

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2015 IL App (4th) 130530-U

NO. 4-13-0530

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

February 20, 2015
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Livingston County
CAPRECIO PATTERSON,)	No. 10CF240
Defendant-Appellant.)	
)	Honorable
)	Mark A. Fellheimer,
)	Judge Presiding.

PRESIDING JUSTICE POPE delivered the judgment of the court.
Justices Steigmann and Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in dismissing defendant's petition for relief from judgment.

¶ 2 On March 22, 2013, defendant, Caprecio Patterson, filed a petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-1401 (West 2012)). On May 23, 2013, the trial court granted the State's motion to dismiss defendant's petition. Defendant argues the court erred in granting the State's motion to dismiss because "a portion of his petition was sufficient to require the circuit court to hold an evidentiary hearing." We affirm.

¶ 3 I. BACKGROUND

¶ 4 In September 2010, the State charged defendant with unlawful possession with intent to deliver a controlled substance (less than 15 grams of heroin, subsequent offense) (720

ILCS 570/401(c)(1) (West 2010)) (count I); unlawful possession of a controlled substance (hydrocodone, alprazolam and dextropropoxyphene, all subsequent offenses) (720 ILCS 570/402(c) (West 2010)) (counts II, III, and IV, respectively); and unlawful delivery of a controlled substance (less than one gram of heroin, subsequent offense) (720 ILCS 570/401(d)(1) (West 2010)) (counts V, VI, and VII). *People v. Patterson*, 2013 IL App (4th) 110693-U, ¶ 4. After a jury trial, defendant was found guilty on all seven counts. *Id.* ¶ 16. We affirmed defendant's convictions. *Id.* ¶ 36.

¶ 5 On March 22, 2013, defendant filed a *pro se* petition for relief from judgment pursuant to section 2-1401 of the Procedure Code (735 ILCS 5/2-1401 (West 2012)). Defendant argued the State knowingly used the perjured testimony of Ryan Carter to obtain his conviction, the trial court erred in denying his motion for a hearing pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978), the State failed to establish a chain of custody of the items seized, and the State failed to prove him guilty beyond a reasonable doubt. In support of his reasonable-doubt claim, defendant cited an affidavit provided to him by Nicole Watts, which he attached to the petition. Watts was involved in the same drug sales to police informant Ryan Carter for which defendant was prosecuted. Watts' affidavit stated, in relevant part, the following:

"I would like to bring to the attention of the concerned parties involved that I acted alone and am solely responsible for the actions that brought about the criminal activity that was charged against myself and [defendant] on [September 16, 2010].

My conscious [*sic*] will no longer allow me to remain silent to this stated fact. By no means did [defendant] participate in the activities that were derived out of my home.

I would pray that there would be a way to correct this matter and so rectify it. Even to the point of testifying in court to the fact that [defendant] had no involvement in the said activity, which he was charged and convicted of."

¶ 6 On April 3, 2013, the State filed a motion to dismiss defendant's petition. On May 22, 2013, the trial court issued an order dismissing defendant's petition for relief from judgment. As defendant's argument to this court centers on Watts' affidavit, we focus on the court's comments regarding this affidavit. The court stated:

"Proof Beyond a Reasonable Doubt. Defendant's argument is two-fold. First, a general recitation of the facts that he made at trial with no support that any of those facts are premised on newly discovered evidence. Second, the newly acquired affidavit of his co-defendant and mother of his child, Nicole Watts, whereby she attempts to take responsibility of the items, and actions, for which the defendant was convicted. This court also sentenced Ms. Watts after her plea of guilty and after she asserted her 5th Amendment rights during the defendant's jury trial when called as a prosecution witness. The People are correct that her affidavit comes only after her plea and sentencing as opposed to before defendant's jury trial. She has absolutely nothing to lose by stating what she states in her affidavit. All of that which she asserts in her affidavit were known to her and to the defendant well in advance of the defendant's jury trial. These two people were

familiar enough with one another that they conceived a child together. This is not a case where a new and independent witness came forward with new evidence that was unknown to the defendant before[, o]r during, his jury trial. Everything she tells the court now was known to her and the defendant a long time before defendant's trial. It is awfully ironic that Ms. Watts takes all the blame in her affidavit at about the same time as she was paroled by the Illinois Department of Corrections. If she wanted to take the blame and responsibility for the defendant, the time to do that was during his trial, not after. Furthermore, even, assuming *arguendo*, that the facts in her affidavit are true, there was ampl[e] evidence presented to the jury to connect the defendant to the items and activities for which he was convicted."

¶ 7 This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 On appeal, defendant argues the trial court erred in dismissing his petition for relief from judgment pursuant to section 2-1401 of the Procedure Code (735 ILCS 5/2-1401 (West 2012)) because Watts' affidavit is newly discovered evidence supporting a claim of "actual innocence." "Relief under section 2-1401 is predicated upon proof, by a preponderance of evidence, of a defense or claim that would have precluded entry of the judgment in the original action and diligence in both discovering the defense or claim and presenting the petition." *People v. Vincent*, 226 Ill. 2d 1, 7-8, 871 N.E.2d 17, 22 (2007). We review the trial court's dismissal of a section 2-1401 petition *de novo*. *Id.* at 18, 871 N.E.2d at 28. We may affirm the

court's decision for any reason supported by the record. *People v. Ryburn*, 378 Ill. App. 3d 972, 978, 884 N.E.2d 1178, 1183 (2008).

¶ 10 According to defendant:

"Essentially the circuit court determined as a factual matter that Watts' testimony would not have made any difference in the outcome of [defendant's] trial and made this determination without ever hearing her testimony. This factual determination was wrong.

This court should reverse and remand for an evidentiary hearing."

Defendant makes an "actual innocence" argument to this court. However, we note defendant did not make an "actual innocence" claim in his section 2-1401 petition. Instead, defendant argued the State did not prove his guilt beyond a reasonable doubt.

¶ 11 This court has held a defendant's failure to include an issue in his or her section 2-1401 petition results in the forfeiture of the issue on appeal. See *People v. Bramlett*, 347 Ill. App. 3d 468, 475, 806 N.E.2d 1251, 1256 (2004). As a result, we find defendant's claim forfeited. However, to prevent defendant from simply filing another section 2-1401 petition in the trial court alleging "actual innocence" based on Watts' affidavit, we will address the merits of his argument.

¶ 12 Claims of actual innocence may be raised in a section 2-1401 petition. *People v. Bocclair*, 202 Ill. 2d 89, 102, 789 N.E.2d 734, 742 (2002). However, actual innocence means total vindication or exoneration. *People v. Collier*, 387 Ill. App. 3d 630, 636, 900 N.E.2d 396, 403 (2008). Our supreme court has stated "[t]he elements of a claim of actual innocence are that the evidence in support of the claim must be 'newly discovered'; material and not merely

cumulative; and of such conclusive character that it would probably change the result on retrial."

People v. Edwards, 2012 IL 111711, ¶ 32, 969 N.E.2d 829. Our supreme court also noted:

"We deem it appropriate to note here that the United States Supreme Court has emphasized that such claims must be supported 'with new reliable evidence—whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence—that was not presented at trial.' [*Schlup v. Delo*, 513 U.S. 298, 324 (1995)]. The Court added: 'Because such evidence is obviously unavailable in the vast majority of cases, claims of actual innocence are rarely successful.' *Id.*" *Id.*

¶ 13

According to defendant:

"Watts' affidavit raised a material issue of fact regarding [defendant's] innocence, as the affidavit contained facts that controverted the trial assumption that [defendant] possessed the drugs found in Watts' residence. The evidence of [defendant's] guilt is not overwhelming. The conviction rests upon the testimony of a convicted felon (Carter) and [defendant's] presence in Watts' residence on the day of the search. Watts' affidavit articulates a cognizable actual innocence claim comprised of new, material, noncumulative evidence that would probably change the result on retrial. [Citation.] As a result, this Court must remand his case for further proceedings under section 2-1401."

¶ 14 The State argues Watts' affidavit lacks specificity and is conclusory. Further, the State argues Watts does not have the "sufficient legal education or knowledge to make the broad, general statements she makes about criminal law in Illinois." We agree. This is not a situation where Watts is stating defendant was not present during the drug transactions or had no knowledge she was involved in the drug trade and dealing drugs from the residence. Instead, she simply makes broad assertions she was "solely responsible," defendant did not "participate in the activities derived out of [her] home," and defendant "had no involvement in the said activity, which he was charged and convicted of."

¶ 15 As the State notes, it prosecuted defendant under an accountability theory. "A person is legally accountable for the conduct of another when *** either before or during the commission of an offense, and with the intent to promote or facilitate that commission, he or she solicits, aids, abets, agrees, or attempts to aid that other person in the planning or commission of the offense." 720 ILCS 5/5-2(c) (West 2010). In short, a person can be legally accountable or responsible for actions far short of what many people would consider participation. Without making any kind of credibility determination or factual finding, Watts' affidavit was not of such conclusive character it would probably change the result if defendant were retried.

¶ 16 After all, as this court noted in its decision in defendant's direct appeal, Ryan Carter testified he made three controlled drug buys from the residence at 104 1/2 South Franklin in Dwight. *Patterson*, 2013 IL App (4th) 110693-U, ¶¶ 10-13. At the first controlled buy, defendant answered the door and asked Carter what he needed. *Id.* ¶ 11. Carter gave defendant \$60 in "buy money" in exchange for four bags of heroin, which was given to Carter by Watts. *Id.* At the second controlled buy, Watts answered the door and took defendant's money. *Id.* ¶ 12. She then walked to a bedroom in the apartment while Carter waited in the living room. *Id.*

Carter could hear Watts and defendant talking prior to Watts returning with four bags of heroin for Carter. *Id.*

¶ 17 At the third controlled buy on September 16, 2010, Carter again gave Watts enough money to buy 5 bags of heroin. Carter heard defendant's voice come from down a hallway asking Watts who was there. Watts went down the hallway and came back with the heroin for Carter. *Id.* ¶ 13.

¶ 18 Prior to the third controlled buy, the police had obtained a search warrant for the residence. *Id.* ¶ 14. Within 15 minutes of the third buy, police executed the search warrant. *Id.*

"Defendant, Watts, and a small child were the only people in the residence. Police searched defendant and found \$1,094 cash in his pocket. Police recovered 52 small bags of heroin, later determined to weigh 5.1 grams and another 11 bags of heroin weighing 0.6 grams. Over \$4,000 in cash was recovered from a men's tennis shoe in the bedroom. Included in that money were the three recorded \$20 bills from the first buy. The prerecorded buy money from the transaction just prior to execution of the search warrant was found in the inner pocket of a men's green vest in the bedroom closet." *Id.* ¶ 15.

The evidence does not suggest defendant was in the wrong place at the wrong time when the police executed the search warrant. Based on the record in this case, Watts' affidavit clearly was not of such conclusive character that it would probably change the result on retrial. As a result, dismissal of an actual-innocence claim—had it been raised—would have been proper.

¶ 19

III. CONCLUSION

¶ 20 For the reasons stated above, we affirm the trial court's order dismissing defendant's section 2-1401 petition for postjudgment relief. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2012).

¶ 21 Affirmed.