

NOTICE
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2015 IL App (5th) 130018-U

NO. 5-13-0018

IN THE

APPELLATE COURT OF ILLINOIS

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).

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Marion County.
)	
v.)	No. 01-CF-391
)	
STEVEN R. SANDERS,)	Honorable
)	Sherri L. E. Tungate,
Defendant-Appellant.)	Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.
Presiding Justice Cates and Justice Chapman concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court properly denied the defendant leave to file a successive postconviction petition, and the defendant's appointed counsel in this appeal has correctly concluded that this appeal lacks merit, and therefore counsel is granted leave to withdraw, and the judgment of the circuit court is affirmed.

¶ 2 The defendant, Steven R. Sanders, appeals from an order of the circuit court of Marion County denying him leave to file a successive petition for postconviction relief under section 122-1(f) of the Post-Conviction Hearing Act (725 ILCS 5/122-1(f) (West 2012)). The defendant's court-appointed attorney, the Office of the State Appellate Defender (OSAD), has concluded that this appeal lacks merit and has filed a motion to

withdraw as counsel pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987). This court has examined OSAD's motion to withdraw, the document that the defendant filed in response thereto, and the entire record on appeal, including the defendant's motion for leave to file a successive petition, the proposed successive petition, and the materials in support of the proposed petition's claims. This examination has not revealed any error or potential ground for appeal. For the reasons set forth below, this court grants OSAD's *Finley* motion and affirms the judgment of the circuit court.

¶ 3

BACKGROUND

¶ 4 The defendant was charged by information with attempted first-degree murder and residential burglary. In January 2005, the defendant waived his right to a trial by jury. In February 2005, the cause proceeded to a bench trial. Ultimately, the court found the defendant guilty on both counts and sentenced him to concurrent terms of imprisonment, and this court affirmed the judgment of conviction. See *People v. Sanders*, No. 5-06-0394 (Jan. 31, 2008) (unpublished order pursuant to Supreme Court Rule 23). This court's order in the direct appeal provided a thorough summary of the evidence adduced at trial. Here follows a brief summary.

¶ 5 At the bench trial, William Williams, the complainant in the attempted first-degree murder count, testified that during the evening of November 29, 2001, he and Carlotta Tourtillott walked to Melissa Brown's house on Gragg Street in Centralia in order to visit Brown. On the back porch of Brown's house, Williams saw two men whom he did not know. Later, Williams would come to know one of these two men as the defendant, and the other man as Jarren Jones. Williams asked the defendant whether Brown was at

home, and the defendant indicated that she was not. Williams and Tourtillott left the Brown residence and began walking toward their own residence a few blocks away. Williams saw the defendant and Jones also leave the Brown residence, and head in another direction. After some time at their own residence, Williams and Tourtillott decided to walk back to Brown's.

¶ 6 Some lights were on inside Brown's residence. As Williams approached Brown's back porch, he saw Jones "ripping stuff out of the refrigerator." Williams started to back away, and told Tourtillott that something was amiss. Just then, the defendant appeared with a handgun and held it to Williams's head. Williams handed his wallet to the defendant. The defendant looked through the wallet and held the gun against Williams's head. Williams knocked the gun away; the gun fired, but the bullet did not hit anyone. Williams and the defendant struggled for possession of the gun. A second shot was fired, but it too did not hit anyone. Williams told Tourtillott to run. Grabbing the defendant's wrist and arm, Williams tried to wrest the gun away from the defendant, but without success. While the gun was between Williams and the defendant, it fired a third time, and a bullet struck Williams in the chest on the right side. Williams fell backward to the ground, but immediately rolled over onto his stomach in order to "play dead." Seconds later, he heard and felt another gunshot, with the bullet hitting his back. He continued to play dead until "it was all quiet." Then, he stood up and started to walk in search of help, but soon collapsed in the yard. During his struggle with the defendant, Williams did not see Jones at all. At some point, an ambulance took Williams to a hospital. He underwent two surgeries in order to repair internal injuries.

¶ 7 The State's other witnesses were Carlotta Tourtillott, who saw Williams when he was shot the first time, but turned and ran before he was shot the second time; Melissa Brown, who was at work at a restaurant during the break-in and shooting at her home; Jarren Jones, the defendant's partner in crime, who ran away from Brown's house prior to the firing of any gunshot; and Melissa Parsakis, who drove the defendant and Jones to and from the Brown residence but who only heard, and did not see, the gunshots. In addition, the parties stipulated that Centralia police officer Jamie James would testify that Williams stated at the scene that he had been "shot twice in the chest." The defendant did not testify at the bench trial.

¶ 8 As previously stated, the court found the defendant guilty on both counts. In regard to the attempted-murder count in particular, the court found that the evidence showed that the defendant intended to shoot Williams in the chest and intended to shoot him in the back, and these findings gave rise to a finding, beyond a reasonable doubt, that the defendant intended to kill Williams.

¶ 9 In March 2005, the court held a sentencing hearing. No evidence, other than the presentence investigation report, was presented. In a statement in allocution, the defendant stated that he had tried to persuade his attorney to present medical records showing that "[Williams] didn't get shot like he testified he got shot," but counsel failed to present those records. According to the defendant, the medical records "showed different angles and everything to what the victim testified to being shot." The defendant insisted that he had not shot Williams in the back while Williams was lying on the ground. He insisted that all of Williams's gunshots were sustained during their struggle

for possession of the gun. The court sentenced the defendant to imprisonment for an extended term of 45 years for attempted first-degree murder and a term of 20 years for the residential burglary, with the sentences to run concurrently.

¶ 10 Subsequently, the defendant *pro se* filed a motion for reduction of sentence, wherein he complained that his conviction resulted from trial counsel's failure to present medical records. According to the defendant, these records would have shown that Williams was shot accidentally during a struggle for a gun, and not "in the fashion in which [Williams] testified too [*sic*]. This means that the victim committed perjury, a charge in itself." The circuit court appointed new counsel for the defendant. By new counsel, the defendant filed a motion for new trial, wherein he raised several claims, including a claim that trial counsel "failed to hire or call expert witnesses related to *** medical and forensic evidence."

¶ 11 On June 26, 2006, the court held a hearing on the defendant's motions for new trial and sentence reduction. In regard to the motion for new trial, the defendant testified that prior to his bench trial, he asked appointed trial counsel Todd Ringel to find a medical expert to review Williams's medical records. The defendant himself had reviewed those records, and he thought that Williams's description of the shooting "didn't match up" with the records' contents. On the day of trial, Ringel told the defendant that he had spoken with a medical expert, but the defendant did not know whether he truly had done so, and no expert was called to testify at trial. The defendant also testified that he told Ringel that they "needed a police officer to testify," but Ringel did not call any police officer to testify. In addition, the defendant testified about his pretrial communications with

Ringel, Ringel's trial strategy, and the circumstances surrounding the defendant's waivers of the rights to a jury trial and to testify at trial. The defendant also testified about matters relating to his motion to reduce sentence.

¶ 12 Also at the hearing on the defendant's motion for new trial, trial attorney Ringel testified that he did not consult with a medical expert in regard to Williams's medical records. Ringel thought that the records clearly showed that Williams was shot once in the chest while struggling for the gun and once in the back while lying face-down.

¶ 13 While arguing against the defendant's motion for new trial, the State's Attorney briefly discussed Williams's medical records. According to the State's Attorney, those records suggested a possible disagreement between the emergency-room (ER) physician who first treated Williams and the surgeon who operated upon Williams, regarding the number and location of the gunshots sustained by Williams. The State's Attorney represented to the court that Ringel approached him a few days before the bench trial commenced, and asked him whether the prosecution would call the surgeon to testify at trial if the defense were to call the ER physician and he testified in a manner helpful to the defense, and the State's Attorney replied to defense counsel that he definitely would call the surgeon under those circumstances. Therefore, the State's Attorney stated to the court, Ringel knew pretrial that the prosecution would be able to prove that the number, location, and trajectories of the gunshots were exactly as the prosecution alleged. "[Ringel] knew I had that covered," the State's Attorney said.

¶ 14 The court took the matter under advisement, and ultimately denied both the motion for new trial and the motion to reduce sentence.

¶ 15 As previously mentioned, the defendant appealed from the judgment of conviction. His appointed attorney in that appeal, OSAD, thought that the appeal lacked merit and sought leave to withdraw as counsel pursuant to *Anders v. California*, 386 U.S. 738 (1967). This court granted the *Anders* motion and affirmed the judgment of conviction. OSAD had identified various potential arguments in the direct appeal, viz.: (1) that the evidence was insufficient to prove the defendant guilty beyond a reasonable doubt of attempted first-degree murder where the evidence failed to prove that the defendant intended to kill Williams; and (2) that the defendant's trial counsel provided constitutionally ineffective assistance (a) by failing to call as witnesses medical and forensic experts and police officers, whose testimony would have cast doubt on Williams's testimony about where on his body he was shot, (b) by coercing the defendant into forgoing his right to testify, (c) by advising the defendant not to testify, and (d) by coercing the defendant into waiving his right to trial by jury. This court considered and rejected each of these potential arguments. See *People v. Sanders*, No. 5-06-0394 (Jan. 31, 2008) (unpublished order pursuant to Supreme Court Rule 23).

¶ 16 On December 1, 2008, the defendant filed *pro se* a 45-page petition for postconviction relief, his first such petition. He claimed that (1) he was not proved guilty of attempted murder because the evidence failed to show that he intended to kill Williams; (2) his conviction was based upon the attempted-murder complainant's perjured testimony that he was shot in the back while lying prostrate on the ground; (3) trial counsel was ineffective in that he (a) failed to consult with, or to call as a witness, any forensic or medical expert who could have aided the defense with evidence or

testimony regarding Williams's gunshot wounds, (b) failed to call as witnesses police officers Jamie James, Shawn Richards, Rich Simer, and Steve Prather, whose testimonies would have discredited Williams's testimony about the shooting, and (c) advised the defendant not to testify; and (4) posttrial counsel was ineffective for failing to properly present his claim of ineffective assistance of trial counsel, in that he (a) failed to call as witnesses the forensic experts or the police officers whom trial counsel had failed to call, (b) failed to present medical records and the complainant's clothing in support of theory that both of Williams's gunshots were inflicted while Williams struggled with the defendant for possession of the defendant's gun, and (c) failed to properly cross-examine trial counsel with respect to trial strategy.

¶ 17 The defendant attached to his postconviction petition a variety of supporting materials. No affidavit from any forensic or medical expert was included. Reports from the hospital at which Williams was treated indicated that Williams had two gunshot entry wounds, one to the right anterior chest or thorax, and one to the right posterior chest or thorax.

¶ 18 On December 15, 2008, the circuit court summarily dismissed the first postconviction petition as frivolous and patently without merit. The court explained that each of the defendant's postconviction claims either had been raised or could have been raised on direct appeal, and therefore was either *res judicata* or waived, making summary dismissal appropriate.

¶ 19 The defendant appealed from the summary dismissal of his first postconviction petition. His appointed attorney in that appeal, OSAD, thought that the appeal lacked

merit and sought leave to withdraw as counsel pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987). This court granted the *Finley* motion and affirmed the summary dismissal, after considering and discussing each of the defendant's postconviction claims. In regard to the reasonable-doubt claim and the claims of ineffective assistance of trial counsel, this court noted that they had been considered and rejected on direct appeal. In regard to the claim that Williams committed perjury, this court noted, *inter alia*, that the defendant had not attached to his petition any materials that provided support for that claim. See *People v. Sanders*, No. 5-09-0005 (Aug. 26, 2010) (unpublished order pursuant to Supreme Court Rule 23).

¶ 20 On December 17, 2012, the defendant filed *pro se* a 48-page motion for leave to file a successive petition for postconviction relief, which was accompanied by a 34-page proposed successive petition. The motion consisted of a prolix history of the case and extended criticisms of this court's order affirming the judgment of conviction, the circuit court's summary dismissal of the defendant's first postconviction petition, and this court's order affirming the summary dismissal of the first petition.

¶ 21 In the proposed successive postconviction petition, the defendant sought to raise five claims, *viz.*: (1) The State failed to disclose to the defense "a ballistic's [*sic*] expert analysis of the medical records in comparison to the clothing Williams was shot in, the removed bullet and shell casings." According to the defendant, this alleged analysis had "the potential to show" that "Williams was shot both times while fighting over the gun and not once while laying [*sic*] facedown on the ground." As part of this claim, the defendant asserted that he is actually innocent of attempted first-degree murder.

According to the defendant, the evidence did not support a finding that he intended to kill Williams, and the alleged ballistics expert's alleged analysis "can show" that the defendant is actually innocent of attempted first-degree murder. (2) His conviction was based on false testimony, specifically, victim Williams's testimony that the second of his two gunshot wounds was inflicted while he was lying prostrate on the ground. According to the defendant, the State knew or should have known that Williams's testimony was false due to the alleged ballistics expert's alleged analysis of Williams's medical records. (3) Direct-appeal counsel was constitutionally ineffective for failing to argue that (i) the prosecutor failed to disclose potentially exculpatory "expert evidence" of how Williams was shot, and (ii) posttrial counsel was ineffective for "failing to argue how the prosecutor was the only one in possession of the bullet trajectories or investigating into the medical evidence himself as he was arguing trial counsel was ineffective for failing to do." According to the defendant, direct-appeal counsel could have raised these two issues "but he failed to do so even though they [were] matters of record." (4) At the preliminary hearing, the State relied on police officer Steve Prather's testimony that victim Williams had been shot once while lying on the ground, even though the State knew or should have known that Prather's testimony was false because "all physical ballistic evidence established that [Williams] was in fact standing, engaged in a struggle over a gun with [the defendant] when he was shot." (5) "The State of Illinois has intentionally through deceptive practices, infringed upon his rights to due process of law and equal protection of the law in violation of the Fourteenth Amendment." According to the defendant, the circuit court, during the first postconviction proceeding, deprived him

of due process and equal protection when it falsely stated that the defendant had failed to support his claim that his conviction had been based on perjured testimony by Williams concerning the circumstances of the shooting, when in truth the defendant had supported this claim with medical records and police reports attached to his petition.

¶ 22 Attached to the proposed successive petition were numerous and varied exhibits, ranging from police reports, to hospital records of victim Williams, to portions of transcripts from the defendant's trial, the posttrial hearing, and the sentencing hearing.

¶ 23 On December 18, 2012, the circuit court entered a docket-entry order denying leave to file a successive postconviction petition. "The defendant has failed to set forth any new basis to allow a successive petition for post-conviction relief," the court explained. From this denial order, the defendant now appeals.

¶ 24 ANALYSIS

¶ 25 This appeal is from an order denying leave to file a successive postconviction petition. Such an order is reviewed *de novo*, and may be affirmed on any basis supported by the record. *People v. Edwards*, 2012 IL App (1st) 091651, ¶ 25.

¶ 26 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2012)) provides a statutory remedy to "[a]ny person imprisoned in the penitentiary" who claims that he suffered a "substantial denial" of his constitutional rights in the proceedings that resulted in his conviction. 725 ILCS 5/122-1(a)(1) (West 2012). A proceeding under the Act is a collateral attack on a final judgment, not an appeal. *People v. Ruiz*, 132 Ill. 2d 1, 9 (1989). Where a postconviction petitioner has previously taken a direct appeal from a judgment of conviction, any issue in the petition that was raised and decided on direct

appeal is barred from postconviction review by *res judicata*, and any issue that could have been presented on direct appeal, but was not, is waived. *People v. Neal*, 142 Ill. 2d 140, 146 (1990). Furthermore, "Any claim of substantial denial of constitutional rights not raised in the original or an amended [postconviction] petition is waived." 725 ILCS 5/122-3 (West 2012). In other words, the Act contemplates only one postconviction proceeding per criminal case, and a criminal defendant is generally limited to filing only one postconviction petition per case. *People v. Guerrero*, 2012 IL 112020, ¶ 15.

¶ 27 Nevertheless, the bar against successive postconviction proceedings will be relaxed if the petitioner either: (1) establishes "cause and prejudice" for his failure to raise his claim earlier, or (2) demonstrates a "fundamental miscarriage of justice" by showing that he is actually innocent of the crime of which he stands convicted. *People v. Edwards*, 2012 IL 111711, ¶¶ 22, 23.

¶ 28 The cause-and-prejudice exception has been codified in section 122-1(f) of the Act. See 725 ILCS 5/122-1(f) (West 2012). A petitioner shows cause "by identifying an objective factor that impeded his or her ability to raise a specific claim during his or her initial post-conviction proceedings." 725 ILCS 5/122-1(f) (West 2012). He shows prejudice "by demonstrating that the claim not raised during his or her initial post-conviction proceedings so infected the trial that the resulting conviction or sentence violated due process." *Id.* The cause-and-prejudice test is applied to individual claims, not to a successive petition as a whole. *People v. Pitsonbarger*, 205 Ill. 2d 444, 462 (2002). If the petitioner succeeds in showing both cause and prejudice, the circuit court should grant him leave to file a successive postconviction petition and should consider

the eligible claim(s). 725 ILCS 5/122-1(f) (West 2012); *Pitsonbarger*, 205 Ill. 2d at 464. "[L]eave of court to file a successive postconviction petition should be denied when it is clear, from a review of the successive petition and the documentation submitted by the petitioner, that the claims alleged by the petitioner fail as a matter of law or where the successive petition with supporting documentation is insufficient to justify further proceedings." *People v. Smith*, 2014 IL 115946, ¶ 35.

¶ 29 As for the actual-innocence exception, a claim of actual innocence must be supported by evidence that is newly discovered, material and not merely cumulative, and of such conclusive character that it would probably change the result on retrial. *People v. Ortiz*, 235 Ill. 2d 319, 333 (2009). The circuit court should grant leave to file a successive petition when "the petitioner's supporting documentation raises the probability that it is more likely than not that no reasonable juror would have convicted him in the light of the new evidence." (Internal quotation marks omitted.) *Edwards*, 2012 IL 111711, ¶ 24. "[L]eave of court should be denied only where it is clear, from a review of the successive petition and the documentation provided by the petitioner that, as a matter of law, the petitioner cannot set forth a colorable claim of actual innocence." *Id.*

¶ 30 In the defendant's proposed successive petition, the first claim was that the State failed to disclose to the defense an alleged (and unidentified) ballistic expert's potentially exculpatory analysis of shooting victim Williams's medical records. See *Brady v. Maryland*, 373 U.S. 83 (1963) (due process requires the prosecution to disclose exculpatory evidence to the defense). As proof of the existence of such an expert analysis, the defendant in his successive petition pointed to remarks by the prosecutor at

the June 26, 2006, hearing on the defendant's motion for new trial, remarks described above. Because the basis for this first claim appeared in the transcript of the hearing on the motion for new trial, the claim obviously could have been raised in the direct appeal. The claim also could have been raised in the first postconviction proceeding, paired with a claim that direct-appeal counsel was constitutionally ineffective for not raising it. However, the claim was not raised on either occasion. Accordingly, the claim must be deemed waived. In his successive petition, the defendant attempted to avoid waiver and to establish the cause element of the cause-and-prejudice test by stating that he did not grasp until 2012 the meaning or significance of the prosecutor's remarks at the June 26, 2006, hearing. It was in 2012 that the Illinois Attorney General filed an answer to the defendant's federal *habeas corpus* petition, citing the prosecutor's remarks, and only then did the defendant realize that the prosecutor must have been referring to some kind of previously undisclosed analysis by a ballistics expert. This explanation does not change the fact that the basis for the successive petition's first claim is found in the transcript of the June 26, 2006, hearing, and therefore the claim could have been raised on direct appeal or in the first postconviction proceeding. The defendant has failed to establish cause for his failure to raise the first claim during his first postconviction proceeding.

¶ 31 Also, the defendant has failed to establish prejudice in regard to the first claim. The claim is based on pure conjecture. At the June 26, 2006, the prosecutor was obviously saying that if the defense called the ER doctor to testify at trial, and if the ER doctor testified that Williams had been shot twice in the front, the prosecution would then call Williams's surgeon to testify that Williams had been shot once in the front and once

in the back. Nothing in the prosecutor's remarks even intimates the existence of some previously undisclosed analysis by a ballistics expert. Nevertheless, the defendant presumed from those remarks that some ballistics expert must have examined Williams's medical records and must have found evidence that presumably would have benefitted the defense at trial. This conjecture is the sole basis for the proposed successive petition's first claim. Certainly, the defendant did not attach to his petition any affidavit supporting the notion that such a ballistics expert's analysis actually exists, or ever did exist. See 725 ILCS 5/122-2 (West 2012) (postconviction claims must be supported by affidavit or other evidence). Lacking any factual basis whatsoever, this first claim did not even state the gist of a constitutional claim, and qualified as frivolous and patently without merit. See 725 ILCS 5/122-2.1(a)(2) (West 2012); *People v. Hodges*, 234 Ill. 2d 1, 11-12, 17 (2009). There is no true indication of a *Brady* violation in this case.

¶ 32 Within his first claim, the defendant included an assertion that he was actually innocent of attempted first-degree murder. However, the defendant did not present any newly discovered evidence, let alone any newly discovered evidence that would satisfy the "colorable claim of actual innocence" standard. See *Ortiz*, 235 Ill. 2d at 333; *Edwards*, 2012 IL 111711, ¶ 24. He merely stated that he was actually innocent and conjectured that the State must have possessed some undisclosed ballistics analysis that would establish his innocence.

¶ 33 The second claim in the defendant's proposed successive petition is that the attempted first-degree murder conviction was based on victim Williams's allegedly perjured testimony that the second of his two gunshot wounds was inflicted while he was

lying prostrate and helpless on the ground. Substantially the same claim was presented in the defendant's first postconviction petition, as the defendant himself acknowledged in his proposed successive petition. On appeal from the summary dismissal of that first petition, this court correctly noted, *inter alia*, that the defendant had not attached to his petition any materials that provided support for the claim. See *People v. Sanders*, No. 5-09-0005 (Aug. 26, 2010) (unpublished order pursuant to Supreme Court Rule 23). Any issue previously decided by a reviewing court is barred by *res judicata*. *People v. Harris*, 224 Ill. 2d 115, 124-25 (2007). More narrowly, a ruling on an initial postconviction petition has *res judicata* effect with respect to all claims that were raised or could have been raised in that initial petition. *People v. Orange*, 195 Ill. 2d 437, 449 (2001). Without doubt, the defendant's second claim, alleging perjury by victim Williams, is barred.

¶ 34 Furthermore, the perjury claim is just as weak the second time around. The claim is based in part on the pure conjecture that there exists, or once existed, some type of "analysis" by an unidentified ballistics expert that could potentially contradict Williams's trial testimony describing the particulars of the shooting. Obviously, this conjecture provides no support for the perjury claim. The claim also is based on a police report and medical records, which the defendant attached to his proposed successive petition. In a police report apparently authored by Officer Jamie James, it was stated that Williams, while still at the scene of his shooting, said that he had been shot "twice in the chest." At the bench trial, the parties stipulated that Officer James would so testify, and therefore the trier of fact was aware of Williams's possibly inconsistent out-of-court statement. In the

same paragraph of that police report, it was reported that Williams at the time he made his statement "appeared very weak" and was "barely understandable." Under those circumstances, Williams's words to Officer James are not a very strong contradiction of Williams's trial testimony describing the shooting. More importantly, the medical records that the defendant attached to his successive petition do not contradict, and largely corroborate, Williams's trial testimony. A two-page "history and physical," signed by attending physician Mark Murfin, M.D., of St. Mary's Good Samaritan Hospital in Centralia, noted that Williams arrived at the emergency room with two "obvious" gunshot entry wounds to the right chest, one posterior and one anterior. Likewise, a three-page "report of operation," also signed by Dr. Murfin, noted one gunshot entry wound in the posterior chest and one in the anterior chest. Nothing in the medical records contradicts any portion of Williams's testimony. Indeed, they corroborate his testimony that he was shot once in the front and once in the back. Because there is no indication of perjury by Williams, the prejudice element of the cause-and-prejudice test cannot be established in regard to the perjury claim.

¶ 35 The third claim in the defendant's proposed successive petition was that direct-appeal counsel was constitutionally ineffective for failing to raise certain issues relating to the alleged ballistics expert's alleged analysis of Williams's medical records, an analysis that was potentially exculpatory but wrongfully withheld from the defense. According to the defendant, these issues were "apparent in the original appellate record." Of course, if the issues were apparent in the original appellate record, the defendant could have raised this ineffective-assistance-of-direct-appeal-counsel claim in his initial

postconviction petition. There was nothing to stop him from raising it in the first proceeding. That is, there was no cause for his failure to bring the claim in the initial postconviction proceeding. Furthermore, there can be no prejudice with regard to this third claim. As explained *supra*, the existence of a potentially exculpatory "analysis" by a "ballistics expert" was purely a matter of conjecture, the product of the defendant's overactive legal imagination. Direct-appeal counsel cannot be faulted for not raising meritless issues that have no factual basis in the record.

¶ 36 The fourth claim in the successive petition is that the State, at the preliminary hearing in this case, relied on the allegedly false testimony of a police officer who testified that victim Williams had been shot while lying prostrate on the ground, and that the State knew or should have known this testimony was false because it possessed "ballistic evidence" contradicting the testimony. This claim, too, is grounded in the defendant's conjecture that there exists, or once existed, some kind of potentially exculpatory analysis conducted by a ballistics expert. The defendant could have raised this claim in his first postconviction petition. Also, as explained above, there is no legitimate reason to think that such an expert analysis exists or ever did exist. The defendant cannot establish cause or prejudice in regard to this claim.

¶ 37 The fifth and final claim in the proposed successive petition is that the circuit court deprived the defendant of "due process" and "equal protection" when, during the first postconviction proceeding, it stated that he had not provided any support for his claim that his conviction was based on victim Williams's perjured testimony. This claim has no place in a postconviction proceeding. Postconviction proceedings are to address alleged

constitutional violations that occurred in the proceedings that resulted in the defendant's conviction. See 725 ILCS 5/122-1(a)(1) (West 2012). An alleged error in ruling upon a postconviction petition cannot qualify as such a violation. At any rate, the defendant's factual allegation is simply incorrect. The circuit court, in its December 15, 2008, order summarily dismissing the first postconviction petition, did not state that the defendant had not provided any support for his perjury claim. Rather, the circuit court stated that all of the first petition's claims were barred by either *res judicata* or waiver. It was this court, when reviewing the order summarily dismissing the first petition, that stated that the defendant had failed to provide any support for his perjury claim, and this court was correct in its assessment. The ostensible "support" for the perjury claim in the first postconviction proceeding was essentially the same as the "support" provided with the successive petition, *i.e.*, a police report and Williams's medical records. As explained above, these items provided no support for the perjury claim, and actually corroborated Williams's testimony that he was shot once in the front and once in the back.

¶ 38 The defendant completely failed to establish either cause or prejudice in connection with any of the five claims that he sought to raise in a successive petition. The circuit court was correct in denying the defendant leave to file a successive postconviction petition. OSAD was correct in finding no merit to this appeal. Accordingly, OSAD is granted leave to withdraw as counsel in this appeal, and the judgment of the circuit court is affirmed.

¶ 39 Motion to withdraw as counsel granted; judgment affirmed.