

dismissing his successive petition for postconviction relief without an evidentiary hearing. Brunt argues the petition should have been granted because: (1) he made a substantial showing of ineffective assistance of trial counsel for failing to investigate his alibi defense by providing affidavits of several family members attesting to his whereabouts on the day of the murder; (2) he made a substantial showing of actual innocence by providing an affidavit of codefendant Leanel Deere asserting Brunt was not present for the murder; and (3) he made a substantial showing of ineffective assistance of appellate counsel for failing to raise a challenge to the trial court's jury instructions. Brunt further asserts the circuit court abused its discretion by denying his discovery motion to obtain the original police reports in this matter. For the following reasons, we affirm the judgment of the circuit court of Cook County.

¶ 3

BACKGROUND

¶ 4 On July 22, 1994, a jury convicted Brunt and codefendant Leanel Deere (Deere) for the murder of Michael Payton (Payton).¹ Brunt is currently serving an 80-year sentence in the Illinois Department of Corrections for the offense.

¶ 5

I. Facts of Michael Payton's Murder

¶ 6 The chain of events leading to Payton's untimely death began with an altercation between two students at Wright Elementary School. Deere's son, Antonio Hughes (Hughes), approached Quincy Mabrey after school on November 20, 1991. The two students exchanged punches before Quincy eventually tripped Hughes to the ground and "stomped" him. That evening, Deere approached Quincy at a pool hall. Deere threatened he would be waiting at Quincy's school the following day and would break the legs of whomever his son pointed out as his attacker. These

¹ The jury acquitted codefendant Kenneth Washington. All three defendants were jointly tried before a single jury.

threats ultimately materialized into a fight outside of Wright Elementary School on November 21, 1991, culminating with the shooting and killing of Payton. At trial, the State presented four witnesses to describe the events of that day in detail: Johnny Mabrey, Tasha Mosby, Betty Davis, and James Randle.

¶ 7

A. Testimony of Johnny Mabrey

¶ 8 Johnny Mabrey (Johnny), Quincy's brother, testified he went to Wright Elementary School on the afternoon of November 21, 1991 to pick up Quincy from school. Johnny, unaware his brother had stayed home in light of Deere's threats, noticed Deere waiting with Brunt and a few others outside of the school. According to Johnny, Deere and Brunt approached him, followed by two other men. After one of the men hit him in the face, Johnny fell to the ground to protect himself. He then overheard someone tell the men to stop. Johnny identified this man as Payton, who bent down and tried to help Johnny from off the ground. Johnny heard a gunshot as Payton attempted to help him. Payton immediately dropped Johnny back to the ground. When Johnny looked up, he observed Payton attempting to run away. Johnny then remained on the ground and pretended to have been wounded, at which point he heard more gunshots fired.

¶ 9

B. Testimony of Tasha Mosby

¶ 10 Tasha Mosby (Mosby), a friend of Payton, testified Payton had picked her up in his automobile on the day of the incident en route to his mother's house. As they drove past Wright Elementary School, Payton and Mosby noticed a fight in progress across the street from the school. After they realized a man lay on the ground being beaten by a group of attackers, Payton stopped his vehicle in the middle of the street and approached the scene of the altercation. Mosby remained seated in Payton's automobile, which was parked approximately five or six feet from the incident. She then observed the following events from her opened passenger-side

window.

¶ 11 According to Mosby, Deere and Brunt kicked Johnny while he laid on the pavement. She then watched as Payton made his way through the crowd asking them to stop. Mosby overheard a woman in the crowd say, “Who the f**k was he? He doesn't have s**t to do with it.” She also heard Deere shout, “take the m*****r out.” Deere faced Mosby at the time, allowing her to see his face as he spoke. When Payton bent down to pick Johnny up, Mosby heard a gunshot. Payton dropped Johnny and reached for his back. Payton then ran toward a vacant lot, with Brunt following behind him and armed with a pistol pointed at his back. Codefendant Kenneth Washington also pursued armed with a handgun. Deere walked behind them. Mosby heard another shot fired. Payton grabbed his thigh and continued to flee. By the time he reached the vacant lot, Payton fell to the ground. Brunt continued to approach. As Payton rolled over, Brunt pointed the weapon down at him and fired repeatedly until Mosby heard a click indicating the handgun was empty.

¶ 12 On cross-examination, Mosby admitted while she recognized Deere and Washington from prior occasions, she had not seen Brunt prior to the shooting.

¶ 13 C. Testimony of James Randle

¶ 14 James Randle testified he was working as a security guard at Wright Elementary School on the day in question. While he stood next to the main entrance of the school, Randle noticed a group of adults and teenagers standing near the north end of the building. Shortly thereafter, Randle was called away to break up a fight between two students in the back of the school. When he returned to the main entrance, Randle witnessed the beating of Johnny in progress. Randle identified Deere, Washington, and Brunt as amongst those punching and kicking Johnny. Randle quickly approached the group before Washington removed his weapon and discharged it

at Payton. When Payton started running toward the vacant lot, Randle witnessed Brunt chase after him and fire his pistol. Washington followed closely behind. After Payton fell onto the ground, Randle observed Brunt walk up to Payton and fire an additional three or four shots.

¶ 15

D. Testimony of Betty Davis

¶ 16 Betty Davis testified she was working as a school community representative at the elementary school on the day of the incident. On that day, Davis had been standing at the north door of the school when she noticed a group of men coming down the street. She recognized Deere, whom she knew. Deere approached Davis and after she initiated conversation, he told her to “get the f**k out of his face.” Davis then headed for the front door to let Randle know that there might be a problem. Davis observed Hughes come out of the school and heard Deere ask him whether any of the boys who had jumped him were there. Hughes pointed out a student and Deere told his son to “get him.” Hughes chased the boy behind the school and inside the back door of the school. Davis then went inside the school and saw them beating up on the student. She and some of the aides at the school were able to break up the fight.

¶ 17 Davis thereafter returned outside to find Deere with a group of men. She also witnessed Johnny walking down the street. After someone shouted, “there goes Quincy's brother,” the group approached Johnny and started beating him. Although she did not know his name at the time, Davis recognized Brunt as a relative of Deere and as one of the individuals attacking Johnny.

¶ 18 Davis testified she then observed a vehicle pull up in front of the school. A man exited the automobile attempting to help Johnny. Davis heard someone say “it wasn't his f*****g business,” and someone else say, “take him out.” According to Davis, at this point Deere's sister, Lorraine, passed a handgun to someone in the crowd. Upon seeing the weapon, Davis grabbed a

nearby student and hid under an automobile. She heard gunshots fired and people running. From her vantage point under the vehicle, Davis claims she could recognize Brunt from the distinct blue-green jacket he was wearing. She could further see he was holding a handgun. Despite hearing shots fired, Davis did not witness the actual shooting.

¶ 19

II. Defense Testimony

¶ 20 Codefendant Washington called four witnesses and testified himself. Deere called one witness and did not testify. Brunt presented no witnesses and did not testify. Of the defense witnesses, five claimed to have not seen Brunt at Wright Elementary School that day, including Washington and Lorraine Deere, Brunt's cousin.

¶ 21

III. Jury Instructions

¶ 22 After the close of evidence, the trial court instructed the jury with regards to how it should consider the witnesses' identification evidence. Without objection, the trial court based its instruction on Illinois Pattern Jury Instruction, Criminal, No. 3.15 (3d ed. 1994) (hereinafter, IPI Criminal No. 3.15). The trial court's instruction provided:

"When you weigh the identification testimony of a witness, you should consider all the facts and circumstances in evidence, including, but not limited to, the following:

The opportunity the witness had to view the offender at the time of the offense;

or

The witness's degree of attention at the time of the offense;

or

The witness's earlier description of the offender;

or

The level of certainty shown by the witness when confronting the defendant;

or

The length of time between the offense and the identification confrontation.”

¶ 23

IV. Direct Appeal

¶ 24 Following his conviction, Brunt appealed, arguing he had been denied a fair trial for two reasons: (1) as a result of one officer's testimony, which noted Brunt had already been in custody prior to his arrest for the murder of Payton; and (2) as a result of the State's rebuttal during closing arguments. This court affirmed Brunt's conviction. *People v. Brunt*, No. 1-94-3540 (1997) (unpublished order under Supreme Court Rule 23).

¶ 25

V. Initial Postconviction Petition

¶ 26 Brunt filed a postconviction petition following his appeal in June 1997. The petition alleged his trial counsel was ineffective for failing to investigate his assertion that he was "somewhere else" and failing to "speak with or request the appearance of possible defense witnesses who could attest to where [he] was at the time of the offense." The petition did not identify where he allegedly had been during the murder or with whom he had been. The petition further did not provide affidavits detailing what his alleged alibi witnesses would have testified to had they been called. Instead, Brunt asserted such affidavits would be forthcoming, provided the court granted his petition. The circuit court summarily dismissed the petition as "frivolous and patently without merit" and this court subsequently affirmed. *People v. Brunt*, No. 98-4314 (2000) (unpublished order under Supreme Court Rule 23).

¶ 27

VI. Successive Postconviction Petition

¶ 28 In 2001, Brunt filed a "Motion to Vacate Void Judgment." The circuit court treated the motion as a successive postconviction petition and appointed counsel.

¶ 29 In 2010,² appointed counsel filed a motion for discovery, requesting police reports originally tendered to trial counsel. Appointed counsel now sought to investigate whether trial counsel had been ineffective for failing to perfect the impeachment of the State's witnesses. Trial counsel had laid a foundation for impeachment by asking certain witnesses about their descriptions of Brunt and asking whether they ever tendered those descriptions to the police following the murder. Because trial counsel never perfected the impeachment, appointed counsel sought the police reports to see if they in fact provided the basis for impeachment as suggested by the questioning. The circuit court denied the motion for discovery.

¶ 30 In 2011, appointed counsel filed an amended successive postconviction petition. The successive petition again alleged Brunt's trial counsel had been ineffective for failing to investigate his alibi defense. This time, Brunt attached the affidavits of seven various friends and family members attesting to his whereabouts on the date of the murder. Additionally, Brunt raised an actual innocence claim, attaching the affidavit of his cousin and codefendant, Leanel Deere. The Deere affidavit claimed Brunt had not been present during the murder of Payton and instead asserted an unknown man "jumped out of his car with a pistol in his hand," shooting Payton. Lastly, Brunt argued in the petition the jury instruction based on IPI Criminal No. 3.15 denied him a fair trial because it used the disjunctive "or" between the five factors instead of the conjunctive "and." After hearing arguments from both parties, the circuit court ultimately granted the State's motion to dismiss the petition in an order from which Brunt now appeals.

¶ 31

ANALYSIS

¶ 32 The Post-Conviction Hearing Act (Act) provides a remedy to criminal defendants whose

² The record indicates the parties continued the case on at least 28 occasions over seven years following the appointment of counsel. In 2008, postconviction counsel indicated it would be pursuing an actual innocence claim, after which it encountered difficulty contacting the necessary witnesses, thus leading to further delays.

federal or state constitutional rights were substantially violated in their original trial or sentencing hearing. *People v. Pitsonbarger*, 205 Ill. 2d 444, 455 (2002); 725 ILCS 5/122-1 *et seq.* (West 2010). In noncapital cases, the Act creates a three stage procedure for relief. *People v. Hobson*, 386 Ill. App. 3d 221, 230-31 (2008). At the first stage, the circuit court must independently determine whether the petition is “frivolous or is patently without merit.” 725 ILCS 5/122-2.1(a)(2) (West 2010); *People v. Hodges*, 234 Ill. 2d 1, 10 (2009). If a petition is not summarily dismissed by the circuit court during the first stage, it advances to the second stage, where counsel may be appointed to an indigent defendant and where the State is allowed to file a motion to dismiss or an answer to the petition. *Id.* To avoid dismissal at the second stage, the petitioner must make a substantial showing of a constitutional violation. *People v. English*, 403 Ill. App. 3d 121, 129 (2010). If the State's motion to dismiss is denied, or no such motion is filed, the State must file a timely answer to the postconviction petition. *Id.* If the circuit court determines at the second stage the petitioner made a substantial showing of a constitutional violation, a third-stage evidentiary hearing must follow. *Id.*

¶ 33 Generally, the Act contemplates the filing of only one petition. 725 ILCS 5/122-1(f) (West 2010). Successive petitions are disfavored and therefore to proceed on a successive petition a petitioner must first obtain leave of court by either asserting actual innocence or satisfying the cause-and-prejudice test. *People v. Sutherland*, 2013 IL App (1st) 113072, ¶ 16; 725 ILCS 5/122-1(f) (West 2010). “To show cause, a defendant must identify an objective factor that impeded his ability to raise a specific claim during his initial postconviction proceedings.” *Id.* “To show prejudice, a defendant must demonstrate that the claim not raised so infected the trial that the resulting conviction or sentence violated due process.” *Id.*

¶ 34 The circuit court dismissed Brunt's successive petition at the second stage of the

proceedings,³ a decision we review *de novo*. *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006). Brunt now asks this court to reverse the circuit court's decision granting the State's motion to dismiss and remand the cause for a third-stage evidentiary hearing. Brunt contends: (1) he has made a substantial showing of ineffective assistance of trial counsel for failing to investigate his alibi defense; (2) he has made a substantial showing of actual innocence by providing an affidavit of codefendant Leanel Deere; (3) he has made a substantial showing of ineffective assistance of appellate counsel for failing to raise a challenge to the trial court's jury instructions; and (4) the circuit court erred in denying his discovery motion to obtain the original police reports in this matter. We address these arguments in turn.

¶ 35 I. Ineffective Assistance of Trial Counsel

¶ 36 Brunt attached to his successive petition the affidavits of seven friends and family members, each purporting to provide Brunt with an alibi for the murder. These affidavits, according to Brunt, reveal the failure of his original trial counsel to investigate his alibi defense and present the witnesses at trial, thus making a substantial showing of ineffective assistance of counsel. As the circuit court found, however, *res judicata* prohibits Brunt from asserting this claim in his successive petition.

¶ 37 The doctrine of *res judicata* limits postconviction relief to constitutional claims that have not been and could not have been raised earlier. *English*, 403 Ill. App. 3d at 130. Thus, a petitioner may not raise the same claim in a successive petition previously raised on appeal or in the original petition. *People v. McDonald*, 364 Ill. App. 3d 390, 392-93 (2006). Strict application of the doctrine, however, may be relaxed in circumstances where fundamental

³ We note the record does not indicate whether Brunt received leave to file the successive petition and in its written order the circuit court noted the petition "apparently [reached the second stage] without leave of court." In any event, the circuit court did not dismiss on these grounds and the issue is not relevant to the disposition of this appeal.

fairness so requires. *People v. Flores*, 153 Ill. 2d 264, 274 (1992). The circuit court's exercise of the doctrine of *res judicata* is a question of law reviewed *de novo*. *People v. Davis*, 377 Ill. App. 3d 735, 745 (2007).

¶ 38 Brunt acknowledges he already raised this claim in his original postconviction petition, but asserts *res judicata* should not apply here. According to Brunt, the circuit court never "actually decided" the previous "general version" of his ineffective assistance claim because it summarily dismissed the original petition for procedural deficiencies. Thus, Brunt urges us to address the merits of his now more "specific claim" because he has supported it with affidavits and documentation previously not tendered to the court.

¶ 39 Brunt cites *People v. Harris*, 206 Ill. 2d 1, 42 (2002), for the proposition that the circuit court never "actually decided" his original ineffective assistance of counsel claim. Yet, *Harris* does not stand for the notion that *res judicata* should be relaxed where the prior judgment was a first-stage summary dismissal. Rather, the *Harris* court did not apply *res judicata* simply because the petitioner's two contentions in that case, while similar, were "not the same." *Id.* *Harris*, accordingly, does not apply here.

¶ 40 Indeed, contrary to Brunt's assertions, a first-stage dismissal is in fact a substantive ruling. See *People v. Harris*, 224 Ill. 2d 115, 125-26 (2007) ("At the first stage, [the Act] directs the circuit court to independently assess the substantive merit of the petition. [citation] If the court finds that the petition is 'frivolous' or 'patently without merit,' the Act requires that the court dismiss it, and this dismissal is a final order."). Moreover, to proceed on Brunt's successive petition in light of the new affidavits would be to proceed in a manner specifically discouraged by our supreme court; a petitioner may not "develop the evidentiary basis for a claim in a piecemeal fashion in successive post-conviction petitions" by simply providing affidavits that

were not submitted in the first petition. *People v. Erickson*, 183 Ill. 2d 213, 226-27 (1998); see also *English*, 403 Ill. App. 3d at 131 (fundamental fairness did not require that successive petition be heard simply because petition was supported by additional affidavits). Accordingly, we find the circuit court properly dismissed Brunt's ineffective assistance of trial counsel claim under the doctrine of *res judicata*.

¶ 41

II. Actual Innocence

¶ 42 In addition to the seven affidavits attesting to his alibi on the day of the murder, Brunt attached to his successive petition the affidavit of Leanel Deere, his cousin and codefendant in the original criminal trial. Deere's affidavit proclaims he never saw Brunt at the scene of the shooting and had never seen his cousin with long or curly hair. Deere allegedly offered this information to Brunt's trial counsel, but Deere's own attorney "refused to allow him to testify." According to Brunt, this affidavit qualifies as newly discovered evidence in support of a claim of actual innocence.

¶ 43 To support a claim of actual innocence, a petitioner must present "reliable" 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. Edwards*, 2012 IL 111711, ¶ 32. Deere's affidavit does not meet all of these elements and therefore does not support Brunt's actual innocence claim.

¶ 44

A. Newly Discovered

¶ 45 To qualify as "newly discovered," the evidence must have been "unavailable at trial and could not have been discovered sooner through due diligence." *People v. Harris*, 206 Ill. 2d 293, 301 (2002). Brunt makes no effort to assert he was unaware of Deere's potential testimony at the 1994 trial. Instead, Brunt insists "it is irrelevant that [he] knew of Deere's identity at the time of

trial because, as a co-defendant himself, Deere had a Fifth Amendment right against self-incrimination and no amount of due diligence by Brunt could have forced Deere to provide an affidavit admitting his presence at the scene unless and until he chose to do so."

¶ 46 For support, Brunt cites *People v. Parker*, 2012 IL (1st) 101809, ¶¶ 83-84. In *Parker*, the State raised the argument that "a codefendant's exculpatory affidavit can *never* constitute newly discovered evidence," which this court rejected. (Emphasis added.) *Id.* ¶ 83. The *Parker* court, however, did not go so far as to declare the opposite; that is, the court did not find whether we must *always* treat a codefendant's postconviction affidavit as newly discovered evidence where the codefendant merely could have invoked the fifth amendment privilege against self-incrimination at trial. See generally *id.*; see also *Edwards*, 2012 IL 111711, ¶ 38 (finding the affidavit constituted newly discovered evidence "where no amount of diligence could have forced [codefendant] to violate [his fifth amendment privilege] if he did not choose to do so"). In this instance, Deere's affidavit actually admits the fifth amendment provided no hurdle to his testimony and he was quite willing to provide this information at trial. Deere instead claims his own counsel "refused" to allow him to testify. The fifth amendment privilege, however, rests not with Deere's counsel but with Deere himself. *People v. Collins*, 366 Ill. App. 3d 885, 892 ("An individual's fifth amendment right against self-incrimination is generally a personal right that may only be invoked by the individual claiming that right."). Accordingly, we are not certain *Parker* and *Edwards* apply here. Nevertheless, we need not reach a conclusion on this issue, for Brunt's actual innocence claim fails on other grounds.

¶ 47

B. Cumulative

¶ 48 Evidence is cumulative "when it adds nothing to what was already before the jury."

People v. Ortiz, 235 Ill. 2d 319, 335 (2009). Brunt concedes five defense witnesses, including

another codefendant, testified he had not been present for the murder, but argues Deere's affidavit is material and not cumulative because "Deere knew what Brunt looked like and knew the shooter looked nothing like Brunt." This argument ignores that Deere's sister, Lorraine, was amongst those who testified Brunt had not been present for the murder and, also being Brunt's cousin, is likewise familiar with his appearance. Yet Brunt asserts in his reply brief because Lorraine had not seen him for "a few years" prior to the shooting, she could not state whether he ever possessed the "long or curly" hair described by the State's witnesses. Deere's affidavit, however, makes no mention of how recently before the shooting he had seen his cousin either. At best, Deere's testimony would "merely corroborate[]" that of the previous alibi witnesses, thus rendering it cumulative evidence. *People v. Mitchell*, 2012 IL App (1st) 100907, ¶ 74.

Accordingly, we find the content of Deere's purported testimony would have added nothing to that of the five defense witnesses whose testimony the jury rejected.

¶ 49

C. Conclusive Character

¶ 50 Nevertheless, even assuming Deere's testimony would qualify as noncumulative evidence, Brunt still cannot show it "would probably change the result on retrial." As the circuit court noted, the jury rejected the testimony of the five alibi witnesses, including that of acquitted codefendant Kenneth Washington. Brunt's claim thus requires us to believe the additional testimony of his cousin and codefendant regarding the same fact would somehow alter that result. We are not persuaded by this argument.

¶ 51 Quoting *People v. Ortiz*, Brunt responds Deere's affidavit would likely change the outcome on retrial because it would make the evidence of his innocence "stronger when weighed against" the State's evidence. *Ortiz*, 235 Ill. 2d at 337. In *Ortiz*, the State presented the recanted testimony of two eyewitnesses to prove the defendant shot and killed the victim. *Id.* at 323-24.

The first witness identified defendant as the shooter, but admitted to being high on cocaine during the offense and previously testified in a deposition to not having seen the defendant commit the offense. *Id.* at 323. The second witness claimed the defendant had nothing to do with the shooting and recanted his prior identification of the defendant as having been coerced by the police. *Id.* at 324. In a successive postconviction petition, defendant attached the detailed affidavit of a new witness, which the *Ortiz* court found constituted evidence of actual innocence. *Id.* at 337.

¶ 52 The State's evidence in *Ortiz* was noticeably lacking and Brunt relies on the false assumption that the State's identification evidence in this case was similarly weak. To the contrary, the State presented significant, credible evidence rebutting Brunt's alibi defense. Four witnesses independently identified Brunt as having been present for the murder, one of whom had familiarity with Brunt from prior occasions and recognized him as a relative of the Deere siblings. The jury believed this testimony and we do not find the additional testimony of another alibi witness would have any effect on that outcome. See *English*, 403 Ill. App. 3d at 134 (Defendant "unable to establish that the evidence put forth by his three new alibi witnesses was of such conclusive character that it would have probably changed the result on retrial" where "[t]here was substantial credible evidence adduced at trial which contradicted the testimony of defendant and his alibi witnesses."); see also *People v. Smith*, 177 Ill. 2d 53, 82-84 (1997). Consequently, Deere's affidavit does not support a claim of actual innocence.

¶ 53 III. Ineffective Assistance of Appellate Counsel

¶ 54 Brunt additionally argues the trial court's use of a flawed IPI-instruction denied him a fair trial and, accordingly, his appellate counsel was ineffective for not making this argument on appeal. Brunt cites *People v. Gonzalez*, 326 Ill. App. 3d 629, 640 (2001), in which this court

found the use of the word "or" between the listed factors to be error because it implied that a juror may account for only one of the factors in determining the reliability of witness testimony. This court decided *Gonzalez* on November 26, 2001, and we subsequently held any such errors occurring prior to that date "may not be raised in post-conviction petitions." *People v. Oliver*, 2013 IL App (1st) 120793, ¶ 24. Brunt's appeal was decided in 1997, well before this court decided *Gonzalez*, thereby foreclosing his ability to raise the issue in a postconviction petition.

¶ 55 Brunt attempts to circumvent this limitation, noting he does not raise a direct attack on the jury instructions, but instead claims the ineffective assistance of appellate counsel for failing to challenge the instructions on direct appeal. As an alternative argument, Brunt asserts his postconviction counsel was unreasonable for failing to make this ineffective assistance of appellate counsel claim in the initial petition. *Oliver*, nonetheless, still forecloses both of these contentions. As *Oliver* states, a claim of ineffective assistance of counsel cannot "be based on counsel's failure to invoke a ruling that had not yet occurred." *Id.* (citing *People v. Chatman*, 357 Ill. App. 3d 695, 700 (2005)). Requiring counsel to predict "future appellate court holdings would render 'effective assistance' an impossible standard to meet and would, we believe, render nearly all Illinois attorneys incompetent." *Chatman*, 357 Ill. App. 3d at 700. Thus, Brunt's claim of ineffective assistance of appellate counsel cannot succeed. Moreover, it follows that we cannot find Brunt's initial postconviction counsel unreasonable for having abstained from making a meritless ineffective assistance of counsel argument.

¶ 56 IV. Motion for Discovery

¶ 57 Brunt lastly contends the circuit court erred in denying his discovery motion to obtain the police reports related to the investigation of the murder. Given the potential for abuse of the discovery process in postconviction proceedings, the circuit court should allow discovery only

after the moving party demonstrates “good cause” for a discovery request. *People v. Fair*, 193 Ill. 2d 256, 264-65 (2000). We do not disturb a circuit court's denial of a request for discovery in postconviction proceedings absent an abuse of discretion. *Id.* at 265. A circuit court abuses its discretion only where its decision is arbitrary, fanciful or unreasonable or where no reasonable person would take the view adopted by the court. *People v. Shum*, 207 Ill. 2d 47, 62 (2003).

¶ 58 Brunt asserts in his brief he sought the reports to determine whether they would support an ineffective assistance of trial counsel claim for failing to perfect the impeachment of the State's eyewitnesses. Brunt neither raised this issue on appeal, nor in his original petition. Brunt had thus forfeited the issue twice prior to even making his motion for discovery. See *People v. Rogers*, 197 Ill. 2d 216, 221 (2001). Consequently, his motion sought to possibly support a claim that was, regardless of its merits, unsuitable for a successive petition. Given this fact, we find the circuit court did not abuse its discretion in denying Brunt's motion. See *People v. Enis*, 194 Ill. 2d 361, 415 (2000) (not an abuse of discretion to deny "a defendant's discovery request [that] has gone beyond the limited scope of post-conviction proceedings").

¶ 59

CONCLUSION

¶ 60 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 61 Affirmed.