

No. 1-13-1603

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 08 C6 61970
)	
MICHAEL BLOUIN,)	Honorable
)	Marjorie C. Laws,
Defendant-Appellant.)	Judge Presiding.

JUSTICE GORDON delivered the judgment of the court.
Justices McBride and Reyes concurred in the judgment.

O R D E R

¶ 1 **Held:** Circuit court did not abuse its discretion in denying defendant's petition for a certificate of innocence where defendant failed to prove the statutory prerequisites to the granting of the certificate by a preponderance of the evidence.

¶ 2 Defendant Michael Blouin appeals from an order of the circuit court denying his petition for a certificate of innocence under the Code of Civil Procedure (Code) (735 ILCS 5/2-702 (West 2012)). On appeal, defendant contends that his petition should have been granted where he

was innocent of the charged burglary, and where the trial court misapplied the statute regulating certificates of innocence. We affirm.

¶ 3 Defendant was arrested and charged with burglary stemming from an incident that occurred on October 29, 2008, where police saw him inside of a vacant warehouse. The evidence adduced at defendant's 2009 bench trial showed that the building at 11955 South Vincennes Road in Blue Island had been abandoned for about five years, was dilapidated, and that people frequently entered and exited the building. Officer Cirullo was dispatched to the building at about 3 p.m. on October 29, after police received a call that men were on the roof removing scrap metal. Cirullo searched the first and second floors of the building, noting that it was stripped "all over the place," and that if October 29 was the only day that the building had been stripped, it would not account for the numerous items from the building that he saw in the alley. During his search, Cirullo saw defendant on the second floor and arrested him.

¶ 4 The following day, after being advised of his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), defendant gave police an oral statement that was reduced to writing by police. In the statement, defendant said that he went to an abandoned building and stacked about eight pallets, which he was planning on selling. When the police arrived and asked defendant what he was doing, he responded that he was "getting some pallets," and then the police arrested him. Defendant acknowledged that he was wrong to go into the building without permission and take items that did not belong to him.

¶ 5 Justin Smith, an employee of Works for Life International Ministries, testified that the building in question was donated to Works for Life in 2008, and that he had not given anyone permission to enter the building on October 29, or to remove any materials from the building. Smith was not asked any questions regarding who owned the pallets, or whether the organization

was aware that they were in the building.

¶ 6 Defendant testified at trial that people had been "dumping" items and debris into the abandoned building for years.

¶ 7 Following the trial, defendant was convicted of burglary for the unauthorized entry into the subject building with intent to commit the theft of wooden pallets and sentenced as a Class X offender to 10 years' imprisonment. Defendant appealed his conviction and this court found that there was insufficient evidence to support his burglary conviction where defendant did not have the requisite intent to commit a theft, and reversed the trial court's finding. See *People v. Blouin*, 2011 IL App (1st) 100025-U (*Blouin I*) (unpublished order under Supreme Court Rule 23).

¶ 8 Defendant filed a petition for a certificate of innocence through his attorney on September 28, 2012, alleging that he was innocent of the burglary charge because he lacked the intent to commit a felony or theft. Defendant pointed out that he could not have had the intent to permanently deprive an owner of the use of the pallets where the evidence failed to show that anyone owned them. In support of his petition, defendant attached this court's decision reversing his conviction.

¶ 9 The State objected to defendant's petition for a certificate of innocence, and defendant responded by filing a "Reply Brief in Support of Petition for a Certificate of Innocence." In it, defendant asserted that he established his actual innocence by a preponderance of the evidence because, as a matter of law, he was not committing a burglary where he did not intend to permanently deprive an owner of the use or benefit of the pallets, particularly where the appellate court determined that he subjectively and reasonably believed that no one owned them.

¶ 10 The circuit court subsequently granted the State leave to file a response to defendant's petition. In its reply, the State asserted that defendant's reliance on the appellate court ruling was

misplaced where it did not establish his actual innocence. Instead, the State pointed out that the appellate court reversed defendant's conviction because the State failed to meet its burden of proving that he intended to commit a theft when he entered the building. In particular, the State failed to establish beyond a reasonable doubt that the pallets were not abandoned property. In addition, the State argued that the appellate court's discussion of the case conceded that the evidence presented during the bench trial established that he committed the crime of criminal trespass to property.

¶ 11 Defendant replied to the State's response, reiterating that due to the fact that he lacked the requisite intent to commit a theft because the pallets were abandoned, he was innocent of the charged burglary offense. Defendant further asserted that although he did not trespass, whether he did was irrelevant because section 702 of the Code only applies to charged offenses, and he was not charged with criminal trespass to real property.

¶ 12 On March 20, 2013, the circuit court heard arguments on defendant's petition. No evidence was submitted on behalf of defendant other than this court's order reversing defendant's conviction, and the parties argued their positions based on the facts from trial, the appellate court order, and their pleadings. After hearing arguments, the court denied defendant's petition. In doing so, the court stated that although the appellate court found that the State was not able to sustain their burden in proving defendant guilty of burglary, defendant was nevertheless guilty of criminal trespass to land. In addition, the court noted that in his statement to police, defendant apologized and admitted he did not have permission to enter the building and take property.

¶ 13 On appeal, defendant contends that the trial court erred in denying his petition for a certificate of innocence. Defendant specifically maintains that this court's order established his actual innocence where we found in *Blouin I* that he lacked the requisite intent to be found guilty

of burglary.

¶ 14 A person who was wrongly convicted and imprisoned may file a petition for a certificate of innocence in the circuit court of the county in which he was convicted to seek compensation in the Court of Claims. See 735 ILCS 5/2-702(a),(b) (West 2012); 705 ILCS 505/8(c) (West 2012). To obtain a certificate of innocence under section 2-702 of the Code, a defendant must prove by a preponderance of the evidence that:

"(1) [he] was convicted of one or more felonies by the State of Illinois and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence;

(2)(A) the judgment of conviction was reversed or vacated, and the indictment or information dismissed or, if a new trial was ordered, either [he] was found not guilty at the new trial or [he] was not retried and the indictment or information dismissed; ***

(3) [he] is innocent of the offenses charged in the indictment or information or his *** acts or omissions charged in the indictment or information did not constitute a felony or misdemeanor against the State; and

(4) [he] did not by his *** own conduct voluntarily cause or bring about his *** conviction." 735 ILCS 5/2-702(g) (West 2012).

¶ 15 Although defendant is correct that the interpretation of a statute is a question of law that we review *de novo* (*Express Valet Inc. v. City of Chicago*, 373 Ill. App. 3d 838, 850 (2007)), "[w]hether or not a petitioner is entitled to a certificate of innocence is generally committed to

the sound discretion of the court.' " *People v. Dumas*, 2013 IL App (2d) 120561, ¶ 17 (quoting *Rudy v. People*, 2013 IL App (1st) 113449, ¶ 11).

¶ 16 Here, defendant has failed to show that he was actually innocent and that he did not through his own conduct bring about his conviction. The evidence at trial established that during his search of the building, Officer Cirullo saw defendant on the second floor and arrested him. Following his arrest, defendant told police that he went to the abandoned building and stacked about eight pallets inside of the building, which he was planning on trading in for money, and that he was wrong to enter the building without permission and take items that did not belong to him. Defendant's statements to police showed, at a minimum, that he committed part of the first element required to convict a defendant of burglary, *i.e.*, he entered a building without authority. See 720 ILCS 5/19-1(a) (West 2008) (stating that "[a] person commits burglary when without authority he knowingly enters or without authority remains within a building *** with intent to commit therein a felony or theft").

¶ 17 Although defendant attached this court's order reversing his burglary conviction to his petition for a certificate of innocence, the order actually supports the circuit court's decision to deny his certificate of innocence. In reversing defendant's conviction, this court held:

"There is not a credibility dispute here. We are crediting completely the testimony of every witness who testified for the State, as well as the written statement of defendant which it introduced. As the State observed in its appellate brief, 'there were no inconsistencies in the evidence.' However, we still find that there was insufficient evidence to disprove defendant's subjective and reasonable belief that the pallets were abandoned and thus

ownerless." *Blouin I*, ¶ 43.

In so holding, this court never stated that defendant was actually innocent but, instead, held that the State did not sustain its burden of proof because it did not establish the owner of the pallets. See *Dumas*, 2013 IL App (2d) 120561, ¶ 19 ("A mere reversal for failure to prove guilt beyond a reasonable doubt will not suffice" to show that the defendant was actually innocent); see also *Rudy*, 2013 IL App (1st) 113449, ¶¶ 14-15 (noting that the supreme court did not find the defendant "actually innocent" where it indicated that the State's evidence against him was "simply insufficient") (citing *People v. Ehlert*, 211 Ill. 2d 192, 215 (2004)).

¶ 18 Moreover, the circuit court similarly held that defendant failed to show he was actually innocent when it denied his petition for a certificate of innocence. The court specifically held,

"[E]ven though the Appellate Court found that *** the State was not able to sustain their burden in proving that [he] was guilty for the offense of burglary, I do not see how you can say that at the same time that the defendant was not guilty of the misdemeanor offense of criminal trespass to land; in as much as when you review the opinion and the evidence presented at trial, [he] indicated within his handwritten statement that he was *** sorry, and that he did not have permission to enter the building and to take the property within.

Even though the Appellate Court has said that the State was not able to prove that property belonged to, the fact is, under the statute, and the State has provided the legislative history for me,*** that a person is guilty of criminal trespass to real property

when he knowingly, without legal or lawful authority enters or remains within or on a building, that person commits a Class B misdemeanor.

For those reasons, I find that even though the Appellate Court has deemed that he did not commit the felony of burglary; that he did commit a misdemeanor, criminal trespass to real property, and, therefore, he is not entitled to a certificate of innocence in this Court's opinion."

¶ 19 Therefore, where this court held that the State's evidence against defendant was merely insufficient, and defendant failed to support his petition with any evidence that he was actually innocent, we find that the circuit court did not abuse its discretion in denying defendant's petition for a certificate of innocence based on the fact that he unlawfully entered the premises in question.

¶ 20 Defendant nevertheless asserts that the last paragraph of the appellate court's analysis is highly significant in showing that he was actually innocent. We stated in *Blouin I* that:

"In addition, defendant's failure to attempt to conceal himself or to evade police is evidence of his lack of a criminal intent. *** [I]n the case at bar, defendant walked toward the officer and answered without hesitation that he was there 'getting some pallets.' It is unlikely that he would have forthrightly informed the police of his plan to remove the pallets if he subjectively believed that the pallets had an owner. As discussed above, we find that this subjective belief was also objectively reasonable. Thus, we find

that the State provided insufficient evidence of a specific intent to deprive an owner." *Blouin I*, ¶ 46.

¶ 21 Despite defendant's contentions to the contrary, the above comments do not show that defendant was actually innocent. Instead, they simply indicate that the evidence to convict him was insufficient where he did not have the requisite intent to commit a theft. In concentrating exclusively on the intent to commit a theft element of burglary, defendant neglects the fact that this court also specifically held that defendant did commit an unauthorized entry into the building. We specifically held,

"The evidence at trial also established that his entry was unauthorized since first, a representative of the building's owner testified at trial that no one had received permission to enter the building on the date in question; and second, in defendant's statement to the police, the defendant acknowledged that he was in the building 'without permission.'" *Blouin I*, ¶ 46.

In so finding, this court clearly did not find defendant actually innocent where we explicitly found that he entered the building without authority.

¶ 22 We also find unpersuasive defendant's argument that the trial court misread the statute regarding certificates of innocence. Defendant specifically contends that the circuit court violated section 702(g) of the Code in denying his petition for a certificate of innocence because it reasoned that he was not actually innocent where he was still guilty of criminal trespass to land, a crime with which defendant was not charged. Defendant maintains that, because section 702(g) of the Code applies only to charged crimes, the court read into the statute a requirement that does not exist, *i.e.*, "that the [defendant] also be innocent of all felonies or misdemeanors that were not

charged in the indictment or information and for which the [defendant] was not convicted."

¶ 23 In assessing the court's comments denying defendant's petition, we agree with the State's assertion on appeal that, although not articulated by the circuit court, its findings essentially established that defendant did not meet the third or fourth requirement of section 2-702, where defendant is not actually innocent and acted in a way that brought about his conviction. See *Dumas*, 2013 IL App (2d) 120561, ¶¶ 18-19 (finding that although the defendant's finding of guilt was reversed based on the State's inability to prove that he possessed cocaine beyond a reasonable doubt, the defendant voluntarily brought about his own conviction where he took steps to arrange a drug sale, leading to his arrest and conviction). This is particularly true here where, as highlighted by the circuit court in its findings, the uncontested facts show that police found defendant inside a building that he admitted he did not have permission to be inside, and thus acted in a way that caused him to be charged with burglary.

¶ 24 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 25 Affirmed.