2014 IL App (1st) 112295-U

FIFTH DIVISION
January 10, 2014

No. 1-11-2295

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County, Illinois
Plaintiff-Appellee,	)	
v.	)	No. 99 CR 7798
	)	
DAMON WILLIAMS,	)	Honorable
	)	Joseph M. Claps,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE TAYLOR delivered the judgment of the court.
Justices McBride and Palmer concurred in the judgment.

ORDER

¶ 1 *Held*: First, since the alleged new evidence was not so conclusive as to probably change the result on retrial, the trial court did not commit manifest error when it denied petitioner's motion for new trial based on newly discovered evidence. Second, since petitioner did not present his ineffective assistance of counsel claims during his postconviction proceedings, the appellate court cannot rule on matters outside the record before it.

¶ 2 BACKGROUND

¶ 3 Defendant, Damon Williams, was charged by indictment with first degree murder. His

first trial resulted in a deadlocked jury, and the trial court declared a mistrial. Defendant then waived his right to a jury trial and subsequently a bench trial was held where petitioner was found guilty beyond a reasonable doubt of first degree murder and sentenced to 25 years imprisonment in the Illinois Department of Corrections. On direct appeal, both his conviction and sentence were affirmed. Defendant now appeals the trial court's dismissal of his post-conviction petition claiming actual innocence based on newly discovered evidence.

¶ 4 Jury Trial

¶ 5 On the night of February 25, 1999, Oscar Bush was shot multiple times and killed close to the corner of Greenshaw and Springfield Avenues in Chicago. After conducting lineups and filing police reports, police officials apprehended defendant for Bush's homicide.

¶ 6 Defendant's jury trial took place in 2001. During trial, six different witnesses testified, including Augustine Barr, Tamiki Duling, forensic investigator John Paulson, Officer Gregory Cameron, Detective Christian Kato, and medical examiner Nancy Jones. After the witnesses testified and during jury deliberations, the judge declared a mistrial due to a hung jury.

¶ 7 At the time of trial, Augustine Barr testified first. She testified that she was a heroin user for about ten years, but had been sober for nine months and completing a methadone treatment program. She had used heroin at noon but stated that she was no longer under its effect at the time of the incident. That evening Barr was working security for Bush while he sold drugs. Her job was to walk up and down Pulaski Street watching out for police and clients. At around 8:30 or 9:00 p.m. she saw defendant, whom she had never seen before, approach Bush. At this time, Barr was a couple houses away from the two men. She started walking towards them and heard an argument between them when defendant told Bush, "I told you I was going to get you."

Thereafter, the men started fighting until defendant fell on the ground. Bush started to walk away when defendant pulled out a gun and shot Bush in the shoulder and in the legs. Defendant walked over to Bush to shoot him more. Afterwards, defendant ran towards Springfield Avenue. Barr testified that after she heard the shots she hid behind a car. Once defendant left the scene, she took the bus home.

¶ 8 At the time, Barr lived with Bush's fiancé, Angela. When she got home she told Angela about what had happened. On March 1, 1999, Barr and Angela went to the police station to view a lineup. During the lineup Barr picked out defendant as the shooter. She stated that since the streetlights were on, she had no problem seeing the shooter who was wearing dark clothing. She was not threatened and no promises were made for her testimony.

¶ 9 Detective Kato conducted the lineup Barr viewed and was with Barr while she picked out defendant as the shooter. He conducted the lineup at about 7:30 p.m. on the night of March 1, 1999. On March 3, 1999 the detective met with Duling at the police station and took her statement.

¶ 10 Tamiki Duling testified that she knew defendant for about three years. She lived near the area where the shooting took place. On February 25, 1999, at around 8:45 or 9:00 p.m., defendant came to her home located at 1240 S. Harding wearing dark clothing and sweating. She also stated that he looked mad. She let him in and he spent 15 minutes watching television. After that, Duling had to leave to go to her aunt's house. Defendant asked to come with her, and she said he could not come because she was planning to stay there for a while. Thereafter, she dropped defendant off at the corner of Roosevelt and Springfield Avenues.

¶ 11 Officer Gregory Cameron testified about an altercation that occurred between defendant

and the victim on February 22, 1999, three days prior to the shooting. On that date, he went to the 3900 block of Fillmore in response to a call about a battery. At the scene, defendant identified himself as Kevin Jackson. He asked Officer Cameron to arrest Bush because Bush had beaten him and stolen his gold chain. Cameron arrested Bush and took him to the station where defendant refused to sign a complaint. At this point, Cameron released Bush from custody. After hearing about the crime on February 25, Cameron came forward with information regarding the prior altercation between the two men. He showed the detectives a picture of defendant. He then found out defendant had given him a false name.

¶ 12 Chicago Police Forensic Investigator John Paulson testified about the crime scene on February 25, 1999. He stated that when he arrived at the scene there were uniformed officers securing the scene and evidence was taken. He recovered six bullets surrounding the victim's body. He also recovered a cell phone, walkie talkie, and cell phone battery.

¶ 13 Dr. Nancy Jones was an assistant medical examiner with the Cook County Medical Examiner's Office who performed Bush's autopsy. The autopsy revealed that his cause of death was multiple gunshot wounds. However, none of the evidence revealed close range shooting.

¶ 14 After the People rested, defendant made a motion for directed verdict that the court denied. Defendant did not testify on his own behalf, and the parties agreed on two stipulations. The parties stipulated that Assistant State's Attorney Kelli Huseman would testify about taking Barr's statement on March 2, 1999, and that Janet Lupa would testify that she was the shorthand reporter who transcribed Barr's grand jury testimony, which was when Barr was asked, "Now, before you saw him arguing, Damon arguing, with Bozo [Bush], where did you see Damon come from?" She would testify that Barr answered, "From the corner of Grenshaw and Springfield. He

came around from that way towards Pulaski because he was walking. He crossed like in the middle of the block where Bozo was standing there."

¶ 15 The jury deliberated for two days before the court declared a mistrial due to a deadlocked jury on April 20, 2001. Thereafter, defendant waived his right to jury trial and the case proceeded to a second trial in front of the same judge, Judge Suria.

¶ 16 Bench Trial

¶ 17 Defendant's second trial began on May 22, 2001. The only live witness at defendant's bench trial was Barr whose testimony was substantially the same as that presented at the jury trial. However, the parties stipulated as to the rest of the State's witnesses who testified at the jury trial. The State rested, and defendant moved for a directed verdict. This motion was denied.

¶ 18 After closing arguments, the court noted some discrepancies in Barr's testimony. She was biased in that (1) she knew Bush since he was seven years old, and (2) she had a good relationship with her roommate, Bush's fiancée. However, the court still found defendant guilty beyond a reasonable doubt because (1) Officer Cameron's testimony gave defendant a motive, given the prior altercation between the two men, and (2) Duling's testimony placed him in the vicinity of the crime around that time. The court also noted that this case was a single-finger identification and that Barr's testimony was not 100% credible. Even though there were some discrepancies, the court convicted and sentenced defendant to 25 years in prison. Defendant filed a timely appeal.

¶ 19 Direct Appeal

¶ 20 On appeal, defendant's counsel filed a motion for leave and withdraw as appellate counsel and accompanying brief pursuant *Anders v. California*, 386 U.S. 738 (1967). In his

motion, counsel stated that on appeal there were no issues of arguable merit. Defendant filed two responses to his counsel's brief: (1) counsel improperly acted as a judge in determining the merits of his appeal, and (2) counsel was ineffective when he advised him to waive jury trial. Further, defendant argued that Barr's testimony was not credible and that he was not proven guilty beyond a reasonable doubt.

¶ 21 The appellate court reviewed the case and found that his allegations against counsel had no factual merit. Further, the court noted that defendant failed to show prejudice. Thus, on September 12, 2002, the court granted the assistant public defender's motion to withdraw, and affirmed defendant's conviction and sentence. On June 4, 2003, defendant's petition for leave to appeal to the Illinois Supreme Court was denied. *People v. Williams*, 204 Ill. 2d 681 (2003).

¶ 22 Post-Conviction Proceedings

¶ 23 On November 12, 2003, defendant filed a *pro se* petition for post-conviction relief under the Illinois Post-Conviction Hearing Act. At this time, defendant claimed that his appellate counsel was ineffective for (1) filing an *Anders* motion and brief, and (2) failing to introduce Cephus Tynes' testimony concerning Barr's extortion attempts. With his motion, defendant attached a letter from his appellate counsel stating that he would do everything he could on appeal, two affidavits from Cephus Tynes (defendant's father), a copy of Barr's trial testimony, and motions and briefs filed on appeal (including the *Anders* motion).

¶ 24 Tynes' affidavit stated that on February 26, 1999, Barr came to him demanding $5000 to keep her from identifying defendant as the shooter. Further, it stated that Barr also informed him that she had arranged for a friend to say that defendant was in the vicinity of the crime. Tynes' stated that he spoke with trial counsel and informed counsel that he, his girlfriend, and his

girlfriend's daughter could testify that defendant was at home with them during the night of the murder. However, trial counsel did not call them to testify. Tynes also spoke to defendant's appellate counsel at which time counsel informed him of the *Anders* motion and his wish to withdraw from the case.

¶ 25 On June 10, 2004, the court advanced defendant's petition to the second stage. Accordingly, it appointed counsel. The State filed a motion to dismiss, appointed defense counsel sought leave to withdraw, and a private attorney sought leave to file his appearance.

¶ 26 On March 5, 2008, defendant's counsel filed a supplemental petition that added an actual innocence claim based on newly discovered evidence. This supplement argued that Barr's testimony was coerced. On September 28, 2007, Barr met with an investigator and recanted her trial testimony and said that she did not see the shooter's face and was coerced to pick defendant as the shooter. On May 22, 2008, the State filed a motion to dismiss defendant's supplemental petition for failure to identify a constitutional violation and failure to meet evidentiary and pleading requirements. The State filed another motion to dismiss declaring that defendant's ineffective assistance of counsel claims against his trial and appellate counsel did not meet the *Strickland* standard. On February 26, 2009, defendant filed Barr's affidavit – dated September 29, 2008 – to support his claim.

¶ 27 In her affidavit Barr stated that she never saw the shooter's face, that she was a heroin addict, and that she identified defendant as the shooter because she felt pressured by the police to identify him. She also stated that she viewed two different lineups and that before viewing the third an officer told her to identify defendant or else he would make sure she received more time on a pending drug case. She complied to avoid more problems with the law. She was not forced,

threatened, or coerced to give this affidavit.

¶ 28 On April 25, 2009, defense counsel filed a Rule 651(c) certificate. On May 2, 2009, the State filed a second motion to dismiss defendant's supplemental petition. On September 17, 2009 defendant filed a reply to the State's motion and added a claim that perjured testimony was used to convict him. On March 18, 2012, the trial court denied the State's motion and granted a third stage evidentiary hearing regarding Barr's recantation testimony only. Judge Claps added that since he had not heard Barr's testimony at trial he was not in the position to make a ruling on the case without observing her testimony. The court held an evidentiary hearing on December 8, 2010 and on March 3, 2011. During the evidentiary hearing defendant presented the testimony of Barr and Lieutenant Sanchez.

¶ 29 Barr testified that she currently lived in Milwaukee and worked at a restaurant as a cashier and cook. She had changed her life around and had stopped using drugs. In 2006 or 2007, she talked to one of her son's friends who told her that she should feel guilty for what she did to defendant. After this conversation, she independently reached out to defendant's counsel through a friend that works in the court system.

¶ 30 Barr testified that on February 25, 1999, she was selling drugs for Bush and working as his security. At the time, she was addicted to heroin. She started using heroin in 1991 or 1992 and stopped in 2003. During defendant's trial she was still using heroin but did not say it. She stated that on February 25, 1999 she saw Bush arguing with someone she did not know. When she heard the shots, she hid behind a car and did not see the shooter's face. After the shooter left, she ran and got in the bus. She did not talk to the police. She testified that the next day, Detective Sanchez and another officer came to get her at her house. She stated that she did not remember

saying at trial that Angela took her to the police station. She testified that she was kept at the police station for two days, and that she viewed a lineup on the third day. She was unsure as to whether she viewed two or three lineups. She had a pending drug case at the time. An officer showed her a picture of defendant and told her that he did it, that his girlfriend had turned him in, and that she should pick him out in the lineup. The officer told her that if she did not pick out defendant at the lineup he would make sure that she got more time on her drug case. She did not pick anyone the first time she viewed the lineup, but she picked defendant the second time. She ended up getting probation on her drug case, but violated her probation and went to prison for one year.

¶ 31 In 2001, she testified at trial and picked defendant again because Detective Sanchez was looking at her while she was testifying. She felt that that was what she was supposed to do. She knew Sanchez from the neighborhood; he was always a threat and harassed them every day.

¶ 32 Barr stated that she did not know Tynes until the last court date. She was unaware that he had accused her of extortion. She met an investigator in Milwaukee on September 28, 2007 and signed an affidavit on September 29, 2008. There were no promises made to her. She said that she testified falsely on all prior occasions and said that she lied under oath.

¶ 33 Lieutenant Sanchez testified that he was a detective at the time of the crime, that he did not bring Barr to the station, and that he conducted a lineup. Further, he testified that he did not tell her who to pick, and that he was not in the room during the lineup. He also testified that he did not threaten her, and that he was not in the courtroom while Barr testified at defendant's trial.

¶ 34 On July 13, 2011, the trial court dismissed defendant's post-conviction petition. Regarding defendant's ineffectiveness of counsel claims, the court dismissed them stating that

since defendant already raised the issue on direct appeal it was barred from review by res judicata. As for defendant's actual innocence claim the court stated that while Barr's testimony was new, material, and noncumulative, it was not of such conclusive character as to change the result on retrial. It found that Barr's testimony and affidavit were incredible and contradictory. Further, it stated that her new testimony did not make sense when taken into consideration with the rest of the evidence presented at trial and evidentiary hearing. There were a lot of inconsistencies, including Tynes' affidavit – she could not have been at the police station at the same time that she was procuring extortion money from Tynes – and whether the police picked her up at her house to view the lineups or whether she went there on her own accord with Angela. Moreover, Lieutenant Sanchez contradicted her testimony in terms of the lineups and lack of police coercion in the proceedings prior and during trial. Lastly, the court held that petitioner failed to make a substantial showing that his constitutional rights were violated and failed to prove actual innocence.

¶ 35 On July 19, 2011, the court notified defendant that his petition was dismissed. On July 15, 2011, defendant filed a timely notice of appeal, and this appeal follows.

¶ 36 ANALYSIS

¶ 37 On appeal from that judgment, defendant now contends two different bases of error: (1) that the trial court manifestly erred by denying his post-conviction petition after an evidentiary hearing that included newly discovered evidence that would change the result on retrial, and (2) that post-conviction counsel provided unreasonable assistance by failing to present Tynes' testimony at the evidentiary hearing.

¶ 38 The purpose of post-conviction petitions is not to present matters that could have been

raised on direct appeal. *People v. Burrows*, 172 Ill. 2d 169, 187 (1996). Instead, the purpose of post-conviction review is to present matters that if presented during trial would have prevented defendant's conviction. *Id*. Claims presented on direct appeal, or that could have been presented on direct appeal are barred by the doctrines of res judicata and waiver. *Id*. Further, any claims not presented in an original or amended post-conviction petition are waived. *People v. Davis*, 156 Ill. 2d 149, 158 (1993); *People v. Collier*, 387 Ill. App. 3d 630, 634 (2008); *People v. Morgan*, 212 Ill. 2d 148, 153 (2004); *People v. Steidl*, 177 Ill. 2d 239, 250 (1997); *People v. Pendleton*, 223 Ill. 2d 458, 474 (2006). In turn, the court may grant post-conviction relief on matters that are not on the record and have been discovered since trial. *Burrows*, 172 Ill. 2d at 187. Rather than an appeal to a conviction, a post-conviction proceeding is a collateral proceeding that allows review of petitioner's constitutional claims in regards to his conviction. *People v. Ortiz*, 235 Ill. 2d 319, 277 (2009).

¶ 39 The Illinois Post-Conviction Hearing Act (the Act) was enacted to provide a convicted prisoner with a mechanism in which he can assert that his conviction was a result of substantial denial of the constitutional rights afforded to him under the Illinois Constitution, the United States Constitution, or both. *People v. Jones*, 213 Ill. 2d 498, 503 (2004); *People v. Johnson*, 154 Ill. 2d 227, 237 (1993); *Morgan*, 212 Ill. 2d at 153; *Pendleton*, 223 Ill. 2d at 471. In securing post-conviction relief, the Act provides prisoners an alternative to federal habeas corpus based on claims of newly discovered evidence. *People v. Washington*, 256 Ill. App. 3d 445, 447 (1993). Further, it establishes a means for review of convictions inconsistent with fundamental principles of liberty and justice. *Id*. The Act provides a remedy for issues that could not have been adjudicated on direct appeal. *Steidl*, 177 Ill. 2d at 249. Under the Act, proceedings begin with

petitioner's filing in the circuit court where the original trial was held. *Jones*, 213 Ill. 2d at 503. The Act provides a three-stage process. *Id.*

¶ 40 At the first stage of post-conviction proceedings, the court determines the merits of the petition and may dismiss it if it finds it frivolous or without merit. *People v. Perkins*, 229 Ill. 2d 34, 42 (2008). Rather than procedural compliance, at this stage, the court reviews petitioner's substantive constitutional claims. *Id*. At this stage, the Act provides a low threshold for furtherance of the request. *Jones*, 213 Ill. 2d at 504. The petition does not need to show great amount of detail, legal arguments, or case citations. *Id*. The test is whether petitioner's petition presents a "gist" of what can be a constitutional claim. *Id*. The substance of the claim determines its fate. *Davis*, 156 Ill. 2d at 163. Once filed, the court has 90 days to review and dismiss the petition. *People v. Suarez*, 224 Ill. 2d 37, 44 (2007). If not dismissed, the court dockets it and assigns counsel if petitioner is indigent. *Id*. Within 30 days of docketing, the State must file a motion to dismiss the petition or otherwise respond to it. *Id*. During the first and second stages, the court is to review the petition and consider all well-pleaded facts not otherwise rebutted by the record as true. *People v. Childress*, 191 Ill. 2d 168, 174 (2000). Nonfactual and nonspecific assertions which merely amount to conclusions are not sufficient to be a constitutional claim. *People v. Barnslater*, 373 Ill. App. 3d 512, 525 (2007).

¶ 41 At the second stage, the petition under consideration must make a substantial showing of a constitutional violation or be subject to a motion to dismiss. *People v. English*, 403 Ill. App. 3d 121, 129 (2010). The issue for the court to resolve is whether petitioner's allegations are supported by affidavits and other documents. *People v. Coleman*, 2013 IL 113307, ¶ 5. It is for the trial court to determine whether the merits of petitioner's claim call for an evidentiary

hearing. *People v. Turner*, 187 Ill. 2d 406, 416 (1999).

¶ 42 When petitioner's allegations make a substantial showing that petitioner's constitutional rights may have been violated, as supported by affidavits and other documents, the court shall hold a third-stage evidentiary hearing. *English*, 403 Ill. App. 3d at 129; *Steidl*, 177 Ill. 2d at 249. Supporting documents must identify the source's character and availability of the evidence in alleged support of the claims. *Johnson*, 154 Ill. 2d at 239. At an evidentiary hearing, the petitioner bears the burden of proving substantial depravation of his constitutional rights. *People v. Coleman*, 206 Ill. 2d 261, 277 (2002). As the fact finder, the court is to make all credibility assessments during an evidentiary hearing. *Morgan*, 212 Ill. 2d at 165. Since the post-conviction trial judge is in the best position to weigh the evidence and make witness credibility assessments, his judgment will not be disturbed absent manifest error. *People v. Ortiz*, 385 Ill. App. 3d 1, 6 (2008).

¶ 43 On review after an evidentiary hearing where the trial court has made findings of fact, the reviewing court allows substantial deference to the trial court's findings and applies the manifest error standard. *People v. Jones*, 2012 IL App (1st) 093180, ¶ 49; *People v. Gonzalez*, 407 Ill. App. 3d 1026, 1034 (2011). Therefore, the appellate court must affirm the trial court's disposition unless it is manifestly erroneous. *Steidl*, 177 Ill. 2d at 249. "Manifest error" is error that is clearly plain, evident, and indisputable. *Gonzalez*, 407 Ill. App. 3d at 1033. In proving manifest error on appeal, petitioner carries a heavy burden and must surpass a very high threshold. *Jones,* 2012 IL App (1st) 093180, ¶ 49.

¶ 44 Wrongful conviction of an innocent man violates due process. *People v. Washington*, 171 Ill. 2d 475, 481 (1996). The due process clause of the Illinois Constitution allows a prisoner to

present a freestanding claim of actual innocence based on newly discovered evidence. *Ortiz*, 235 Ill. 2d at 333. A proper claim under the Act may include a claim of actual innocence based on newly discovered evidence. *Burrows*, 172 Ill. 2d at 199. The hallmark of this kind of claim is total vindication from the crime. *Barnslater*, 373 Ill. App. 3d at 520. For a claim of actual innocence to be successful, the defendant's evidence must be new, noncumulative, material, and "so conclusive it would probably change the result on retrial." *Coleman*, 2013 IL 113307, ¶ 96 (citing *Washington*, 171 Ill. 2d at 489).

¶ 45 The case at bar deals with a post-conviction claim that survived all stages defined under the Act. However, in granting an evidentiary hearing, the court noted that since it had not been sitting at the original trial it could not assess credibility issues without observing Barr's testimony. After Barr testified, the court noted that Barr's testimony was incredible, and it conflicted with the evidence at trial and the new evidence offered in Tynes' affidavit. It therefore held that while the evidence was newly discovered, material and noncumulative, it was not of such conclusive character as to probably change the result on retrial. We now review for manifest error. For a trial court's decision to be manifestly erroneous, the appellate court must determine that the trial court's decision is arbitrary, unreasonable, and not based on the evidence. *Jones,* 2012 IL App (1st) 093180, ¶ 49.

¶ 46 We first consider whether the trial court erred in finding the evidence to be newly discovered, noncumulative, and material. Newly discovered evidence is evidence that could not have been discovered at the time of trial through the exercise of due diligence. *Burrows*, 172 Ill. 2d at 199. Although a new witness or source of information may have been unknown, unavailable, or uncooperative, evidence is not newly discovered when it presents facts already

known to petitioner during his trial. *Barnslater*, 373 Ill. App. 3d at 523.

¶ 47 The evidence must also be material to the issue and noncumulative. *Collier*, 387 Ill. App. 3d at 636. Evidence is material when constitutional error arises from governmental suppression, and another result would have occurred at trial if the evidence had been presented. *Coleman*, 2013 IL 113307, ¶ 96. Further, evidence is material when it gives a different light to the State's case. *Id.* ¶ 113. On the other hand, evidence is cumulative when it merely adds to the evidence already presented at trial. *People v. Molstad*, 101 Ill. 2d 128, 135 (1984). The court does not favor petitions for a new trial based on newly discovered evidence. *Gonzalez*, 407 Ill. App. 3d at 1034. Thus, new evidence is subject to close scrutiny by the court. *Id*.

¶ 48 Six years after testifying at trial, Barr came forward with a different statement. In her new statement she stated that on the night of the crime she did not see defendant's face, that she was using heroin during trial, that the police coerced her statement, and that after getting clean she felt guilty for providing evidence that led to defendant's wrongful conviction. Since these are facts that were not known or could not have been known to petitioner during trial, they are newly discovered evidence that shed new light on defendant's case. See *Coleman*, 2013 IL 113307, ¶ 113. Therefore the court correctly held that the evidence regarding Barr's recantation was newly discovered, material, and noncumulative.

¶ 49 The State argues that Barr's evidence is not newly discovered and merely cumulative. The State's argument rests on defendant's cross-examination during trial that sought to uncover the fact that, in truth, Barr did not see petitioner's face. Thus, her new recantation merely impeaches her prior statement. The State also contends that defendant's father's affidavit indicates that petitioner was aware Barr did not see the shooter because she wanted $5,000 from

defendant's father in exchange for not implicating defendant. While these contentions may be correct, during the post-conviction process the court found otherwise given the complexity of the statements. As finder of fact, the court's decision will not be disturbed. Therefore, we now hold that the trial court did not manifestly err in finding petitioner's evidence to be newly discovered, material, and noncumulative.

¶ 50 However, this alone is not dispositive. To succeed in a claim for post-conviction relief, the new evidence must be of such conclusive character as to probably change the result on re-trial. *Coleman*, 2013 IL 113307, ¶ 96. In determining whether the evidence is so conclusive as to probably change the result on retrial, the court must engage in a balancing test of the evidence before it. *Id.* ¶ 97; see *Molstad*, 101 Ill. 2d at 135 (granting new trial based upon exculpatory testimony of five codefendants, since "[i]t appears that a different result is probable if the trier of fact considers the testimony of Molstad's codefendants"); *Burrows*, 172 Ill. 2d at 190 (granting new trial in murder case based upon witness's testimony that she alone killed the victim and the defendant was innocent). This balancing process "is a comprehensive approach and involves credibility determinations that are uniquely appropriate for trial judges to make." *Coleman*, 2013 IL 113307, ¶ 97.

¶ 51 Recantation testimony is inherently unreliable and untrustworthy. *People v. Burrows*, 148 Ill. 2d 196, 228 (1992); *People v. McDonald*, 405 Ill. App. 3d 131, 137 (2010); *Morgan*, 212 Ill. 2d at 153; *Steidl*, 177 Ill. 2d at 260; *Jones,* 2012 IL App (1st) 093180, ¶ 63; *People v. Steidl*, 142 Ill. 2d 204, 254 (1991). Since recantations are not natural constitutional violations, a witness's recantation does not automatically entitle defendant to a new trial. *Jones,* 2012 IL App (1st) 093180, ¶ 63. Therefore, a court usually does not give a witness's recantation so much weight as

to support a conclusion that his testimony at trial was willfully false and corrupt. *Steidl*, 142 Ill. 2d at 254. Moreover, a stronger assumption of unreliability arises when the recantation involves a confession of perjury. *Id*.

¶ 52 The case at bar deals with a recantation that alleges perjury, police coercion, and guilty thoughts leading up to it. Not only does it contradict the evidence at trial, it contradicts petitioner's new evidence contained in Tynes' affidavit. Furthermore, Barr's recantation was directly contradicted at the evidentiary hearing by Lieutenant Sanchez's testimony. In discarding Barr's recantation as sufficient to warrant retrial, the court observed that, at trial, Officer Cameron's testimony gave defendant a motive, and Duling's testimony placed him in the vicinity of the crime, with dark clothing, on that night. Based upon all of this evidence, the trial court concluded that Barr's recantation testimony was not so conclusive as to probably change the result on retrial. Given that such determinations "involve[] credibility determinations that are uniquely appropriate for trial judges to make" (*Coleman*, 2013 IL 113307, ¶ 97), and that this result is not unreasonable, arbitrary, and contrary to the weight of the evidence, the court did not manifestly err in determining that defendant's new evidence did not entitle him to a new trial. See *Jones,* 2012 IL App (1st) 093180, ¶ 49.

¶ 53 Next, defendant contends that his post-conviction counsel provided unreasonable assistance by failing to present Tynes' testimony at the evidentiary hearing. The State responds stating that since Tynes' testimony was contradicting Barr's it was not unreasonable for him not to present it. See *People v. Moore*, 207 Ill. 2d 68, 77-78 (2003). It contends that it was a decision of trial strategy that would have otherwise resulted in petitioner's self-contradiction. *Id*. Further, the State argues that since petitioner brings this claim for the first time on appeal, the appellate

court should not rule on it. We agree.

¶ 54 Since the appellate court cannot rule on post-conviction claims not raised in petitioner's initial petition, it does not possess authority to rule on petitioner's claims against his post-conviction counsel. See *Jones*, 213 Ill. 2d at 507.

¶ 55 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 56 Affirmed.