2014 IL App (2d) 140419-U
No. 2-14-0419
Order filed December 31, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Stephenson County.
Plaintiff-Appellee,	)	
v.	)	No. 04-CF-290
EDMOND W. ELLIS,	)	Honorable James M. Hauser,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Jorgensen and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly dismissed defendant's "Amended Petition for Relief of Void Judgment" and denied his motion for leave to file a successive Post-Conviction Hearing Act petition (725 ILCS 5/122-1 *et seq*. (West 2012)).

¶ 2 Defendant, Edmond W. Ellis, appeals from an order dismissing his "Amended Petition for Relief of Void Judgment" pursuant to section 2-1401(f) of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401(f) (West 2012)) and denying his motion for leave to file a successive petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq*. (West 2012)). We affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant's case has come before this court on four prior occasions. Following a jury trial in March 2005, defendant was found guilty of attempted first-degree murder (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2004)) and armed robbery (720 ILCS 5/18-2(a)(4) (West 2004)). In *People v. Ellis*, Nos. 2-05-0452 & 2-05-0453 (2007) (unpublished order under Supreme Court Rule 23), we affirmed defendant's convictions and sentences on direct appeal. In *People v. Ellis*, No. 2-08-0489 (2010) (unpublished order under Supreme Court Rule 23), we affirmed the summary dismissal of defendant's postconviction petition. While that appeal was pending, the trial court ruled that both of defendant's sentences were void. The trial court later resentenced defendant on both counts, which included an enhanced sentence for attempted first-degree murder. Thereafter, in *People v. Ellis*, 2012 IL App (2d) 110815-U, we vacated defendant's enhanced sentence and remanded for resentencing on the attempted first-degree murder count. Following our decision, the trial court resentenced defendant, and we affirmed in *People v. Ellis*, 2014 IL App (2d) 130754-U.

¶ 5 The underlying facts of this case have been detailed in our prior decisions, so we will confine our recitation to the facts pertinent to the present appeal. Around 6 p.m. on September 17, 2004, two individuals wearing hoodies and pink bandanas covering parts of their faces robbed a convenience store in Freeport, Illinois. One man brandished a gun and shot the victim, Bader Alkabalny (Bud), in the chest. Witnesses saw the perpetrators running through the streets, and police were directed to a residence at 1121 ½ South Carroll Street. Defendant and Jason Driver eventually emerged from the residence and were arrested. That night, police obtained a search warrant and seized certain evidence from the residence. Of particular importance, they found a .25 caliber firearm, a magazine for that weapon, and a box of ammunition. Police also

found several pieces of pink cloth and two hooded sweatshirts.

¶ 6 Defendant and Jason were tried together. One of the State's witnesses whose testimony is at issue in this appeal was Jason's aunt, Gloria Driver. Gloria testified that she had spoken with the State's Attorney on three occasions at his office, and he showed her a police report and told her to tell the truth. Gloria was asked on direct examination whether she was on Galena Street on September 17, 2004, at or about 5:30 or 6 in the evening. She responded: "I don't know the time, but I was walking down Galena." According to Gloria, she was heading toward a gas station when she saw a gray car with four men in the parking lot of the Oky-Doky, the convenience store where the shooting occurred. She saw Jason in the parking lot, and he was wearing a black sweater with the hood up. She said that she did not notice anyone else walking in the parking lot, although she testified on cross-examination that she saw an unknown man with braids come from the store and step into the gray car. She hollered something at Jason, and he looked at her but did not say anything back to her. She continued on to the gas station. While she was in the gas station, a person came in and said that a man had been shot. She then walked to the Oky-Doky, where everybody was running. She saw that Bud, who was her friend, had been shot and was on a stretcher.

¶ 7 On cross-examination, Gloria testified that a couple of days after the shooting, she met with Detective Steve Stovall and Officer Lamont Hail for twenty minutes. She told the officers at that time that she had seen someone in the parking lot who looked like Jason, and that the person's face was "scrunched up." She also testified that she had not met with Detective Stovall again. Defense counsel asked her whether anyone had offered her money to testify, and she said "[n]o." Counsel then asked, "are you certain of that?" She responded that "he" made a remark about payment arrangements, but she testified that "it had nothing to do with today." She then

clarified that by "he," she meant Detective Stovall. According to Gloria, Detective Stovall had said that he heard that she was at the scene, and she kidded by saying "it ain't like I'm getting paid." Detective Stovall then said: "that could be arranged." On re-direct examination, Gloria testified that she received coffee and lunch when she met with the State's Attorney, but that she did not receive money.

¶ 8 At trial, Bud testified that defendant, whom he recognized as a customer at the convenience store, was the individual who robbed and shot him. Detective Jennifer Manus testified that she and police Corporal Chamberlain met with Bud at the hospital on the night of the shooting, and Bud identified defendant as the shooter and Jason as the other robber. Defendant was also tied to the crime by certain forensic evidence. Notably, a firearms and tool mark examiner linked spent shells found at the convenience store to the gun recovered at the residence where defendant was arrested. A jury convicted defendant of attempted first-degree murder and armed robbery, and he was originally sentenced on April 29, 2005.

¶ 9 Since that time, defendant has attempted to challenge the validity of his trial and sentence in a number of different ways. At issue in this appeal are his "Amended Petition for Relief of Void Judgment" and his motion for leave to file a successive postconviction petition.

¶ 10 Section 2-1401(f) Petition

¶ 11 On July 5, 2013, defendant filed his "Amended Petition for Relief of Void Judgment" pursuant to section 2-1401(f) of the Code. On appeal, defendant has abandoned two of the claims in that petition. As it pertains to this appeal, defendant first alleged in his petition that his convictions were void because the State "knowingly used perjured testimony to secure an additional 120 days [*sic*] continuance for DNA testing purposes in violation of [his] due process and right to a fair and speedy trial." Specifically, he alleged that on December 30, 2004,

Detective Stovall testified falsely at a due diligence hearing that he had sent two pieces of pink cloth to a crime lab to be tested.

¶ 12 Defendant also alleged that his convictions were void because, during a lunch recess in the course of his trial, State witness Carl Driver, Jr.[1] overheard jurors "discussing the case and stating that the defendants were guilty." According to the petition, after lunch, Carl reported the jurors' comments to the State's Attorney, but the State's Attorney did not relay that information to the court or the defense. Defendant supported this claim with an affidavit signed by Carl, in which Carl attested to these allegations.

¶ 13 Defendant next alleged that his convictions were void "because the State knowingly used a cumulative of [*sic*] perjured testimony violating [his] due process and right to a fair jury trial." According to the petition, "the State failed to correct Gloria Drivers [*sic*] testimony that no promises and arrangements were made to her by Detective Steven Stovall, in exchange for her testimony." Defendant also alleged that the State knowingly used perjured testimony from Gloria that she recognized defendant outside the convenience store moments before the crime[2] and that she saw Jason moments before the crime. In support of these allegations, defendant submitted his own affidavit, in which he averred that "[s]ince trial," Jason had spoken with Gloria by telephone. According to defendant's affidavit, Gloria disclosed to Jason that she testified falsely at trial about having not been paid for her testimony, when, in actuality, Detective Stovall gave her $100 to testify. Defendant also asserted that Gloria said that she testified falsely about having seen Jason at the scene of the crime. According to defendant's

[1] Carl did not testify at trial.

[2] As indicated above, Gloria testified that Jason was at the convenience store. She did not say that defendant was there.

affidavit, Gloria had told the State's Attorney that she saw Jason on the morning of the incident, hours before the crime. The State's Attorney then purportedly told Gloria not to tell the court or the jury when she really saw Jason. Defendant also submitted an affidavit from Ashley Ellis, in which she claimed that Gloria had told her many of these same things.[3]

¶ 14 Finally, defendant alleged in his petition that the State knowingly used perjured testimony that Bud, on the day of the shooting, had immediately picked defendant out of a photo lineup as the person who shot him. Defendant supported this allegation with another one of his own affidavits, in which he attempted to cast doubt on Detective Manus's trial testimony. According to defendant, Detective Manus testified that, on the day of the shooting, Bud "'immediately' identified [defendant] as a robber and the person who shot him." Defendant averred that, "[s]ince trial and after [his] direct appeal and first post conviction" petition, he spoke with Bud and was told that Bud "in fact told Detective Jennifer Manus and Officer Chamberlain that he did not know which suspect shot him." According to defendant, Bud told him that he "was told weeks after being released from the hospital by Detective Steve Stovall and Detective Jennifer Manus to say that [defendant] was the one with the gun and shooter [*sic*]." Defendant also stated in his affidavit: "It further should be noted that Lt. Brian Kuntzleman [*sic*] also knew that Bud could not identify the shooter."[4] According to defendant, he had "made every effort to locate" Manus, Chamberlain, Bud, and Kuntzelman, to no avail.

---

[3] Ashley did not testify at trial. Although the State represents in its brief on appeal that Ashley is defendant's sister, it is not clear from the record what connection she has to the case.

[4] Trial testimony showed that Kuntzelman directed Manus to go to the hospital on the day of the shooting to speak with Bud. Kuntzelman was also one of the officers who searched the residence where defendant was arrested.

¶ 15 On August 30, 2013, the State filed a motion to dismiss defendant's petition. The State argued that defendant did not file the petition within two years of the judgment. The State also contended that defendant had forfeited his claims by failing to assert them in a post-trial motion or on appeal.

¶ 16 On October 7, 2013, defendant filed a response to the State's motion to dismiss. Addressing the State's argument that the petition was untimely, he insisted that the two-year limitation "does not apply when the judgment in question is void." He also attempted to invoke a "fundamental fairness" exception to excuse his failure to raise certain arguments (ones he has since abandoned) on direct appeal.

¶ 17 On October 28, 2013, defendant filed a motion to supplement his pending petition with an affidavit signed by Gloria. In her affidavit, Gloria attested to the following:

> "I was interviewed by Detective Steve Stovall about the incident that happened at Oky Doky store. I told him that I had seen Jason Driver earlier that day at Oky Doky store around 9 a.m. – 11 a.m. standing outside. I did not see [defendant] at Oky Doky. I saw a gray four door car outside. Detective Stovall said that payment could be arranged for my statement/testimony. I never received payment for my statement/testimony.
>
> On the day of my testimony when I arrived Detective Steve Stovall grabbed me by my arm and made me come with him. I was scared. He took me to a room and he and States [*sic*] Attorney John Vogt went over my statement prior to me testifying. They told me not to say what time I saw Jason Driver, that the time was not important[.] [T]hey also told me to assume that I did see [defendant]. I did not understand the question that was asked if I had received payment or offered [*sic*] when [defense counsel] had asked me in court. After I gave my testimony in court I was not able to leave the courthouse. I

had to stay with Detective Steve Stovall in a room. He provided me with lunch that day. The staff also was there."

¶ 18 On April 22, 2014, the trial court issued a written order dismissing defendant's petition. The court first found that, contrary to defendant's claim, the judgment at issue was not void. Accordingly, the petition was subject to the two-year statute of limitations and was untimely. Additionally, the court found that, even if the petition were timely, it would still be subject to dismissal, because it did not allege a meritorious defense or due diligence in presenting the defense. Moreover, the court determined that "[t]here is nothing [defendant] is asserting that could not have been raised on direct appeal." The court indicated that it had considered the affidavits submitted by defendant, including Gloria's affidavit, but explained that they "do not change this court's conclusion that the petition must be dismissed."

¶ 19 The court attached to its order the court's March 18, 2014, order in co-defendant Jason's case, which referred to a different affidavit signed by Gloria, dated September 20, 2012. In that affidavit, Gloria had declared:

"I have reviewed the statement written by Jason Driver, signed and sworn March 16, 2012. I told the truth during the trial in the case of People v. Driver, 04CF289.

I never talked to Jason Driver in person or over the phone telling him that I got paid to testify. I was never paid to testify.

The Statements given in this affidavit signed March 16, 2012 are also false in regards to whether Mr. Vogt told me to lie about when I saw Jason Driver. Mr. Vogt told me to tell the truth.

My testimony given during the trial was truthful. Members of Jason Driver's family had asked me to change my statement to say I was bribed to not tell the truth. His

sister Tori Driver and Thelma Hollins[5] have told me it was up to me to help Jason Driver get out of prison. They wanted me to go back and change my statements, specifically that Jason Driver was not at the scene. Jason Driver was at the scene of the robbery. I testified truthfully at court as to his presence at the Oky Dokey [*sic*] store."

¶ 20 Motion for Leave to File a Successive Postconviction Petition

¶ 21 On November 19, 2012, defendant filed a motion seeking leave to file a successive postconviction petition. He raised four claims in that motion, two of which are relevant to the current appeal and which are virtually identical to claims he raised in his section 2-1401(f) petition. His first claim was that the State knowingly used Gloria's perjured testimony, which violated his rights to due process and a fair trial. Similar to his section 2-1401(f) petition, he argued that "[t]he State failed to correct Gloria Driver's testimony that no promises were made in exchange for her testimony." He supported this claim with his own affidavit, one which he also submitted in support of his section 2-1401(f) petition.

¶ 22 For his second claim, he argued that the State knowingly used perjured testimony from Detective Manus. According to the motion, "the State failed to correct Detective Jennifer Manus's testimony, that during the interview and photo line-up of [Bud] at the hospital on September 17, 2004, * * * [Bud] immediately identified [defendant] as the shooter, when in fact [Bud] told Detective Jennifer Manus that 'he did not know which suspect shot him.' " Defendant claimed that "[a]fter [his] first post-conviction" petition, he spoke with Bud on the telephone, and Bud told him this information. Defendant also alleged that Bud "was later told by Detective Steven Stovall and Detective Jennifer Manus to say that it was [defendant] who was the shooter."

[5] Trial testimony indicates that Thelma is Jason's mother.

¶ 23 Defendant argued in his motion that he had not forfeited these claims, noting that the support for such claims came from his own affidavit, "which was not part of the record on direct appeal and was not known to [him] at the time of his first post-conviction petition."

¶ 24 On April 22, 2014, the trial court denied defendant's motion for leave to file a successive postconviction petition in the same written order in which it dismissed the section 2-1401(f) petition. The court concluded that defendant "failed to satisfy the cause-and-prejudice test to warrant granting leave to file a successive post-conviction petition." The court noted that defendant had "not even attempted to identify why he could not have previously raised his claims."

¶ 25 Defendant timely appeals from the dismissal of his section 2-1401(f) petition and from the denial of his motion for leave to file a successive postconviction petition.

¶ 26 II. ANALYSIS

¶ 27 Defendant argues that the trial court erroneously dismissed his "Amended Petition for Relief of Void Judgment" and denied his motion for leave to file a successive postconviction petition. Before addressing the merits of the appeal, we agree with the State that defendant's brief is not in compliance with court rules. Most notably, he has neglected to include a statement of facts in violation of Illinois Supreme Court Rule 341(h)(6) (eff. Feb. 6, 2013). In lieu of a statement of facts, defendant declares: "Those additional facts necessary for an understanding of the issues raised on this appeal will be included, together with appropriate record references, in the argument portion of this brief." However, defendant does not cite to the record anywhere in his brief. Nor does he provide the factual context necessary to cogently articulate the arguments that he raised in the trial court. Under these circumstances, we certainly could find that defendant has forfeited all of his arguments and dismiss the appeal. See *Hall v. Naper Gold*

Hospitality LLC, 2012 IL App (2d) 111151, ¶ 15 (dismissing an appeal where appellant failed to comply with multiple court rules); *People v. Robinson*, 2013 IL App (2d) 120087, ¶ 15 ("[A]n appellant must present clearly defined issues to the court, supported by relevant authority: this court is 'not simply a repository in which appellants may dump the burden of argument and research.' " (quoting *People v. Chatman*, 357 Ill. App. 3d 695, 703 (2005))). Defendant's *pro se* status does not excuse his failure to comply with the rules. *Coleman v. Akpakpan*, 402 Ill. App. 3d 822, 825 (2010). Nevertheless, as we explain below, forfeiture aside, defendant's section 2-1401(f) petition was insufficient as a matter of law, and he did not meet the requirements of the cause and prejudice test so as to be entitled to file a successive postconviction petition.

¶ 28 Section 1401(f) Petition

¶ 29 On appeal, defendant challenges the trial court's order dismissing his "Amended Petition for Relief of Void Judgment" as it pertains to his claims alleging: (1) the State's use of perjured testimony to secure an additional 120 days for DNA testing purposes; (2) the State's use of perjured testimony from Gloria; (3) the State's use of perjured testimony from Detective Manus; and (4) the State's withholding of information that jurors were overheard discussing the case.

¶ 30 Section 2-1401 of the Code establishes a procedure for litigants in both criminal and civil cases to challenge final judgments between 30 days and 2 years after the entry of the judgment. 735 ILCS 5/2-1401(a)(c) (West 2012); *People v. Vincent*, 226 Ill. 2d 1, 7-8 (2007). "Relief under section 2-1401 is predicated upon proof, by a preponderance of evidence, of a defense or claim that would have precluded entry of the judgment in the original action and diligence in both discovering the defense or claim and presenting the petition." *Vincent*, 226 Ill. 2d at 7-8. This section "provides a forum in a criminal case in which to correct all errors of fact occurring in the prosecution of a cause, unknown to the petitioner and the court at the time that judgment

was entered, which, if then known, would have prevented its rendition." *People v. Kane*, 2013 IL App (2d) 110594, ¶ 13. However, such petition "may not be used to obtain relief for issues previously raised at trial or in other collateral proceedings." *Kane*, 2013 IL App (2d) 110594, ¶ 13.

¶ 31 As the State notes, there is a conflict between panels of this court regarding the standard of review applicable to section 2-1401 proceedings. See *Kane*, 2013 IL App (2d) 110594, ¶ 15 (noting that the court has applied both the *de novo* and abuse of discretion standards). We need not comment further or resolve this issue here, because we would affirm under either standard of review.

¶ 32 "Petitions brought on voidness grounds need not be brought within the two-year time limitation," and "the allegation that the judgment or order is void substitutes for and negates the need to allege a meritorious defense and due diligence." *People v. Ocon*, 2014 IL App (1st) 120912, ¶ 21 (quoting *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104 (2002)). However, "[u]nder Illinois's voidness doctrine, a judgment is void only if it was entered by a court lacking jurisdiction." *People v. Hubbard*, 2012 IL App (2d) 101158, ¶ 12. There are three elements of jurisdiction: "(1) personal jurisdiction, (2) subject matter jurisdiction, and (3) 'the power to render the particular judgment or sentence.' " *Hubbard*, 2012 IL App (2d) 101158, ¶ 21 (quoting *People v. Davis*, 156 Ill. 2d 149, 156 (1993)).

¶ 33 In his petition, defendant did not contest the trial court's personal or subject matter jurisdiction. Nor did he argue that the trial court exceeded its jurisdiction or lacked the power to render a judgment. See *Davis*, 156 Ill. 2d at 156 ("a judgment or decree may be void where a court has exceeded its jurisdiction"). Accordingly, defendant's allegation that his convictions are void is baseless, and the trial court properly dismissed the petition.

¶ 34 To the extent that the petition can be construed as alleging that the judgment was voidable rather than void (see *Davis*, 156 Ill. 2d at 155-56 ("a voidable judgment is one entered erroneously by a court having jurisdiction")), defendant has not pleaded facts sufficient to meet the requirements for relief from the judgment. Defendant's claims regarding the trial court's decision to grant the State additional time to perform DNA testing is merely a rehashing of arguments that he has raised previously. Specifically, he raised this issue in his post-trial motion filed on April 27, 2005, and again in his original postconviction petition, which he filed on February 19, 2008. In his original postconviction petition, defendant also raised the issue of the comments that Carl overheard from the jury. Because these issues were litigated previously, they are not proper matters for a section 2-1401 petition. See *Kane*, 2013 IL App (2d) 110594, ¶¶ 17, 20 (dismissal of petition was affirmed where the defendant had previously raised his claim); *People v. Haynes*, 192 Ill. 2d 437, 461 (2000) ("Points previously raised at trial and other collateral proceedings cannot form the basis of a section 2-1401 petition for relief.").

¶ 35 Furthermore, defendant's claim that the State used perjured testimony from Detective Manus is predicated on a blatantly deficient affidavit—specifically, defendant's averments about what the victim, Bud, told defendant that he had previously told detectives. A section 2-1401 petition does not state facts sufficient to require an evidentiary hearing where it is supported only by hearsay affidavits and conclusions. *People v. Cole*, 215 Ill. App. 3d 585, 588-89 (1991). Defendant has not argued that any hearsay exception applies or adequately explained why he could not obtain an affidavit from Bud himself.

¶ 36 Defendant's claim that the State used perjured testimony from Gloria fails as well. Two of the affidavits submitted in support of this claim constituted hearsay and did not justify an evidentiary hearing ((1) defendant's affidavit relating what Jason said that Gloria told him, and

(2) Ashley's affidavit explaining what Gloria told her). Although defendant also submitted an affidavit from Gloria herself, he alleged no facts in his petition tending to indicate that he was diligent in discovering his claim and filing this petition more than eight years after his trial. To survive the State's motion to dismiss, defendant was required to "set forth specific factual allegations" demonstrating his diligence. *Ocon*, 2014 IL App (1st) 120912, ¶ 20 (quoting *People v. Pinkonsly*, 207 Ill. 2d 555, 565 (2003)). On appeal, defendant argues that the State concealed information from him and that he would have lacked support to bring this claim earlier, noting that he did not receive Gloria's affidavit until October 2013. Yet he offers no reason why he could not have previously contacted Gloria (his co-defendant's aunt) or raised this issue either on direct appeal or in his first postconviction petition.

¶ 37 Defendant also argues that the trial court's dismissal order was erroneous, because the court had previously granted him leave to file his amended section 2-1401(f) petition. According to defendant, "[o]nce the circuit court allowed [him] to amend his original Petition for Relief from Judgment and further allow [*sic*] [him] and State [*sic*] to supplement the record, it would be erroneous for the circuit court to dismiss the amended petition without conducting a [*sic*] evidentiary hearing." Aside from the fact that defendant cites no authority to support this proposition, the trial court's decision to allow defendant to amend his petition bears no connection to the issue of whether the amended petition alleged facts sufficient to justify an evidentiary hearing.

¶ 38 Accordingly, the trial court properly dismissed defendant's "Amended Petition for Relief of Void Judgment," and we need not address the parties' other arguments relating to the section 2-1401(f) petition.

¶ 39 Motion for Leave to File a Successive Postconviction Petition

¶ 40 Defendant also appeals from the trial court's denial of his motion for leave to file a successive postconviction petition. Although the Act contemplates only one postconviction proceeding, courts have recognized two grounds for relaxing the prohibition against successive petitions. *People v. Love*, 2013 IL App (2d) 120600, ¶ 24. One basis, known as the "fundamental-miscarriage-of-justice" exception, applies only when the defendant advances a claim of actual innocence. *Love*, 2013 IL App (2d) 120600, ¶ 24. The other exception applies when the defendant can establish "cause and prejudice" for failing to raise the claim earlier. *Love*, 2013 IL App (2d) 120600, ¶ 24. That exception is now codified in the Act:

> "Only one petition may be filed by a petitioner under this Article without leave of the court. Leave of court may be granted only if a petitioner demonstrates cause for his or her failure to bring the claim in his or her initial post-conviction proceedings and prejudice results from that failure. For purposes of this subsection (f): (1) a prisoner 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; and (2) a prisoner 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." 725 ILCS 5/122-1(f) (West 2012).

A defendant seeking leave to file a successive petition under this provision must allege facts demonstrating both cause and prejudice and "submit enough in the way of documentation to allow a circuit court to make [the] determination" whether the standard has been met. (Internal quotation marks omitted.) *People v. Smith*, 2014 IL 115946, ¶¶ 34-35. This is a higher burden than the "frivolous or patently without merit" standard that applies during first-stage proceedings under the Act. *Smith*, 2014 IL 115946, ¶ 35. We review *de novo* the trial court's order denying

leave to file a successive petition. *People v. McDonald*, 405 Ill. App. 3d 131, 135 (2010).

¶ 41 Two of the claims that defendant raised below are at issue in this appeal: the allegation that the State used perjured testimony from Gloria and the allegation that the State used perjured testimony from Detective Manus about Bud identifying defendant as the shooter from a photo lineup. Defendant does not attempt to invoke the "fundamental-miscarriage-of justice" exception as a basis for filing a successive petition, and he has not presented a claim of actual innocence.

¶ 42 The trial court found that defendant did not satisfy the cause and prejudice test. We agree. As noted above, in order to show cause, defendant was required to plead facts demonstrating an "objective factor that impeded his * * * ability to raise a specific claim during his * * * initial post-conviction proceedings." 725 ILCS 5/122-1(f) (West 2012); *Smith*, 2014 IL 115946, ¶ 34. In his motion, defendant made no meaningful attempt to articulate a reason for failing to include these claims among the myriad issues he raised in his original postconviction petition. On appeal, he asserts that the affidavits that he relies on were not part of the record on direct appeal or known to him when he filed his original postconviction petition. As we explained above with respect to the section 2-1401(f) petition, defendant has offered no reason why he could not have raised these issues either on direct appeal or in his first postconviction petition. He has not alleged facts sufficient to demonstrate cause, so we need not address whether the allegations satisfied the prejudice requirement. *Love*, 2013 IL App (2d) 120600, ¶ 50. Accordingly, the trial court properly denied defendant's motion for leave to file a successive postconviction petition.

¶ 43 III. CONCLUSION

¶ 44 For the reasons stated, the trial court did not err in dismissing defendant's "Amended Petition for Relief of Void Judgment" and denying his motion for leave to file a successive postconviction petition.

¶ 45 Affirmed.