2017 IL App (2d) 151140-U
No. 2-15-1140
Order entered April 28, 2017

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Lake County.
Plaintiff-Appellee,	)	
v.	)	No. 02-CF-3775
CHARLES W. SMITH,	)	Honorable Mark L. Levitt,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Presiding Justice Hudson and Justice Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not err in denying defendant leave to file a successive postconviction petition where he failed to establish a colorable claim of actual innocence, but the court erred by denying defendant's claim of ineffective assistance of counsel due to a conflict of interest where trial counsel contemporaneously represented defendant while representing a suspect who was named by the State as a potential witness; trial court is reversed and cause remanded.

¶ 2 Defendant, Charles W. Smith, appeals from an order of the circuit court of Lake County denying him leave to file a successive petition for relief under the Post-Conviction Hearing Act

(Act) (725 ILCS 5/122–1(f) (West 2014)). Defendant argues that the trial court erred by denying him leave because 1) he asserted a colorable claim of actual innocence, and 2) he made an arguable claim of cause and prejudice regarding his allegations of ineffective assistance of counsel and lack of due process. We reverse and remand.

¶ 3 Following a jury trial in the circuit court of Lake County, defendant was convicted of first degree murder. He was sentenced to a prison term of 48 years. In June 2015, defendant filed a motion for leave to file a successive postconviction petition, alleging 1) actual innocence, 2) ineffective assistance of counsel based on a *per se* conflict of interest, and 3) lack of due process in obtaining the indictment. The trial court denied defendant's motion.

¶ 4 I. BACKGROUND

¶ 5 The record reflects that on October 2, 2002, the grand jury returned an indictment charging defendant with the July 12, 1997, first degree murder of Corey Hoskins (the victim). Defendant was tried in May 2004. Medical testimony revealed that the victim died of a "through-and-through gunshot wound to the head. Other evidence showed that police located two bullets in the interior of a Maroon Cutlass Supreme parked in the parking lot across from the Intensity Lounge in North Chicago and seven shell casings lying on the pavement in the parking lot. The police did not locate any firearms. Ballistics evidence established that all seven shell casings were ejected from the same firearm, a .45 caliber semiautomatic firearm.

¶ 6 Kelvin Scott testified as follows. On the evening of July 11, 1997, Scott got into an altercation with defendant at a well-lit Mobil gas station. Scott had plans to go to the Intensity Lounge with some friends and stopped at a Mobile station. At the time Scott owned a Nissan Sentra and a Ford van. When Scott stopped at the Mobile station, he saw his girlfriend, Latrina Blanton, who had pulled up to a gas pump in Scott's Nissan Sentra. Defendant was leaning on the Sentra talking to Blanton. Defendant wore a red shirt, a red Texas Ranger baseball cap, and

blue jeans. Scott yelled to defendant to get off the car. When defendant did not comply, Scott repeated his demand about three more times. Blanton pulled away, defendant approached Scott, words were exchanged, and Scott punched defendant with a closed fist. When a North Chicago police car pulled into the gas station friends of defendant and friends of Scott restrained the men.

¶ 7 Defendant was with a group of men; one of them was Freddie "Flirt" Myers, who Scott knew to drive both a grey Buick Regal and a blue Chevy Caprice with custom rims, tinted windows, and ground effect lighting. Defendant and his group pulled out of the gas station. A few minutes later Scott saw defendant and his group pushing the Regal. Scott approached defendant's group and told them to "let it go." Defendant told Scott to follow him to 24th Street to finish the fight. Scott repeated, "Just let it go," got into his van, and drove to the parking lot across from the Intensity Lounge. Scott parked his van in the bank parking lot and Kevin Hamilton, accompanied by the victim, backed his car next to Scott's van. The bank parking lot was well-lit. The victim got into Scott's van. About ten minutes later Myers' Caprice stopped in front of the Intensity Lounge, drove off, passed through the bank drive-thru, drove away, and then appeared again at the corner. About 15 to 20 minutes later a man shot at Scott and his friends in the bank parking lot across the street from the Intensity Lounge and then ran into the bushes. Someone yelled, "Corey's hit!" Scott saw the victim slumped down in the middle passenger seat of his van. Scott drove the victim to the hospital in his van where the victim was pronounced dead.

¶ 8 Scott described the shooter as tall and slim, with a black hat and black T-shirt, and with something over his mouth. Scott said that the shooter reminded him of the man he fought with earlier at the Mobile gas station because the shooter had the same build, light-skinned

complexion, and height. Shortly after the shooting Scott chose a photograph of defendant from an array of six photos as the person he fought with at the gas station.

¶ 9 Kevin Hamilton testified that on July 11, 1997, he and the victim went to the well-lit Mobil gas station and saw Scott fighting with a man Hamilton identified in court as defendant. Scott grabbed defendant, and Hamilton and the victim pulled Scott back and calmed Scott down. At that point defendant said, "n****rs better be strapped up," which Hamilton understood to mean "[you better] get a gun [or] have a pistol." When a police car pulled into the gas station everyone got into their cars and left. Defendant got into Meyer's blue Chevy Caprice which left the gas station the same time as a Buick Regal. Scott left the gas station in his van and Hamilton and the victim followed the van in his car. Hamilton stopped alongside the Caprice, which had stopped near Sherman and 23rd Street. Defendant, a passenger in the Caprice said, "you n****rs better be strapped up." Hamilton followed Scott's van to the well-lit bank parking lot across from the Intensity Lounge where they backed their vehicles into parking spaces. Hamilton got out of his car and stood between his car and Scott's van. The Caprice slowly passed by the front of the Intensity Lounge. At some point the victim got into Scott's van to talk to his cousin and listen to music. The victim sat in the passenger seat with the door open. Hamilton heard gunshots and saw defendant shooting at him and his friends. Hamilton looked directly at defendant; he was about 15 feet away from defendant when he saw defendant shooting. Then, Hamilton's friend, Romeo, pulled Hamilton down to the ground. Hamilton believed that the shooter was defendant because the shooter was the same tall light-skinned person he saw at the gas station and he noticed that the shooter wore a red shirt underneath a black shirt. Two days after the shooting Hamilton identified defendant in a six-person photo lineup.

¶ 10 Kortney Little testified that she was at the Intensity Lounge on July 12, 1997, and at closing time she and about four friends drove to the Mobile gas station where Myers and defendant flagged her down. Defendant and Myers got into the backseat of Little's car and asked to be dropped off by Farrakhan Muhammad's house on 24th Street. Little testified that she did not remember much of the car ride because so much time had passed, she was high at the time, and because at that time in her life she had been smoking 20 or more "blunts" (marijuana cigarettes rolled in cigar paper) a day. Little recalled speaking with North Chicago police detective Lawrence Wade on November 18, 1998. Little denied telling Wade the following; defendant and Myers appeared out of breath as they approached her car, defendant and Myers spoke about the shooting while in Little's car, when Little asked the men what happened they told her, "nothing" and to "shut up," and Little saw defendant carrying a large handgun under his coat, possibly a .45 caliber. The trial court gave a limiting instruction regarding the above impeachment testimony, stating that,

> "[T]he believability of a witness may be challenged by evidence that on a former occasion she made a statement that is not consistent with her testimony in this case. Evidence of this kind may be considered by you only for the limited purpose of deciding the weight to be given the testimony you heard from the witness in this courtroom. It's up for you to determine whether the witness made the earlier statement and if so what weight should be given that statement. In determining the weight that should be given to an earlier statement you should consider all the circumstances under which it was made."

¶ 11 The trial court admitted as substantive evidence State's exhibit number 66, a handwritten voluntary statement from Little, dated November 6, 1998. Little admitted that the statement was in her handwriting. The statement provided as follows:

> "Call [sic] in by [Wade] to come down to the station and ask me about some fellows in a shoting [sic] accident. I told [Wade] that yes I did pick the two fellows up from the Mobile and drop them off on 24th Street by the Muhameds [sic] houses [sic]. Yes, the tall guy was caring [sic] the pistol and they were saying something about a shotting [sic] that they might have did.
>
> /s/ Kortney Little."

¶ 12 When Little was asked if she remembered testifying before the grand jury on January 27, 1999, she replied, I never been in front of a grand jury." Little testified that she did not remember telling the grand jury that defendant and Myers looked out of breath when they got into her car and that they talked about a shooting, and that defendant had a large caliber handgun tucked in his pants and underneath his shirt. Little also testified that later in the day on July 12, 1997, she saw defendant at Tisna Coleman's apartment building in Waukegan. Little denied hearing defendant say anything at that time and place. Little testified that she did not remember telling the grand jury that she saw defendant standing outside of the apartment building and heard him say several times that he needed to leave because of the incident that happened the previous night.

¶ 13 The parties stipulated that Little testified before the grand jury on January 27, 1999, and, in response to questions, she provided the responses provided above. The trial court instructed the jury that it could consider as substantive evidence Little's prior inconsistent statements before the grand jury.

¶ 14 Tisna Coleman testified that the morning of July 12, 1997, she saw defendant standing in the rear entrance of her apartment building. Defendant had scratch marks on his face and when she asked defendant what happened, defendant told her that he got into an "altercation about leaning on a car talking to a girl the night before." Defendant also told Tisna that he was

shooting the previous night, but that he did not think that his bullet was the one that that killed the victim.

¶ 15 A Lake County jury found defendant guilty of first degree murder (720 ILCS 5/9-1(a)(1) (West 1996)), and the trial court sentenced him to a 48-year prison term. This court affirmed that judgment on direct appeal. *People v. Smith,* No. 2-04-0790 (2006) (unpublished order under Supreme Court Rule 23).

¶ 16 On May 21, 2009, defendant, *pro se*, filed his initial postconviction petition alleging ineffective assistance of trial counsel for failure to object to a jury instruction and ineffective assistance of appellate counsel for failure to argue the same on direct appeal. The trial court dismissed defendant's petition as frivolous and patently without merit. This court affirmed that judgment on direct appeal. *People v. Smith,* No. 2-07-0897 (2009) (unpublished order under Supreme Court Rule 23).

¶ 17 On June 25, 2015, defendant filed a motion for leave to file a successive postconviction petition, pursuant to section 122-1(f) of the Act, along with the proposed successive postconviction petition. In his petition defendant claimed (1) actual innocence and attached the affidavit of Shelmar Mays who averred, in part, that he was present at the shooting, he saw the shooter, the shooter was not defendant, and the shooter did not look like defendant; (2) ineffective assistance of counsel due to a *per se* conflict of interest because defense counsel also represented Myers, a potential witness, who may have been the real offender; and (3) violation of due process because a police officer lied to the grand jury that during a photo array, a witness picked defendant out as the shooter.

¶ 18 In support of his claim of actual innocence, defendant attached the affidavit of Shelmar Mays who averred the following:

> "I [w]as in the parking lot that night. We were sitting in the parking lot and listening to music and waiting to see where everyone was going, when the club let out. A guy came out of the bushes and started shooting in our direction. [T]he shooter had a hoodie and a mask on. He was dark skinned and a little shorter than me *** I was arrested that night for disorderly conduct. After the shooting for things that I said to the police, but I was never questioned about the murder. This is the reason for me coming forward today about it. I recently found out that the person that they have charged with the murder of my friend, Corey, is a guy by the name of Charles Smith [defendant] who I also knew from playing ball at the YMCA seeing him around from time to time. *** I recently found out [defendant was in prison] for the murder of Corey. The reason why, [*sic*] I Know it couldn't have [b]een [defendant] is because I know the shooter was shorter than me. And [defendant] is way taller than me and the shooter was dark skinned as well."

¶ 19 On October 28, 2015, the trial court denied defendant's motion for leave to file a successive postconviction petition. Defendant filed a notice of appeal on November 16, 2015.

¶ 20 II. ANALYSIS

¶ 21 Defendant argues that the trial court erred by denying his motion for leave to file a successive postconviction petition because he asserted a colorable claim of actual innocence.

¶ 22 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2014)) contemplates the filing of only one petition without leave of court (725 ILCS 5/122-1(f) (West 2014)), and any claim not presented in an original or amended petition is waived. 725 ILCS 5/122-3 (West 2014). A defendant must obtain leave of the trial court prior to filing a successive postconviction petition. 725 ILCS 5/122-1(f) (West 2014); *People v. Smith*, 2014 IL 115946, ¶ 33. Successive postconviction petitions are disfavored. *People v. Edwards*, 2012 IL 111711, ¶ 29.

¶ 23 The bar to successive postconviction petitions may be relaxed only (1) where there has been a fundamental miscarriage of justice which requires the defendant to show actual innocence (*People v. Sanders*, 2016 IL 118123, ¶ 24), or (2) where a defendant demonstrates cause for failing to raise the claim in his earlier petition and prejudice resulting from that failure (725 ILCS 5/122-1(f) (West 2014)). Where, as here, the issues raised by the denial of a motion for leave to file a successive postconviction petition are solely ones of law, review is *de novo*. *People v. Wrice*, 2012 IL 111860, ¶ 50; *cf. People v. Guerrero*, 2012 IL 112020, ¶ 13 (holding that *de novo* review was improper where the court had held an evidentiary hearing).

¶ 24 A. Actual Innocence

¶ 25 Defendant argues that his petition stated a colorable claim of actual innocence because he attached the affidavit of Mays, an alleged witness previously unknown to defendant or the State, wherein Mays averred that he saw the shooting, defendant was not the shooter, and defendant did not look like the shooter.

¶ 26 To state a colorable claim of actual innocence, a defendant's motion for leave and supporting documentation must "raise the probability that it is more likely than not that no reasonable juror would have convicted him in the light of the new evidence." *Edwards*, 2012 IL 111711, ¶ 31. The evidence of actual innocence must be (1) newly discovered, (2) not discoverable earlier through the exercise of due diligence, (3) material and not merely cumulative, and (4) of such conclusive character that it would probably change the result on retrial. *Edwards*, 2012 IL 111711, ¶ 32. "[C]onclusive means the evidence, when considered along with the trial evidence, would probably lead to a different result." *People v. Coleman*, 2013 IL 113307, ¶ 96.

¶ 27 Regarding Mays' affidavit, we determine that it is not of such conclusive nature that it would probably change the result on retrial. See *Edwards*, 2012 IL 111711, ¶ 32. Newly discovered evidence is considered to be of a conclusive nature if it raises the probability that, in

light of the new evidence, it is more likely than not that no reasonable juror would have convicted the defendant. *Edwards*, 2012 IL 111711, ¶ 40. In his affidavit, Mays averred that he knew that the shooter was not defendant because the shooter was dark-skinned and shorter than Mays and defendant was taller than him. In contrast to Mays' description of the shooter, there was substantial credible testimony adduced at trial identifying defendant as the shooter. Hamilton identified defendant in court as the shooter. Hamilton testified that he knew defendant was the shooter because the shooter was the same tall light-skinned person he saw at the gas station. Similarly, Scott testified that the shooter was tall and reminded him of the man he fought with earlier at the gas station because the shooter had the same build, light-skinned complexion, and height. In addition, Hamilton and Scott identified defendant in photo lineups.

¶ 28 Hamilton and Scott's testimony was corroborated by Little's trial testimony, written statement, and grand jury testimony, in which Little explained that on the night of the shooting she picked up defendant and Myers at the gas station and that defendant was carrying a large caliber handgun or a pistol. Further, Coleman testified that the morning after the shooting defendant told her that he had been shooting the previous night. Given this evidence, we cannot determine that Mays' proposed testimony would probably change the result on retrial. In other words, Mays' affidavit does not raise the probability that, if he testified, it is more likely than not that no reasonable juror would have convicted defendant. See *Edwards*, 2012 IL 111711, ¶ 40. Therefore, the trial court did not err by denying defendant's motion for leave to file a successive petition based on his claim of actual innocence.

¶ 29 B. Cause and Prejudice

¶ 30 Next, defendant argues that the trial court erred by denying him leave to file his successive postconviction petition alleging ineffectiveness of counsel based on a *per se* conflict

of interest and a lack of due process in obtaining the indictment. Defendant argues that he satisfied the cause-and-prejudice test regarding these claims.

¶ 31 The cause-and-prejudice exception is codified in section 122-1(f) of the Act (725 ILCS 5/122-1(f) (West 2012)). Section 122-1(f) of the Act provides that: "(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 2014). Our supreme court observed: "[s]ection 122-1(f) does not provide for an evidentiary hearing on the cause-and-prejudice issues and, therefore, it is clear that the legislature intended that the cause-and-prejudice determination be made on the pleadings prior to the first stage of postconviction proceedings." *People v. Smith*, 2014 IL 115946, ¶ 33. While the test for initial petitions to survive summary dismissal is that the petition states the gist of a meritorious claim, that is, a claim of arguable merit, the cause-and-prejudice test for successive petitions is more exacting than the gist or arguable merit standard. *Edwards*, 2012 IL App (1st) 091651, ¶¶ 21-22, 26.

¶ 32 Here, defendant alleged ineffective assistance of counsel due to defense counsel's *per se* conflict of interest. Defendant alleged that defense counsel, Jed Stone, simultaneously represented Myers in an unrelated case, that Myers was a witness in this case, and that that Myers "may have been the actual offender."

¶ 33 To establish cause defendant argues that he "did not have the information until or after he filed his original post conviction petition." In order to establish cause, a defendant must show some objective factor external to the defense impeded his ability to raise the claim in the initial

postconviction proceeding. *People v. Tenner*, 206 Ill. 2d 381, 393 (2002). Defendant offers this in his sworn affidavit, wherein he states:

> "After I filed my original post-conviction petition I discovered that my attorney, Jed Stone, was actually representing one of the original suspects in my case, [Myers], on another charge while representing me. In 2013, I learned this while consulting with attorney Jed Stone regarding representation. My present lawyer looked for documentation on this matter, but was not able to find it. However, my friend, Sandra went to the Circuit Clerk's Office, and got [the attached] documents."

Thus, defendant stated that Stone kept his representation of Myers from him until 2013. Because defendant offered an objective factor external to his defense that impeded his ability to raise his claim, he established cause.

¶ 34 Regarding prejudice, defendant submits that trial counsel's contemporaneous representation of Myers constituted a *per se* conflict of interest and, therefore, prejudice is presumed.

¶ 35 "The sixth and fourteenth amendments to the United States Constitution guarantee the right to effective assistance of counsel." *People v. Taylor,* 237 Ill. 2d 356, 374 (2010). "A criminal defendant's sixth amendment right to effective assistance of counsel includes the right to conflict-free representation." *Taylor,* 237 Ill. 2d at 374. There are two types of conflicts: *per se* and actual. *People v. Fields,* 2012 IL 112438, ¶ 17. Whether a conflict of interest exists must be evaluated on the specific facts of each case. See *People v. Poole,* 2015 IL App (4th) 130847, ¶ 25. A *per se* conflict of interest arises where a defendant's attorney has a tie to a person or entity that would benefit from an unfavorable verdict for the defendant. *People v. Hernandez*, 231 Ill. 2d 134, 142 (2008). If a *per se* conflict exists, the defendant is not required to show actual prejudice. *Hernandez*, 231 Ill. 2d at 143.

¶ 36 The supreme court has identified three situations where a *per se* conflict exists: "(1) where defense counsel has a prior or contemporaneous association with the victim, the prosecution, or an entity assisting the prosecution; (2) where defense counsel contemporaneously represents a prosecution witness; and (3) where defense counsel was a former prosecutor who had been personally involved with the prosecution of defendant." *Fields,* 2012 IL 112438, ¶ 18. The issue here involves the second scenario, *i.e.,* whether defendant's trial counsel contemporaneously represented defendant and a prosecution witness. Defendant alleged that his trial counsel represented both defendant and a named prosecution witness, Myers, at the same time**.**

¶ 37 The State contends, and the trial court determined, that defendant failed to support his claim with documentation. However, defendant attached his affidavit stating that, in 2013, trial counsel Stone told defendant that he represented "one of the original suspects in [defendant's] case," Myers, "on another charge." Defendant also attached: (1) a minutes query document indicating that, at the time of defendant's trial, Stone represented Myers in a criminal matter; (2) a police report of a witness interview of Eric Green wherein Green told detective Phelps that "Lil Flirt" (Myers) was the shooter in defendant's case; and (3) a State witness list naming Myers and Green. Thus, defendant supported his clam with sufficient documentation at this stage.

¶ 38 The reason for having a *per se* rule prohibiting representation by an attorney with possible conflicting interests is that certain associations may have "subliminal effects" on counsel's performance which are difficult to detect and demonstrate. *People v. Austin M.*, 2012 Il 111194, ¶ 84.; *People v. Washington,* 101 Ill.2d at 110,. See also *Spreitzer,* 123 Ill. 2d at 16. The *per se* conflict rule is designed to avoid unfairness to the defendant, who may not be able to determine whether his representation was affected by the conflict. *People v. Daly*, 351 Ill. App. 3d 372, 376 (2003). The *per se* conflict rule " 'is a rigid one, designed not alone to prevent the dishonest practitioner from fraudulent conduct, but as well to preclude the honest practitioner from putting

himself in a position where he may be required to choose between conflicting duties.' " *People v. Poole*, 2015 IL App (4th) 130847, ¶ 26, (quoting *People v. Lawson,* 163 Ill. 2d 187, 210 (1994)).

¶ 39 We recognize that, ordinarily, the contemporaneous representation of a potential witness is not sufficient to establish the existence of a per se conflict. See *People v. Morales*, 209 Ill. 2d 340, 346-347 (2004) (holding that there was no *per se* conflict of interest where named prosecution witness was not called by the State and, therefore, defense counsel did not assume status of attorney for a prosecution witness). However, in this case, by representing Myers, Stone did not merely represent a potential witness; rather, Stone represented a potential suspect. Therefore, the situation is "too fraught with the dangers of prejudice, prejudice which the cold record might not indicate, that the mere existence of the conflict is sufficient to constitute a violation of [defendant's] rights whether or not it in fact influences the attorney or the outcome of the case." *People v. Daly*, 351 Ill. App. 3d 372, 378 (2003), (quoting, *People v. Stoval,* 40 Ill. 2d 109, 113 (1968)).

¶ 40 We note the record also reveals conduct that could be used in an actual conflict of interest analysis. For example, Green was on the State's witness list and provided an interview to detective Phelps on the day of the shooting indicating that Stone's client, Myers, was the shooter. Green, as an eyewitness to the shooting, logically should have been called to testify at defendant's trial. Yet, Stone called no witnesses on defendant's behalf. If Green failed to identify Myers as the shooter, Stone could have used Green's statement to detective Phelps to impeach Green. However, Stone may have declined to call either Myers or Green as a witness for fear of offending Myers in the course of examination and losing Myers' business, or counsel may have believed that an attack on Myers would later come to haunt Myers in his criminal case. In any event, the failure to call Green and, perhaps Myers as witnesses "would seem to have nothing to do with sound trial strategy in *defendant's* case." (Emphasis in original). See *People v. Thomas,* 131 Ill. 2d 104,

113-14 (1989). Accordingly, the trial court erred by denying defendant's motion for leave to file a successive petition based on ineffective assistance of counsel due to a conflict of interest.

¶ 41 The State cites *People v. Sanchez*, 161 Ill. App. 3d 586 (1987), to support its argument that "there is no evidence in the record to suggest that there was a *per se* conflict" of interest. In *Sanchez*, the defendant filed a postconviction petition alleging, *inter alia*, ineffective assistance of counsel due to a conflict of interest based on defense counsel's representation of the defendant and a third party, Cueto, on charges arising out of the same occurrence as the defendant's charges. *Id*. at 588. During an evidentiary hearing on the defendant's petition defense counsel testified that the defendant was aware of the dual representation. *Id*. at 590. The trial court dismissed the defendant's petition. *Id*. at 588. The appellate court affirmed the trial court, reasoning that there was no evidence establishing a *per se* conflict of interest due in part because "the State never attempted to call Cueto as a prosecution witness." *Id*. at 594. In contrast to the facts in *Sanchez*, in this case defendant was not afforded an evidentiary hearing, defendant averred that he was not aware of defense counsel's contemporaneous representation of Myers, a named witness and a person named by Green as the actual shooter, and Myers and Green were named by the prosecution as witnesses in defendant's trial. Therefore, *Sanchez* is distinguishable from this case and we are persuaded that the cause must be remanded for further proceedings on this claim.

¶ 42 Next, defendant argues that he was denied his right to due process because the indictment was obtained by the perjured testimony of police commander Walter Holderbaum. Defendant's petition contained the following allegations regarding his due process claim. Holderbaum testified before the grand jury that he "investigated the case and the witnesses and the witnesses he interviewed picked [defendant] out of a photo array." However, at trial, Holderbaum

"denied that he had done any of those things." Further, the "State knew or should have known that [Holderbaum] lacked personal knowledge of the investigation."

¶ 43 Here, defendant failed to meet the pleading requirements of section 122-2 of the Act by failing to attach the document that he argues, corroborates his claim to his successive petition. See 725 ILCS 5/122-2 (West 2014). However, even if we were to look beyond defendant's failure to attach to his petition, the grand jury testimony transcript upon which he bases his claim, defendant cannot satisfy the requirements of the cause and prejudice test. Defendant has failed to meet the cause prong because he has failed to identify an objective factor that impeded his efforts to raise the issue of Holderbaum's alleged perjured grand jury testimony in an earlier proceeding. Defendant has failed to include any documentation to demonstrate cause and prejudice regarding his claim of a violation of due process. Defendant failed to provide any documentation indicating why he could not have obtained this purported information earlier, failed to provide the grand jury transcripts containing Holderbaum's testimony, and failed to provide any documentation regarding his allegation that the State knew or should have known about Holderbaum's alleged perjury. Accordingly, defendant has failed to establish cause and prejudice regarding his due process claim. Therefore, the trial court properly denied defendant leave to file his successive postconvition petition.

¶ 44 III. CONCLUSION

¶ 45 The judgment of the circuit court of Lake County is reversed and remanded.

¶ 46 Reversed and remanded.