2022 IL App (4th) 4200429-U

NO. 4-20-0429

FILED
March 31, 2022
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
STEVEN D. MONROE,	)	No. 11CF511
Defendant-Appellant.	)	
	)	Honorable
	)	John R. Kennedy,
	)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Harris and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court granted appellate counsel's motion to withdraw and affirmed, concluding any argument the trial court erroneously denied defendant's motion for leave to file a successive postconviction petition lacked arguable merit.

¶ 2 Defendant, Steven D. Monroe, appeals from the Champaign County circuit court's judgment denying him leave to file a successive petition under the Post-Conviction Hearing Act (Postconviction Act) (725 ILCS 5/122-1 to 122-7 (West 2020)). The Office of the State Appellate Defender (OSAD), who was appointed to represent defendant in this appeal, has filed a motion to withdraw as counsel, asserting there are no meritorious issues to present on appeal. Defendant *pro se* filed a response opposing the motion. The State argues the trial court properly denied defendant's motion for leave to file a successive postconviction petition. We grant OSAD's motion to withdraw as counsel and affirm the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 A. Charges and Trial Evidence

¶ 5 In March 2011, the State charged defendant with five counts of first degree murder (720 ILCS 5/9–1(a)(1), (2), (3) (West 2010)) in connection with the shooting death of Marcus Brown. Following three mistrials, defendant's case proceeded to a fourth and final jury trial in December 2012. A summary of the relevant evidence presented follows.

¶ 6 On January 7, 2011, defendant, Roy Duckworth, Darren Mosley, and Joseph Emery set out to obtain marijuana from Brown. The group drove to Brown's apartment complex in Rantoul after obtaining a handgun. The evidence was unclear as to who went into Brown's apartment, but defendant testified he and Duckworth entered the apartment to purchase the marijuana. The evidence was unclear as to what happened after defendant entered Brown's apartment. The four men left the complex and separated for the duration of the evening.

¶ 7 Following the trip to Brown's apartment, defendant met up with Dennis Droughns. When he entered the backseat of Droughns's car, defendant had the .22-caliber handgun in his pocket. The gun discharged, and a bullet struck Droughns in the back. Defendant exited the car, hid the handgun in a barbecue grill, and hid in a house nearby.

¶ 8 On January 8, 2011, police officers found the handgun in the grill. Later, police discovered a deceased Brown lying on the floor in his apartment, having suffered a single gunshot to the head. Forensic evidence indicated Brown was shot from close range with the same .22-caliber handgun found in the grill. Police noted a laptop computer, Xbox 360 video game system, and a safe used to store marijuana were missing from Brown's apartment.

¶ 9 The jury viewed portions of defendant's January 13, 2011, statement to detectives in which he initially denied being at Brown's apartment on January 7, being involved in the shooting, or knowing who shot Brown. However, defendant later told detectives if they wanted

to know more, they should call Emery because "you might get the right person." Defendant recounted his evening for the detectives but omitted any mention of entering Brown's apartment. Defendant claimed he was in the car when Emery told him he tried to "hit a lick" (*i.e.*, rob Brown), Brown tried to "wrestle" him, and Emery shot Brown in the head. Emery admitted taking a video game and marijuana. Defendant denied leaving anything out of his story.

¶ 10 The jury also viewed portions of defendant's July 26, 2011, interview with the police. In contrast to his previous statement, defendant admitted he, Duckworth, Mosley, and Emery were all at Brown's apartment. He explained Brown did not have the amount of marijuana they wanted to purchase. They left the apartment and returned to the car. Before driving away, Emery said he needed to use the bathroom and exited the car. He returned shortly after with a video game, Xbox game system, and laptop computer. Emery told the others he robbed Brown. Defendant denied being in the apartment when Brown was shot.

¶ 11 Segments of defendant's December 14, 2011, statement at his first trial were also played for the jury. There, defendant testified Mosley obtained the handgun from someone else during the evening of January 7, 2011. Defendant testified after arriving at Brown's apartment, he and Duckworth exited the car and went inside to purchase the marijuana. After purchasing a lesser amount of marijuana than they had originally intended, defendant and Duckworth returned to the car, where Emery said he needed to use the bathroom and exited the car. Defendant testified he did not see Emery carrying anything with him when he returned, but after they arrived at their destination, Emery admitted to the group he had robbed Brown. Defendant testified Mosley asked him to take possession of the gun, which he put in his pocket.

¶ 12 Following arguments, the jury found defendant guilty of first degree murder.

¶ 13 B. Posttrial Proceedings

¶ 14 The trial court sentenced defendant to 52 years in prison. On appeal, this court affirmed defendant's conviction and sentence. *People v. Monroe*, 2014 IL App (4th) 130108-U, ¶ 1. In September 2015, defendant *pro se* filed a postconviction petition, which the trial court summarily dismissed. On appeal, this court granted OSAD's motion to withdraw as appointed counsel and affirmed the trial court's judgment. *People v. Monroe*, 2018 IL App (4th) 150890-U, ¶ 1.

¶ 15 In July 2020, defendant *pro se* filed a motion for leave to file a successive postconviction petition and attached the proposed petition, arguing he was actually innocent. In support of his motion, defendant attached affidavits from Charles Edwards and Mosley, neither of whom testified at the trial resulting in defendant's conviction.

¶ 16 Edwards averred he (1) did not provide defendant with a gun, (2) was threatened by detectives to assist with the case or be charged as an accessory, and (3) "kn[e]w for 100% fact [that defendant] wasn't involved in or had any knowledge of a plan to rob or kill Marcus Brown because [he] was told this by Darren Mosley."

¶ 17 Mosley averred that after Emery emerged from Brown's apartment, Emery admitted to Mosley, Duckworth, and defendant that he robbed Brown and shot him during the struggle. According to Mosley, defendant was not involved in any plan to rob Brown and did not have any involvement in his death. Mosley averred he did not tell the truth sooner because he was threatened by detectives to testify against defendant or be charged with a criminal offense.

¶ 18 In August 2020, the trial court issued a three-page order denying defendant's motion for leave to file a successive postconviction petition. The court found Edwards's affidavit was not based on direct evidence but rather a hearsay statement by Mosley, which would have

been inadmissible at trial. It further found Mosley's affidavit was not newly discovered because Mosley indicated defendant was present when Emery stated he robbed Brown.

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 On appeal, OSAD asserts any argument the trial court erred when it denied defendant's motion for leave to file a successive postconviction petition would be meritless. We agree.

¶ 22 A. Applicable Law

¶ 23 The Postconviction Act provides a remedy for criminal defendants who have suffered a substantial violation of their constitutional rights in the proceedings leading to their conviction. *People v. Pendleton*, 223 Ill. 2d 458, 471, 861 N.E.2d 999, 1007 (2006). The Postconviction Act contemplates the filing of only one postconviction petition. 725 ILCS 5/122-1(f) (West 2020). However, an individual may initiate a successive postconviction proceeding with leave of the trial court. *People v. Edwards*, 2012 IL 111711, ¶ 24, 969 N.E.2d 829.

¶ 24 As relevant to this case, a petitioner may obtain leave to file a successive petition when he has demonstrated a colorable claim of actual innocence. *Id.* "[L]eave of court should be granted when the petitioner's supporting documentation raises the probability that 'it is more likely than not that no reasonable juror would have convicted him in the light of the new evidence.' " *Id.* (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)). "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." *People v. Sanders*, 2016 IL 118123, ¶ 24, 47

N.E.3d 237. "Newly discovered" means evidence "that was discovered after trial and that the petitioner could not have discovered earlier through the exercise of due diligence." *People v. Robinson*, 2020 IL 123849, ¶ 47, 181 N.E.3d 37. Additionally, the "conclusive character of the new evidence is the most important element of an actual innocence claim." *Id.* Specifically, "the conclusive character element refers to evidence that, when considered along with the trial evidence, would probably lead to a different result." *Id.* "Ultimately, the question is whether the evidence supporting the postconviction petition places the trial evidence in a different light and undermines the court's confidence in the judgment of guilt." *Id.* ¶ 48. This court reviews the trial court's denial of leave to file a successive postconviction petition *de novo*. *People v. Bailey*, 2017 IL 121450, ¶ 13, 102 N.E.3d 114.

¶ 25 B. This Case

¶ 26 Here, we agree with OSAD there is no viable argument defendant set forth a colorable claim of actual innocence because his proffered evidence was not newly discovered or of such a conclusive character it would probably change the result on retrial.

¶ 27 First, we agree with the trial court's conclusion Mosley's affidavit did not constitute newly discovered evidence because Mosley specifically stated defendant was present when Emery admitted to robbing and killing Brown. Taking Mosley's statement as true, defendant would have been aware of this alleged admission. Mosley also testified to Emery's possession of the alleged murder weapon at one of defendant's trials that resulted in mistrial. Finally, defendant provided this same information to police in his January 2011 interview, the relevant segment of which was played for the jury at trial. Accordingly, no argument can be made this evidence was "newly discovered" as required to present a colorable claim of actual innocence.

¶ 28 Moreover, Edwards and Mosley's testimony defendant had no knowledge of any plan to rob or kill Brown would not likely have changed the result at retrial because, as OSAD notes in its memorandum supporting its motion to withdraw, the State did not rely on direct evidence to show defendant was involved in a common scheme or plan, but rather on the following facts supporting that inference:

> "(1) [Defendant] admitted that he observed Edwards give a gun to Mosley at a party ***; (2) [defendant] traveled to Brown's apartment complex in the company of Mosley, Emery, and Duckworth ***; (3) [defendant] admitted going into Brown's apartment with Duckworth shortly before Brown was shot and killed and also knocking on the door of one of Brown's neighbors ***; (4) [defendant] stated that he heard Emery announce to him and the others in the car that he had shot and robbed Brown and that Emery displayed the proceeds of the robbery ***; (5) [defendant] took possession of the murder weapon shortly after the shooting and sought to conceal it ***; and (6) [defendant] provided contradictory statements to police, including an initial denial that he had been at Brown's apartment."

¶ 29 On direct appeal, this court found the aforementioned evidence was sufficient to support defendant's conviction on a theory of accountability. See *Monroe*, 2014 IL App (4th) 130108-U, ¶ 27. We agree with the State that neither Edwards's nor Mosley's affidavit undermines or even contradicts the aforementioned evidence relied upon by the State in securing defendant's conviction. We further agree with the State's contention the averments, taken as true, "do not foreclose a realistic scenario in which a plan to rob Brown was communicated to defendant by Emery or by Duckworth outside the hearing or knowledge of Mosley or Edwards."

Accordingly, we agree with OSAD the affidavits attached to defendant's petition did not constitute evidence so conclusive of defendant's innocence it probably would have changed the result on retrial. Because any argument on appeal the trial court erred when it denied defendant's motion for leave to file a successive petition would be meritless, we grant OSAD's motion to withdraw as counsel and affirm the trial court's judgment.

¶ 30 III. CONCLUSION

¶ 31 For the reasons stated, consistent with Illinois Supreme Court Rule 23(b) (eff Jan. 1, 2021), we affirm the trial court's judgment.

¶ 32 Affirmed.