

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

PEOPLE OF THE STATE OF ILLINOIS)
Plaintiff)
)
vs.)
)
James Snow)
Defendant)

Case No. 99 CF 1016

NOTICE

You are hereby notified that on April 19, 2011 the court entered an order, a copy of which is enclosed herewith. You have the right to appeal. In the case of an appeal from a post-conviction proceeding involving a judgment imposing a sentence of death, the appeal is to the Illinois Supreme Court. In all other cases, the appeal is to the Illinois Appellate Court in the district in which the circuit court is located. If you are indigent, you have a right to a transcript of the record of the post-conviction proceedings and to the appointment of counsel on appeal, both without cost to you. To preserve your right to appeal you must file a notice of appeal in the trial court within 30 days from the date the order was entered.

Dated at Bloomington, Illinois this 21st day of April, A.D. 2011

Don R. Everhart, Jr.
McLean County Circuit Clerk

By Sheresa Lambate
Deputy Clerk

FILED
APR 21 2011
MCLEAN COUNTY
CIRCUIT CLERK

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
McLEAN COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)
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 Plaintiff,)
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 vs.)
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 JAMES SNOW,)
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 Defendant.)

No. 99-CF-1016

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ORDER

Cause comes on for hearing on State's Motion to Dismiss Defendant's Amended Petition for Postconviction Relief. The Court, having considered the parties' pleadings, authorities, and arguments, holds as follows:

The Defendant requests postconviction relief in a number of areas which this Court will address individually.

Actual Innocence

The Defendant raises a claim of actual innocence based on evidence that no credible witness saw Defendant at the scene; pressure and deals for state's witnesses, some of whom have now recanted in affidavits; a pattern of misconduct by police and prosecutor; an affidavit stating that the state's attorney told the affiant prior to trial that the Defendant was innocent; and alleged newly discovered evidence.

The facts Defendant wishes the Court to rely on contain no credible evidence that the State was involved in proffering false testimony at trial. The Defendant relies on People v. Washington, 171 Ill 2nd 475, holding that no proof of state involvement is required for an actual innocence claim. That case, however, deals with a witness who did not testify at trial because of fear and absented herself from the State and hid for years after the trial. The current facts involve witnesses who testified under oath and now by affidavit tell a different story.

The State relies on People v. Brown, 169 Ill 2nd 94 (1995). The Illinois Supreme Court, when faced with a defendant's claim in a postconviction

petition that his conviction was procured in part with the false testimony of a witness at trial but no allegation of the State's knowledge of the false testimony. The Court held that the rule in a due process claim is that the defendant must allege and prove knowledge by the State of the false testimony. Brown does not address whether this rule should be applied to claims of actual innocence. This Court believes that granting Defendant the benefit of doubt the relevant inquiry should be can he state a claim of actual innocence regardless of proof of the State's knowledge.

What is required for a proper pleading of actual innocence which would grant the Defendant a third phase evidentiary hearing in this matter? The Defendant must present in his petition for postconviction relief newly discovered evidence and that evidence must be new, material, and noncumulative. It must also be so conclusive as the new evidence would change the result on retrial. People v. Barrow, 95 Ill 2nd 506 (2001).

The Court has read the 30 exhibits attached to the Defendant's Petition that set out his "new evidence." The majority of the affidavits merely question evidence presented at the trial and provide no new evidence. Many of them are hearsay with no affidavit from the actual witness changing their trial testimony or providing new facts. Most of the affidavits rely on conclusions, not facts, to state "I don't think Jamie Snow would do this." In effect, they simply rehash the trial testimony and question why defense counsel didn't talk to them more. The recanting witnesses were not the primary witnesses at trial. The bulk of the witnesses who testified at trial to being present at the time of the murder, or who the Defendant later admitted the crime to, have not provided affidavits changing their testimony.

This case was built on witnesses for the State telling what they observed, what they heard from the Defendant, and this evidence then being questioned by the defense with other witnesses who contradicted what the State's witnesses said. The jury had the difficult task of wading through this contradicting evidence and reaching a decision. This Court, in a postconviction hearing, cannot substitute itself for the jury and re-evaluate the same evidence.

This is a claim of actual innocence, and Defendant must convince this Court of that new evidence. The only new fact is provided by affiant Ed Palumbo, who alleges that Judge Charles Reynard, then State's Attorney Reynard, the prosecutor in this case, made statements to him. Palumbo says that during the trial after he testified, then State's Attorney Reynard told him that Jamie Snow did not commit the murder, but they could not get the other person and Jamie would have to do. I am asked to rely on, as the only new evidence, the

purported statement of Charles Reynard. I am to accept as credible that the state's attorney, during the course of a murder trial, would take a convicted felon sitting in the Department of Corrections into his confidence and advise him he was prosecuting an innocent man for murder. There is no evidence to corroborate this statement and alone it is not new credible evidence to carry a claim of actual innocence.

The balance of the affidavits are either trial witnesses who today have recanted part of their testimony with no corroborating evidence to back up their changed story or hearsay affidavits claiming that witnesses told them that they lied, but those witnesses provide no affidavits.

The allegations in the Petition are not new facts and evidence. They are an attempt to have this Court reconsider in a different light the evidence originally presented. The Defendant had that opportunity at trial and before the appellate court. This Court can't sit as the jury and reconsider the evidence.

The Defendant has failed to establish a freestanding claim of actual innocence and, as such, the People's Motion to Dismiss is Granted.

Ineffective Assistance of Counsel

This issue was fully litigated both prior to sentencing and on appeal, and principles of waiver and res judicata apply. Even if this were not so, the claims of ineffective assistance do not meet the Strickland standard of showing counsel's performance fell below an objective standard of reasonableness and that there is a reasonable probability that the result would have been different absent counsel's errors. Most of what is complained of is trial strategy. Strickland v. Washington, 466 US 688 (1984). Also, counsel's behavior in other cases is not evidence of his ineffective assistance in this case. The State's Motion to Dismiss on this basis is Granted.

Due Process Violation of 5th and 14th Amendments - US Constitution and Article 1 Sections 2 & 8 - Illinois Constitution

Defendant's allegations are based merely on speculation and no facts are alleged that raise a constitutional question of the relief sought under his Amended Postconviction Petition IV & V, and the State's Motion to Dismiss these sections is Granted.


6th and 14th Amendments – US Constitution Article I
Section 8 – Illinois Constitution Illinois Supreme Court Rule 651 (c)

Defendant's claims that waiver does not apply to a claim of ineffective assistance of appellate counsel is not substantiated and a claim under Strickland has not been substantiated, and the State's Motion to Dismiss on this ground is Granted.

Cumulative Error

Defendant's claim that he should be granted a postconviction Stage 3 hearing or new trial because of cumulative errors is not substantiated in law and amounts to a request for this Court to act as the jury in this case, rehear the same evidence and reach a different conclusion. The State's Motion to Dismiss on this ground is Granted.

ENTER: April 19, 2011.



ALEZIA A. McMILLEN
Circuit Judge

cc: Atty
Assistant SA