

COPY

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

THE PEOPLE OF THE STATE OF ILLINOIS)
 Plaintiff,)
)
 VS. NO. 99 CF 1016)
)
JAMES SNOW,)
 Defendant.)

MOTION TO DISMISS DEFENDANT’S PENDING AMENDED PETITION FOR
POST-CONVICTION RELIEF

NOW COME The People of the State of Illinois, by Assistant State’s Attorney William G. Workman, and move this Court to dismiss The Defendant’s Pending Amended Petition for Post-Conviction Relief and in support thereof states as follows:

A motion for Post-Conviction relief is a proceeding to allow Defendant to challenge his conviction based on a substantial deprivation of constitutional rights. *People v. Tenner*, 677 N.E.2d 859 175 Ill.2d 372 (1997). *People v. Edmunds*, 578 N.E.2d 952, 142 Ill.2d 501 (1991).

Where there has been an appeal of the conviction, principles of res judicata and waiver limit issues in a proceeding for Post-Conviction relief to those which have not been and could not have been previously adjudicated. *People v. Mendez*, 582 N.E.2d 1265 (1st Dist. 1991), *People v. Edmunds*, id., *People v. James*, 262 N.E. 2d 5 46 Ill.2d 71 (1970). Issues that could have been raised on appeal but were not, are deemed waived and cannot be raised in a Post-Conviction petition. *People v. Edmunds*, id., *People v. Harris*, 14 Ill.App3d 231, 302 N.E.2d 122 (1st Dist. 1973)

A Petition filed pursuant to the Post-Conviction Relief Act shall clearly set forth the respects in which Defendant's constitutional rights were violated. Argument and citations and discussion of authorities shall be omitted from the petition. Section 122-2 of the Code of Criminal of Procedure of 1963 (725 ILCS 5/122-2).

The Defendant's Amended Petition for Post-Conviction Relief is in excess of 53 pages in length. The first 35 pages of the Petition repeatedly shift between argument and conclusions as to the evidence. It is full of conclusory and compound allegations with citations to the record in violation of Section 122-2.

By page 36 of the Petition the defendant gets to the area identified as Legal Claims. In the fallowing pages the defendant continues with his arguments and conclusiory allegations and adds citations and discussions of authorities in violation of Section 122-2 of the Code of Criminal of Procedure of 1963 (725 ILCS 5/122-2).

Defendant's Pending Post-Conviction Petition alleges actual innocence due to the allegation "no credible witness saw the defendant at the scene and allegations of concealed benefits bestowed upon several of the State's witnesses. In order to prevail under such a theory the Defendant must plead and prove that the alleged false testimony could have affected the jury's verdict in this case. *People v. Williams*, 332 Ill.App.3d 254, 773 N.E.2d 143, 265 Ill.Dec.781 (1st Dist. 2002). There is absolutely no allegation or even suggestion in Defendant's pleading that the errors complained of may have affected the jury's verdict.

The defendant wants this court to rely on the allegation of fact that the first responding officers did not see the defendant at the scene when they arrived. Since they did not see him the eyewitness must not have seen him. Primarily for this he is relying on

Information not based upon facts or even knowledge but rather what he thinks.

In the information alleged concerning Kevin Schaal there is no direct information to support the allegation his testimony at trial was not correct. The information is correct that he received a downward departure and it was based upon providing information about a murder trial in Illinois. The information also indicated his downward departure in the federal case was for his testimony against his co-defendants in his own cause. There is no evidence of how much of a downward departure he received for

Post-conviction Defendant may pursue a free-standing claim of actual innocence based on newly discovered evidence, and to win relief under that theory, the supporting evidence must be new, material, and noncumulative, and it must be of such conclusive character that it would probably change the result on retrial. *People v. Barrow*, 2001, 255 Ill.Dec. 410, 195 Ill.2d 506, 749 N.E.2d 892, rehearing denied, certiorari denied 122 S.Ct. 669, 534 U.S. 1067, 151 L.Ed.2d 583.

The defendant alleges three other paragraphs in this section concerning "The Pattern of Misconduct by the Bloomington Police Department and McLean County State's Attorney's Office, Reynard telling a witness that the defendant was innocent and newly discovered evidence." The defendant has not shown a pattern of misconduct but has cited only two cases. The defendant states that People v. Banks, 192 Ill.App.3d 986, 994, 549 N.E.2d 766, 771-72 (1st Dist. 1989) stands for the proposition that only one other instance of misconduct, is relevant to show *modus operandi*, intent, plan, motive or to impeach a witness' credibility. In actuality the case allowed information of alleged misconduct by two officers in obtaining a confession which was similar to an incident by the officers 13 months earlier. The court found such evidence is therefore probative as to

the conduct they employed in the present case to obtain defendant's confession. Since the evidence of the prior conduct of the police officers tends to prove an issue at trial it was relevant and should have been admissible.

The Defendant cites the affidavit of Ed Palumbo who alleges that Judge Charles Reynard (Then State's Attorney for McLean County) allegedly told him that he knew the Defendant was innocent. Not only is the allegation itself absurd to believe a prosecutor would make such a comment to an individual serving a sentence in the department of corrections at the time, it is inconsistent with the balance of Palumbo's affidavit. He discloses his long standing relationship with the defendant. The attitude he expresses towards the circumstances of his testimony against his friend the defendant. And his desire to receive something for his testimony that is inferred in the affidavit that he did not receive.

The most striking statement the affiant Palumbo makes is in the third paragraph of the affidavit. If, as alleged, Judge Reynard told him the defendant did not do the crime then his statement of "I don't believe Jamie did the crime. He is not a killer." If he was told by the prosecutor that the defendant did not do it then he would know the defendant did not do the crime.

The defendant can still repeat that he is citing new evidence but in truth no new evidence has been disclosed or put forth. As stated earlier a free-standing claim of actual innocence based on newly discovered evidence, and to win relief under that theory, the supporting evidence must be new, material, and noncumulative, and it must be of such conclusive character that it would probably change the result on retrial. None of which is found in the Defendant's Amended Petition for Post-Conviction Relief

The Defendant has alleged an allegation of ineffective assistance of counsel during his trial. Where there has been an appeal of the conviction, principles of res judicata and waiver limit issues in a proceeding for Post-Conviction relief to those which have not been and *could not have been* previously adjudicated. *People v. Mendez*, id., *People v. Edmunds*, id., *People v. James*, id. Prior to sentencing the defendant raised the issue of his counsel's effectiveness. In the defendant's appeal of his conviction he filed the defendant raised the issue of ineffective assistance of counsel. This issue has been raised and litigated and therefore cannot be raised in a Post-Conviction petition. *People v. Edmunds*, id., *People v. Harris*, id..

The defendant re-alleges the above allegations and claims that this constitutes a withholding of exculpatory evidence. As stated above there is no new evidence or any exculpatory evidence that was withheld from the defendant. There is no new supporting evidence that is material, and noncumulative, and of such conclusive character that it would probably change the result on retrial.

The defendant re-alleges the above allegations and claims that this constitutes a Due Process claim. An additional issue is raised here by an allegation from a friend of the defendant, Affiant Randall Howard, that describes conversation he overheard where a "tall Bailiff" describes alleged misconduct on the part of the jury. There is no new supporting evidence that is material, and noncumulative, and of such conclusive character that it would probably change the result on retrial. In fact the Defendant acknowledges this and claims not to have the resources to fully investigate the claim.

The Defendant further claims a Due Process claim based upon the eye witness identification. This issue was raised in the defendant's appeal of his and the principles of

res judicata and waiver limit issues in a proceeding for Post-Conviction relief to those which have not been and *could not have been* previously adjudicated. *People v. Mendez*, id., *People v. Edmunds*, id., *People v. James*, id. This issue has been raised and litigated and therefore cannot be raised in a Post-Conviction petition. *People v. Edmunds*, id., *People v. Harris*, id.

WHEREFORE, the State respectfully requests that the Defendant's Pending Petition for Post-Conviction relief be dismissed with prejudice and without an evidentiary hearing or in the alternative the Defendant's Pending Petition for Post-Conviction relief be dismissed and filed pursuant to Section 122-2 of the Code of Criminal of Procedure of 1963 (725 ILCS 5/122-2)..

Dated this 26th day of April, 2010



Respectfully submitted,
William G. Workman
Assistant State's Attorney

William G. Workman
Assistant State's Attorney
McLean County State's Attorney's Office
104 West Front Street
Bloomington, Illinois 62701