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

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 1998-CF-633
	)	
	)	
BARTON MCNEIL,	)	
	)	
Defendant.	)	

PEOPLE'S MOTION TO DISMISS
DEFENDANT'S POST-CONVICTION PETITION IN PART

NOW come the People of the State of Illinois, by Assistant State's Attorney Mary Koll, and, pursuant to 725 ILCS 5/122-5, moves this Court to dismiss Defendant's Petition for Post-Conviction Relief (hereinafter referred to as "Petition") in part by dismissing all claims except claims I.F. and I.G. (concerning Misook Nowlin's alleged confession), and in support thereof hereby state as follows:

A. PROCEDURAL POSTURE

1. On July 7, 1999, Defendant was convicted of first degree murder of Christina McNeil following a bench trial. On August 11, 1999, he was sentenced to natural life in prison.
2. Defendant filed a direct appeal, raising two issues: (1) that the trial court erred by barring evidence that Misook Nowlin committed the offense, and (2) that his life sentence was invalid as the statute pursuant to which he was sentenced was unconstitutional. *People v. McNeil,* No. 4-99-

0679 (4th Dist. 2001).

a. On October 24, 2001, the Fourth District Appellate Court affirmed defendant's conviction, but remanded the case for resentencing having found the provision under which defendant was sentenced to natural life to be unconstitutional. *Id.*

b. The Appellate Court, after chronicling the evidence defendant presented in support of his claim that Misook Nowlin committed the murder, held that the "evidence showed no clear connection between Nowlin and Christina's death. The evidence [of Misook Nowlin's alleged involvement] was not relevant and the trial court did not abuse its discretion in precluding the use of the evidence." *Id.*

3. On July 18, 2002, defendant was resentenced to 100 years IDOC.

4. In 2005, defendant filed a Post-Conviction Petition which was dismissed at the first stage as being "frivolous and patently without merit."

5. On November 1, 2013, defendant filed a Petition for Post-Conviction Forensic Testing. On August 26, 2014, the court entered a written order granting that request in part. Specifically, the court allowed DNA testing to proceed on stains observed on the bed sheet, pillowcase, underwear, and t-shirt, the bed sheet and pillowcase themselves, a possible latent fingerprint, and the window screen. The results of that testing are set forth in defendant's petition.

6. On February 23, 2021, defendant filed a Successive Petition for Post-Conviction Relief (hereinafter "Successive Petition") along with a Motion for Leave to file said petition. On August 17, 2021, the court granted that request and allowed the Petition to be filed. The court also advanced the petition to second stage review. The People elected to file this Motion to Dismiss, and a hearing on said Motion is scheduled for May 12, 2022.

B. GENERAL PRINCIPLES OF LAW APPLICABLE TO SECOND-STAGE PROCEEDINGS

1. Pursuant to 725 ILCS 5/122-5, if a petition is advanced by the trial court to the second stage, the State shall answer or move to dismiss the petition.
2. The trial court should dismiss the petition at the second stage "when the allegations in the petition, liberally construed in light of the trial record, fail to make a substantial showing of a constitutional violation." *People v. Hall*, 217 Ill.2d 324, 334 (2005).
    a. At this stage, the trial court should accept as true all factual allegations that are not positively rebutted by the record. *Id.*
    b. Rather than engaging in fact-finding or credibility determinations, the trial court must focus its inquiry into "whether a post-conviction petition contains sufficient allegations of constitutional deprivations." *People v. Childress,* 191 Ill.2d 168, 174 (2000).
3. Under principles of *res judicata* and waiver, the scope of available post-conviction relief is limited to "constitutional matters which have not been, and could not have been, previously adjudicated," and "[t]hus, issues that were raised on appeal from the underlying judgment of conviction, or that could have been raised but were not, generally will not be considered in a post-conviction proceeding." *People v. McNeal,* 194 Ill. 2d 135, 140 (2001).
4. Nonfactual and nonspecific claims which merely amount to conclusions are insufficient to trigger an evidentiary hearing under this Act. *See People v. West*, 187 Ill.2d 418, 425 – 426 (1999); *People v. Coleman*, 183 Ill.2d 366, 381 (1998); *People v. Blair*, 215 Ill.2d 427, 453 (2005) (noting that "broad, unsupported, conclusory allegations in a postconviction petition are not allowed").

5. In contrast to first stage dismissals, which must be either dismissed or advanced in their entirety, the trial court may grant a partial dismissal at the second stage. *People v. Lara,* 317 Ill.App.3d 905, 908 (3d Dist. 2000).

C. ARGUMENT

1. Defendant's Claim I: Actual Innocence Based on Newly-Discovered Evidence

a. General Principles of Law Applicable to Actual Innocence Claims

i. In order for a defendant to advance to an evidentiary hearing on a claim of actual innocence, the defendant "must make a substantial showing of actual innocence such that an evidentiary hearing is warranted." *People v. Sanders*, 2016 IL 118123 ¶ 37.

ii. "All well-pleaded factual allegations not positively rebutted by the trial record must be taken as true for purposes of the State's motion to dismiss." *Id.* at ¶ 42.

iii. "An actual innocence claim does not merely challenge the strength of the State's case against the defendant," and "it is well-established that sufficiency of the State's evidence is not a proper issue for a postconviction proceeding." *People v. Evans,* 2017 Ill App 1st 143268, ¶ 30.

iv. The Illinois Supreme Court has held that to advance to the third stage of postconviction proceedings based upon a claim of actual innocence, the petitioner must show that the supporting evidence for the petition is (1) newly discovered, (2) material, (3) not merely cumulative, and (4) of such a conclusive character that it would probably change the result on retrial. *See People v. Sanders,* 2016 IL 118123, ¶ 46; *see also People v. Robinson,* 2020 IL 123849, ¶ 47.

1. "Newly discovered evidence is evidence that was discovered after trial and that the petitioner could not have discovered earlier through the exercise of due diligence." *Id.*

    a. "The defendant bears the burden of showing no lack of due diligence on his or her part." *People v. Snow,* 2012 IL App (4th) 110415, ¶ 21.

    b. "Moreover, if the evidence was available at a prior *posttrial* proceeding, the evidence is not newly discovered evidence." *Id.*

2. "Material evidence" is evidence that is "relevant and probative of the petitioner's innocence." *Robinson* at ¶ 47.

3. "Noncumulative evidence" is evidence that "adds to the information that the fact finder heard at trial." *Id.*

4. "Conclusive character" refers to "evidence that, when considered along with the trial evidence, would probably lead to a different result" and is "the most important element of an actual innocence claim." *Id.; see also Sanders* at ¶47 (holding that the "conclusive character" element requires that the court "must be able to find that petitioner's new evidence is so conclusive that it is more likely than not that no reasonable juror would find him guilty beyond a reasonable doubt" and reiterating that it is "the most important element of an actual innocence claim"). In *Sanders*, the Illinois Supreme Court went on to explain that evidence that "merely adds conflicting evidence to the evidence adduced at trial" does not meet the "conclusive character" requirement unless it would "probably change the

result on retrial." *Id.* at ¶52.

b. Defendant's claim I.A. ("Newly-Discovered Evidence Reveals that the State's Evidence That a Crime Occurred at All Was Junk Science") must be dismissed as it does not meet the standard of "newly discovered."

i. Defendant's first claim revolves around the affidavit and report of Dr. Andrew Baker (defendant's Ex. 35).

ii. Defendant repeatedly uses the words "modern" and "today" in an attempt to persuade this court that Dr. Baker's opinion is or new or novel. *See* Successive Petition, ¶ 216 – 219. Defendant also erroneously frames Dr. Baker's opinion as being "based . . . on advances in the scientific field that post-date McNeil's trial." Successive Petition, ¶ 220.

iii. To the contrary, Dr. Baker's opinion is not based on any "new" or "modern" science; rather, he simply holds a different interpretation of the autopsy findings and a different opinion as to cause of death than the State's forensic pathologist, Dr. Violette Hnilica.

1. The fact that Dr. Baker's opinions merely differ from Dr.Hnilica's—rather than being based on new scientific advancements—is evidenced by the publication dates for the sources he cites:

a. Footnote 20 is a literature review that was published in 2000.

b. Footnote 21 is an article that was published in 1989.

c. Footnote 22 is an article that was published in 1985.

d. Footnote 23 is a review of 50 cases that was published in 2005.

2. Taking the opinion of Dr. Baker as true, nowhere in his opinion does he state that the science upon which he bases his opinion is new or was not known at the time of defendant's trial or original post-conviction proceedings.

iv. Because Dr. Baker's opinion is not new or modern, but rather just a difference of opinion, this claim does not meet the standard of "newly discovered" evidence as defendant cannot meet his burden to show that it "could not have discovered earlier through the exercise of due diligence." *Robinson* at ¶ 47. *See also People v. Patterson,* 192 Ill.2d 93 (2000) (in which the Illinois Supreme Court, in dismissing defendant's post-conviction petition at the second stage, held that the defendant's attached expert report, "in the exercise of due diligence, could have been completed before defendant's trial. Significantly, the expert's conclusions do not rest on any evidence that was not available before defendant's trial. Consequently, we are unable to conclude that the expert's opinion constitutes new evidence.")

v. Defendant could have retained an expert to contradict Dr. Hnilica's opinions at trial, but chose not to. If defendant believed that his trial attorney was ineffective for declining to retain such an expert, he was free to raise that issue on direct appeal, but did not.

vi. In addition, the sources cited in Dr. Baker's report were certainly available at the time defendant filed his original post-conviction petition in 2005, yet he did not include this claim in that petition. Therefore, Dr. Baker's expert opinion cannot be considered newly discovered evidence. *See People v. Snow*, 2012 IL App (4th)

110415, ¶ 21 (holding that "if the evidence was available at a prior posttrial proceeding, the evidence is not newly discovered evidence.")

vii. Because this claim is not "newly discovered," it must be dismissed as a matter of law.

c. Defendant's claim I.B. ("Newly-Discovered Evidence Reveals the State's Evidence Regarding Motive was Predicated on Junk Science") must be dismissed as it does not meet the standard of "newly discovered" or "conclusive."

i. Defendant's next claim involves the affidavit and report of Dr. Nancy Harper (defendant's Ex. 36).

ii. Motive is not an element of the crime of first degree murder, nor is the state required to prove motive. *See, i.e., People v. Smith,* 141 Ill.2d 40, 56 (1990) ("It has long been recognized by this court that motive is not an essential element of the crime of murder, and the State has no obligation to prove motive in order to sustain a conviction of murder.")

iii. As with Dr. Baker, defendant again repeatedly uses the words "modern" and "today" to persuade this court that Dr. Harper's opinion is or new or novel. *See* Successive Petition, ¶ 228 - 229. Defendant also—again—inaccurately characterizes Dr. Harper's opinion as being "based . . . on advances in the scientific field that post-date McNeil's trial." Successive Petition, ¶ 231.

iv. To the contrary, Dr. Harper's opinion is not based on any "new" or "modern" science; rather, she simply has a different interpretation of the autopsy findings than the State's forensic pathologist, Dr. Violette Hnilica.

1. Dr. Harper goes to great lengths in her report to emphasize that her opinion is based on sources that were available in the mid-nineties, pointing out that her opinions on the hymen are based on material that was "well published in the literature as early as 1995," and cites in Footnotes 1 and 2 to sources published in 1992 and 1995. Defendant's Ex. 36 at page 5 – 6. Dr. Harper's report makes precisely this point when she writes that "many authors by the time of [Christina McNeil's] postmortem examination were already publishing an association between an increasing hymenal diameter and increasing age," citing in Footnotes 2 and 4 to sources published in 1995 and 1990. Defendant's Ex. 36 at page 6 - 7.
2. In connection with the anal findings, Dr. Harper again relies on sources that pre-date Barton McNeil's trial, stating that "While the scientific community remains concerned that total anal dilatation . . . may be have association with sexual abuse, this is a common and well-published finding on postmortem examination," relying on a source published in 1996. Defendant's Ex. 36 at page 6 – 7.
3. Finally, in connection with the redness of the hymen and genital tissues, Dr. Harper again underscores that the body of literature on which she bases her opinion that these are non-specific findings not associated with sexual abuse was "well published ... at the time of [Christina McNeil's] postmortem examination," citing to publications from 1990, 1992, and 1994. Defendant's Ex. 36 at page 6 – 7.

v. Because, as pointed out repeatedly throughout her own report, none of Dr.

Harper's opinions are based on science that is new or modern, but rather just a difference of opinion from Dr. Hnilica, this claim does not meet the standard of "newly discovered" evidence as defendant cannot meet his burden to show that it "could not have discovered earlier through the exercise of due diligence." *Robinson* at ¶ 47. *See also People v. Patterson,* 192 Ill.2d 93 (2000) (in which the Illinois Supreme Court, in dismissing defendant's post-conviction petition at the second stage, held that the defendant's attached expert report, "in the exercise of due diligence, could have been completed before defendant's trial. Significantly, the expert's conclusions do not rest on any evidence that was not available before defendant's trial. Consequently, we are unable to conclude that the expert's opinion constitutes new evidence.")

vi. Defendant could have retained an expert to contradict Dr. Hnilica's opinions at trial on the issue of whether there was evidence that Christina McNeil was sexually abused, but chose not to. If defendant believed that his trial attorney was ineffective for declining to retain such an expert, he was free to raise that issue on direct appeal, but did not.

vii. In addition, the sources cited in Dr. Harper's report were certainly available at the time defendant filed his original post-conviction petition in 2005, yet he did not include this claim in that petition. Therefore, Dr. Harper's expert opinion cannot be considered newly discovered evidence. *See People v. Snow*, 2012 IL App (4th) 110415, ¶ 21 (holding that "if the evidence was available at a prior posttrial proceeding, the evidence is not newly discovered evidence.")

viii. Dr. Harper's opinions are also not of a "conclusive character" such that they

would probably have lead to a different outcome.

1. The record in this case rebuts the idea that evidence of sexual abuse was a "fundamental component of the State's case," as the defendant suggests. Successive Petition, ¶ 226.
2. Rather, in finding the defendant guilty of killing Christina, the only reference the trial court made to sexual abuse was to say "The State is not required to prove motive. Indeed what the motive for such an act that occurred here is perhaps beyond human understanding. Certainly the State's evidence did show sexual misconduct as a *possible* motive." July 7, 1999 Tr. at 166 (emphasis added).
3. At the time the trial court found defendant guilty, the court made it clear that there was "no sign of an intruder" and recited the reasons why the defendant's theory that an intruder entered through the bedroom window and murdered Christina McNeil was not plausible. July 7, 1999 Tr. at 162 - 166. A defense expert challenging the State's pathologist on the issue of whether or not the victim had been sexually abused would have in no way changed the court's analysis that there was no intruder—including Misook Nowlin—and that the defendant was proven guilty beyond a reasonable doubt.
4. Because defendant chose a bench rather than jury trial, the trial court is presumed to adequately vetted and properly considered prejudicial evidence. Over fifty years ago our supreme court noted that, "In a bench trial it is presumed that the trial judge has considered only competent

evidence in reaching his verdict." *People v. Gilbert*, 68 Ill. 2d 252, 258-59 (1977); *see also People v. Smith*, 278 Ill. App. 3d 343, 354 (1996) ("it is presumed that a trial court sitting without a jury considered only competent evidence unless the contrary affirmatively appears of record. Defendant has not presented proof to overcome this presumption. Thus, to the extent that irrelevant or incompetent was inappropriately received, we must presume that the trial judge disregarded it.") It's clear from his comments that the trial judge in this case properly considered the evidence of sexual abuse and afforded it little—if any—weight in reaching his finding of guilt; rather, he relied on the overwhelming circumstantial evidence which demonstrated that there was no intruder and that the defendant Barton McNeil was the killer.

ix. Because this claim is not "newly discovered" or "conclusive," it must be dismissed as a matter of law.

d. Defendant's claim I.C. ("Newly-Discovered Evidence Demonstrates that Misook's Hair Was In Christina's Bed") must be dismissed as it does not meet the standards of "material" or "conclusive."

i. Defendant's next claim involves DNA testing on a human hair found inside a pillowcase on defendant's bed where Christina McNeil was found dead. According to Defendant's Exhibit 37, one of the hairs located inside the pillowcase is not consistent with victim Christina McNeil; Misook Nowlin cannot be excluded as a contributor of that sample.

ii. This claim must be dismissed as this evidence is not material.

1. Barton McNeil and Misook Nowlin were in a long-term romantic relationship and lived together for approximately three years. Successive Petition, ¶ 9. While they had recently broken up, they were still in regular contact and even had had sexual intercourse as recently as June 13, 1998, three days before Christina's death. *See* Defendant's Exhibit 5 (in which defendant told police that he "last had sex with Misook on Saturday, 6/13/98.") At his sentencing hearing, defendant further clarified that from the time he moved out of Misook's apartment in April 1998 through the time of Christina's death, he "continued to visit with Misook at her home on an occasional basis," sometimes with Christina. August 12, 1999 Tr. at 41 – 42. The defendant further admitted that Misook was in his apartment on June 3, 1998, and refused to leave. August 12, 1999 Tr. at 42. Four days later, on June 7, 1998, the defendant asked Misook Nowlin to pick Christina up and have her spend the night at Misook's apartment. August 12, 1999 Tr. at 43.

2. Notably, in order to further distance himself from Misook Nowlin and their lengthy intimate relationship, defendant's Petition mischaracterizes the place where Christina was found as "Christina's bed," which is factually incorrect. Rather, this bed was defendant's bed. *See* July 6 – 7, 1999 Tr. at 32 (in which the defendant testified that the bed in which Christina was found was in "the only bedroom with the only bed in it" in his apartment).

3. Based on the length and proximity in time of Barton McNeil's intimate relationship to Misook Nowlin, there is absolutely nothing "relevant and probative of the petitioner's innocence" about the fact that a single hair that possibly may belong to Misook Nowlin was found inside of a pillowcase on defendant's bed. *See People v. Robinson,* 2020 IL 123849, ¶ 47. Given the nature of their relationship, it is natural and completely expected that Ms. Nowlin's hair would be found in defendant's residence, and particularly on his bedding. Even taking this evidence in the light most favorable to the defendant, nothing about this hair shows that Ms. Nowlin entered the residence near the time of Christina McNeil's death or killed Christina McNeil and the presence of this hair has no probative value on the issue of defendant's claim of "actual innocence."

iii. This claim also must be denied as this evidence is not of a conclusive character.

1. Because the presence of a hair that belongs to Misook Nowlin within a pillowcase on defendant's bed is not material in the context of defendant's long-term romantic relationship with Ms. Nowlin, it follows that such evidence is not of a "conclusive character" (evidence that, when considered along with the trial evidence, would probably lead to a different result" which is the "the most important element of an actual innocence claim."). *Id.*

2. Defendant's theory that Misook Nowlin secretly and silently forced entry through a window of the residence, secretly and silently murdered Christina, and then secretly and silently departed without disturbing

anything in this small residence or alerting the defendant who was awake on the other side of the wall—during a torrential downpour— is positively rebutted by the overwhelming evidence at trial that this murder was not committed by an intruder.

a. Bloomington Police Officer Karen Baker, one of the first responders, testified that she did not notice anything out of the ordinary or see any apparent disturbance in the bedroom where she observed Christina's McNeil's body. July 1, 1999 Tr. at 13 – 14.

b. Bloomington Police Crime Scene Detective Thomas Sanders processed the crime scene and testified that when he entered the child's bedroom, he observed the venetian blinds to be down and photographed "an insect suspected and a spider web near . . . the lower latch of the screen," along with insects and spider webs on the the other side." July 1, 1999 Tr. at 73 – 74. Det. Sanders also testified that he observed and photographed the exterior of the apartment around the bedroom window, including bushes and plants near the window, and that he did not observe any marks or any disturbance around the areas below the window, including any trampling of bushes. July 1, 1999 Tr. at 74 – 75. He later was asked in more detail about his observations and emphasized that he did not notice any kind of disturbance under the bedroom window, including no markings, footprints, or indications of trampling. July 1, 1999 Tr. at 108 – 109. He testified that he observed dead insects

and dust with no evidence of disturbance on the windowsill, along with cob webs that he was "very sure to note . . . extended from the screen mesh on to the frame." July 1, 1999 Tr. at 109. He further testified that he observed various objects underneath the window on the inside of the bedroom including a fan, boxes, and other items, and that no items appeared to have been stepped on or disturbed or have footprints on them. July 1, 1999 Tr. at 109 – 110. He also testified that he did not notice any muddy footprints or indication of recent wetness or water anywhere inside the apartment, including underneath the window. July 1, 1999 Tr. at 110. He later clarified that he would not have been able to remove the window screen without disturbing the cob webs that he observed. July 1, 1999 Tr. at 140.

c. Bloomington Police Department Detective Randall McKinley testified that he observed the exterior of the residence on June 16, 1998, and "didn't notice any scuff marks on the wall underneath the window, mud, or anything out of the ordinary there except those two holes that Mr. McNeil pointed out to me." July 2, 1999 Tr. at 169. He further testified that "to get through that window as Mr. McNeil was saying . . . you would need either a step stool, a step ladder or you would have to pry yourself up somehow to get in that window." July 2, 1999 Tr. at 170. Det. McKinley was then asked about his observations of the inside of the bedroom window

and responded, "If you take a flashlight and shine it oblique or across that window seal, you can see what's laying on the surface of that real easily because the light shines across dust particles and, excuse me, spider webs and dirt and different things that accumulate on top of things. This window seal had an even coating of dust. We shined the light up and down the sides of the window frame where the screen was attached and saw spider webs, and there was even a dead bug attached to one of the spider webs. " July 2, 1999 Tr. at 173. When asked whether he saw anything disturbed as far as what he had just described, he unequivocally testified "No, there was nothing disturbed." July 2, 1999 Tr. at 174. Det. McKinley was then asked again, "And did you see anything on the window seal at the McNeil residence at 1106 North Evans Street that any of the dust or particles had been disturbed?" to which he responded, "Absolutely not." July 2, 1999 Tr. at 175. Det. McKinley later further explained that "using a flashlight you could clearly see the spider webs, several of them, not just one or two but numerous of them went from the screen itself to the window frame. So as if that window screen had been pushed up, the spider webs all would have broke lose, the ones that were attached to the screen." July 2, 1999 Tr. at 177 – 178.

d. Even the defendant himself testified that "I thought at the time, and I still do, that the window was kind of high for it to have been

entered. Somebody would need a step ladder or somebody could have or must have left markings on it or somebody was hoisted by some other person." July 6 – 7 Tr. at 72.

3. At the time the trial court found defendant guilty, the court made it clear that there was "no sign of an intruder" and recited the reasons why the defendant's theory that an intruder entered through the bedroom window and murdered Christina McNeil was not plausible. July 7, 1999 Tr. at 162 - 166. Nothing about the presence of a single hair from defendant's longterm romantic partner inside a pillowcase on defendant's bed would have changed the court's analysis that there was no intruder—including Misook Nowlin—and that the defendant was proven guilty beyond a reasonable doubt.

4. In affirming the defendant's conviction, the Fourth District Appellate Court held that evidence concerning Misook Nowlin was "not relevant and the trial court did not abuse its discretion in precluding the use of the evidence" as there was "no clear connection between Nowlin and Christina's death." Defendant's Exhibit 34. The presence of Misook Nowlin's hair inside the pillowcase in the bed of a person she had had sexual relations with as recently as three days prior to Christina's death in no way changes that analysis.

iv. Because this claim is not "material" or "conclusive," it must be dismissed as a matter of law.

e. Defendant's claim I.D. ("Newly-Discovered Evidence Demonstrates Misook's DNA Was Present in Multiple Locations on Christina's Bedding") must be dismissed as it does not meet the standards of "material" or "conclusive."

i. Defendant's next claim is similar and involves the DNA testing of the bedding from defendant's bed where Christina McNeil's body was discovered. According to Defendant's exhibits, Misook Nowlin's DNA was found on defendant's bedsheet and pillowcase.

ii. This claim must be dismissed as this evidence is not material.

1. Barton McNeil and Misook Nowlin were in a long-term romantic relationship and lived together for approximately three years. Successive Petition, ¶ 9. While they had recently broken up, they were still in regular contact and even had had sexual intercourse as recently as June 13, 1998, three days before Christina's death. *See* Defendant's Exhibit 5 (in which defendant told police that he "last had sex with Misook on Saturday, 6/13/98.") At his sentencing hearing, defendant further clarified that from the time he moved out of Misook's apartment in April 1998 through the time of Christina's death, he "continued to visit with Misook at her home on an occasional basis," sometimes with Christina. August 12, 1999 Tr. at 41 – 42. The defendant further admitted that Misook was in his apartment on June 3, 1998, and refused to leave. August 12, 1999 Tr. at 42. Four days later, on June 7, 1998, the defendant asked Misook Nowlin to pick Christina up and have her spend the night at Misook's apartment. August 12, 1999 Tr. at 43.

2. Again, in order to further distance himself from Misook Nowlin and their lengthy intimate relationship, defendant's Petition mischaracterizes these items as "Christina's bedding" and "Christina's bedsheet and pillowcase" when, in fact, they were defendant's bedding found on defendant's bed. *See* July 6 – 7, 1999 Tr. at 32 (in which the defendant testified that the bed in which Christina was found was in "the only bedroom with the only bed in it" in his apartment).

3. Based on the length and proximity in time of Barton McNeil's intimate relationship to Misook Nowlin, there is absolutely nothing "relevant and probative of the petitioner's innocence" about the fact that microscopic traces of Misook Nowlin were found in defendant's residence. *See People v. Robinson,* 2020 IL 123849, ¶ 47. Given the nature of their relationship, it is natural and completely expected that Ms. Nowlin's biological material would be found in defendant's residence, and particularly on his bedding. Even taking this evidence in the light most favorable to the defendant, nothing about this DNA shows that Ms. Nowlin entered the residence near the time of Christina McNeil's death or killed Christina McNeil.

iii. This claim also must be denied as this evidence is not of a conclusive character.

1. The presence of Misook Nowlin's DNA on the bedding of her longterm sexual and romantic partner is not evidence that is of a "conclusive character" (evidence that, when considered along with the trial evidence, would probably lead to a different result" which is the "the most important element of an actual innocence claim."). *Id.*

2. Defendant's theory that Misook Nowlin secretly and silently forced entry through a window of the residence, secretly and silently murdered Christina, and then secretly and silently departed without disturbing anything in this small residence or alerting the defendant who was awake on the other side of the wall—during a torrential downpour—is positively rebutted by the overwhelming evidence at trial that this murder was not committed by an intruder.

    a. Bloomington Police Officer Karen Baker, one of the first responders, testified that she did not notice anything out of the ordinary or see any apparent disturbance in the bedroom where she observed Christina's McNeil's body. July 1, 1999 Tr. at 13 – 14.

    b. Bloomington Police Crime Scene Detective Thomas Sanders processed the crime scene and testified that when he entered the child's bedroom, he observed the venetian blinds to be down and photographed "an insect suspected and a spider web near . . . the lower latch of the screen," along with insects and spider webs on the the other side." July 1, 1999 Tr. at 73 – 74. Det. Sanders also testified that he observed and photographed the exterior of the apartment around the bedroom window, including bushes and plants near the window, and that he did not observe any marks or any disturbance around the areas below the window, including any trampling of bushes. July 1, 1999 Tr. at 74 – 75. He later was asked in more detail about his observations and emphasized that he

did not notice any kind of disturbance under the bedroom window, including no markings, footprints, or indications of trampling. July 1, 1999 Tr. at 108 – 109. He testified that he observed dead insects and dust with no evidence of disturbance on the windowsill, along with cob webs that he was "very sure to note . . . extended from the screen mesh on to the frame." July 1, 1999 Tr. at 109. He further testified that he observed various objects underneath the window on the inside of the bedroom including a fan, boxes, and other items, and that no items appeared to have been stepped on or disturbed or have footprints on them. July 1, 1999 Tr. at 109 – 110. He also testified that he did not notice any muddy footprints or indication of recent wetness or water anywhere inside the apartment, including underneath the window. July 1, 1999 Tr. at 110. He later clarified that he would not have been able to remove the window screen without disturbing the cob webs that he observed. July 1, 1999 Tr. at 140.

c. Bloomington Police Department Detective Randall McKinley testified that he observed the exterior of the residence on June 16, 1998, and "didn't notice any scuff marks on the wall underneath the window, mud, or anything out of the ordinary there except those two holes that Mr. McNeil pointed out to me." July 2, 1999 Tr. at 169. He further testified that "to get through that window as Mr. McNeil was saying . . . you would need either a step stool, a

step ladder or you would have to pry yourself up somehow to get in that window." July 2, 1999 Tr. at 170. Det. McKinley was then asked about his observations of the inside of the bedroom window and responded, "If you take a flashlight and shine it oblique or across that window seal, you can see what's laying on the surface of that real easily because the light shines across dust particles and, excuse me, spider webs and dirt and different things that accumulate on top of things. This window seal had an even coating of dust. We shined the light up and down the sides of the window frame where the screen was attached and saw spider webs, and there was even a dead bug attached to one of the spider webs. " July 2, 1999 Tr. at 173. When asked whether he saw anything disturbed as far as what he had just described, he unequivocally testified "No, there was nothing disturbed." July 2, 1999 Tr. at 174. Det. McKinley was then asked again, "And did you see anything on the window seal at the McNeil residence at 1106 North Evans Street that any of the dust or particles had been disturbed?" to which he responded, "Absolutely not." July 2, 1999 Tr. at 175. Det. McKinley later further explained that "using a flashlight you could clearly see the spider webs, several of them, not just one or two but numerous of them went from the screen itself to the window frame. So as if that window screen had been pushed up, the spider webs all would have broke lose, the ones that were

attached to the screen." July 2, 1999 Tr. at 177 – 178.

d. Even the defendant himself testified that "I thought at the time, and I still do, that the window was kind of high for it to have been entered. Somebody would need a step ladder or somebody could have or must have left markings on it or somebody was hoisted by some other person." July 6 – 7 Tr. at 72.

3. At the time the trial court found defendant guilty, the court made it clear that there was "no sign of an intruder" and recited the reasons why the defendant's theory that an intruder entered through the bedroom window and murdered Christina McNeil was not plausible. July 7, 1999 Tr. at 162 - 166. Nothing about the presence of Ms. Nowlin's DNA on defendant's bedding would have changed the court's analysis that there was no intruder—including Misook Nowlin—and that the defendant was proven guilty beyond a reasonable doubt.

4. In affirming the defendant's conviction, the Fourth District Appellate Court held that evidence concerning Misook Nowlin was "not relevant and the trial court did not abuse its discretion in precluding the use of the evidence" as there was "no clear connection between Nowlin and Christina's death." Defendant's Exhibit 34. The presence of Misook Nowlin's DNA in the bed of a person she had had sexual relations with as recently as three days prior to Christina's death in no way changes that analysis.

iv. Because this claim is not "material" or "conclusive," it must be dismissed as a

matter of law.

f. Defendant's claim I.E. ("Susanne Burns' Newly-Discovered Affidavit Regarding Misook's Suspicious Behavior the Night Christina Died") must be dismissed as it does not meet the standard of "newly discovered," "material," or "conclusive."

i. Defendant next claims that he is entitled to a new trial based on information contained in the affidavit of Susanne Burns.

ii. This claim must be denied as the information in Susanne Burns' affidavit does not meet the definition of "newly discovered."

1. "Newly discovered evidence is evidence that was discovered after trial and that the petitioner could not have discovered earlier through the exercise of due diligence." *Id.*

2. Taking the evidence in Ms. Burns' affidavit as true, it is clear that the defendant knew Ms. Burns and knew her to be Misook Nowlin's close neighbor at the time he was awaiting trial in this case, and therefore could have discovered this evidence through the exercise of due diligence.

a. According to her affidavit, Ms. Burns resided "across the hall" in the same apartment building as Misook Nowlin at the time Christina McNeil was killed. In addition, defendant knew Ms. Burns as he was present so often at Ms. Nowlin's apartment that Ms. Burns thought the defendant resided with Ms. Nowlin. Ms. Burns' daughter even babysat for Christina McNeil.

3. In addition, despite his awareness of Ms. Burns' as a possible witness,

defendant did not include this claim in his original post-conviction petition in 2005. Therefore, this claim cannot be considered newly discovered evidence. *See People v. Snow*, 2012 IL App (4th) 110415, ¶ 21 (holding that "if the evidence was available at a prior posttrial proceeding, the evidence is not newly discovered evidence.")

iii. This claim must also be denied as it is not material.

1. The gist of Ms. Burns affidavit is that she believes she saw Misook Nowlin go between the closet and her apartment in the middle of the night on June 16, 1998.
2. Taking this evidence in the light most favorable to the defendant, there is nothing about Ms. Burns' observations that is probative of defendant's actual innocence. She did not hear Ms. Nowlin say anything, did not notice anything about her appearance other than that she was "fully dressed," and did not observe her to be holding or moving any objects. Most notably, Ms. Burns' did not observe Ms. Nowlin to be wet. Had Ms. Nowlin been present and climbing in and out of the window of the defendant's residence during a storm, she would have been drenched. *See* July 6 – 7, 1999, Tr. at 40 – 41 (in which the defendant explained that he last checked on Christina at approximately 2:00am, and that a thunderstorm began at approximately 2:15am during which it rained); *see also* July 1, 1999 Tr. at 141 – 149 regarding the details of the amount of rain that fell during the early morning hours on June 16, 1998).

iv. This claim must also be denied as this evidence is not of a "conclusive character."

1. Defendant's theory that Misook Nowlin secretly and silently forced entry through a window of the residence, secretly and silently murdered Christina, and then secretly and silently departed without disturbing anything in this small residence or alerting the defendant who was awake on the other side of the wall—during a torrential downpour— is positively rebutted by the overwhelming evidence at trial that this murder was not committed by an intruder.

    a. Bloomington Police Officer Karen Baker, one of the first responders, testified that she did not notice anything out of the ordinary or see any apparent disturbance in the bedroom where she observed Christina's McNeil's body. July 1, 1999 Tr. at 13 – 14.

    b. Bloomington Police Crime Scene Detective Thomas Sanders processed the crime scene and testified that when he entered the child's bedroom, he observed the venetian blinds to be down and photographed "an insect suspected and a spider web near . . . the lower latch of the screen," along with insects and spider webs on the the other side." July 1, 1999 Tr. at 73 – 74. Det. Sanders also testified that he observed and photographed the exterior of the apartment around the bedroom window, including bushes and plants near the window, and that he did not observe any marks or any disturbance around the areas below the window, including any trampling of bushes. July 1, 1999 Tr. at 74 – 75. He later was asked in more detail about his observations and emphasized that he

did not notice any kind of disturbance under the bedroom window, including no markings, footprints, or indications of trampling. July 1, 1999 Tr. at 108 – 109. He testified that he observed dead insects and dust with no evidence of disturbance on the windowsill, along with cob webs that he was "very sure to note . . . extended from the screen mesh on to the frame." July 1, 1999 Tr. at 109. He further testified that he observed various objects underneath the window on the inside of the bedroom including a fan, boxes, and other items, and that no items appeared to have been stepped on or disturbed or have footprints on them. July 1, 1999 Tr. at 109 – 110. He also testified that he did not notice any muddy footprints or indication of recent wetness or water anywhere inside the apartment, including underneath the window. July 1, 1999 Tr. at 110. He later clarified that he would not have been able to remove the window screen without disturbing the cob webs that he observed. July 1, 1999 Tr. at 140.

c. Bloomington Police Department Detective Randall McKinley testified that he observed the exterior of the residence on June 16, 1998, and "didn't notice any scuff marks on the wall underneath the window, mud, or anything out of the ordinary there except those two holes that Mr. McNeil pointed out to me." July 2, 1999 Tr. at 169. He further testified that "to get through that window as Mr. McNeil was saying . . . you would need either a step stool, a

step ladder or you would have to pry yourself up somehow to get in that window." July 2, 1999 Tr. at 170. Det. McKinley was then asked about his observations of the inside of the bedroom window and responded, "If you take a flashlight and shine it oblique or across that window seal, you can see what's laying on the surface of that real easily because the light shines across dust particles and, excuse me, spider webs and dirt and different things that accumulate on top of things. This window seal had an even coating of dust. We shined the light up and down the sides of the window frame where the screen was attached and saw spider webs, and there was even a dead bug attached to one of the spider webs. " July 2, 1999 Tr. at 173. When asked whether he saw anything disturbed as far as what he had just described, he unequivocally testified "No, there was nothing disturbed." July 2, 1999 Tr. at 174. Det. McKinley was then asked again, "And did you see anything on the window seal at the McNeil residence at 1106 North Evans Street that any of the dust or particles had been disturbed?" to which he responded, "Absolutely not." July 2, 1999 Tr. at 175. Det. McKinley later further explained that "using a flashlight you could clearly see the spider webs, several of them, not just one or two but numerous of them went from the screen itself to the window frame. So as if that window screen had been pushed up, the spider webs all would have broke lose, the ones that were

attached to the screen." July 2, 1999 Tr. at 177 – 178.

d. Even the defendant himself testified that "I thought at the time, and I still do, that the window was kind of high for it to have been entered. Somebody would need a step ladder or somebody could have or must have left markings on it or somebody was hoisted by some other person." July 6 – 7 Tr. at 72.

2. At the time the trial court found defendant guilty, the court made it clear that there was "no sign of an intruder" and recited the reasons why the defendant's theory that an intruder entered through the bedroom window and murdered Christina McNeil was not plausible. July 7, 1999 Tr. at 162 - 166. Nothing about the presence of Ms. Nowlin's DNA on defendant's bedding would have changed the court's analysis that there was no intruder—including Misook Nowlin—and that the defendant was proven guilty beyond a reasonable doubt.

3. In affirming the defendant's conviction, the Fourth District Appellate Court held that evidence concerning Misook Nowlin was "not relevant and the trial court did not abuse its discretion in precluding the use of the evidence" as there was "no clear connection between Nowlin and Christina's death." Defendant's Exhibit 34. The presence of Misook Nowlin's DNA in the bed of a person she had had sexual relations with as recently as three days prior to Christina's death in no way changes that analysis.

4. Given the trial court's findings concerning the complete dearth of

evidence that an intruder was involved in the death of Christina McNeil, the fact that Ms. Nowlin was observed in the hallway of her own apartment building in the middle of the night would not "probably lead to a different result" when considered along with the trial evidence.

v. Because this claim is not "newly discovered," "material," or "conclusive," it must be dismissed as a matter of law.

g. The State concedes that defendant's claim I.F. ("Dawn Nowlin's Newly-Discovered Affidavit Averring that Misook Confessed to Don Wang") should be advanced to a third-stage evidentiary hearing.

i. As mentioned above, the trial court may grant a partial dismissal at the second stage. *People v. Lara,* 317 Ill.App.3d 905, 908 (3d Dist. 2000).

ii. The State concedes that defendant is entitled to an evidentiary hearing as to this claim as, taking Dawn Nowlin's affidavit in the light most favorable to defendant, this evidence would be material on the issue of the defendant's innocence. Therefore, an evidentiary hearing is legally required on this claim.

h. The State concedes that defendant's claim I.G. ("Michelle Nowlin's Newly-Discovered Affidavit Averring that Misook Confessed to Don Wang") should be advanced to a third-stage evidentiary hearing.

i. As mentioned above, the trial court may grant a partial dismissal at the second stage. *People v. Lara,* 317 Ill.App.3d 905, 908 (3d Dist. 2000).

ii. The State concedes that defendant is entitled to an evidentiary hearing as to this

claim as, taking Dawn Nowlin's affidavit in the light most favorable to defendant, this evidence would be material on the issue of the defendant's innocence. Therefore, an evidentiary hearing is legally required on this claim.

i. Defendant's claim I.H. ("Misook's 2011 Murder of Tyda Wang is New Evidence of her Culpability for Christina's Death") must be dismissed as it does not meet the standard of "material" or "conclusive."

   i. Defendant next claims that Misook Nowlin's subsequent murder of Tyda Wang entitles the defendant to a new trial.

   ii. This claim should be dismissed as the evidence of Misook Nowlin's murder of Tyda Wang is not material.

      1. The fact that Misook murdered her mother-in-law, on September 5, 2011, over thirteen years after the murder of Christina McNeil, is not relevant and probative of defendant's innocence of his daughter's murder.

      2. While defendant uses the phrase "modus operandi" to describe what they claim is Ms. Nowlin's pattern of violent behavior, the two homicides in no way reveal an identical modus operandi:

         a. Christina McNeil was three years old, whereas Tyda Wang was 70 years old.

         b. There was some evidence that Christina McNeil was sexually abused in connection with her murder, whereas there was no evidence of sexual abuse in connection with the murder of Tyda Wang.

c. Christina McNeil was left by her killer laying in bed for police to find, whereas Ms. Nowlin hid Tyda Wang's body.

d. Ms. Nowlin confessed to her killing and disposal of Tyda Wang's body, whereas Ms. Nowlin has maintained her innocence in connection with Christina McNeil's death.

iii. This claim should also be dismissed as it is not of a conclusive character.

1. Defendant's theory that Misook Nowlin secretly and silently forced entry through a window of the residence, secretly and silently murdered Christina, and then secretly and silently departed without disturbing anything in this small residence or alerting the defendant who was awake on the other side of the wall—during a torrential downpour— is positively rebutted by the overwhelming evidence at trial that this murder was not committed by an intruder.

a. Bloomington Police Officer Karen Baker, one of the first responders, testified that she did not notice anything out of the ordinary or see any apparent disturbance in the bedroom where she observed Christina's McNeil's body. July 1, 1999 Tr. at 13 – 14.

b. Bloomington Police Crime Scene Detective Thomas Sanders processed the crime scene and testified that when he entered the child's bedroom, he observed the venetian blinds to be down and photographed "an insect suspected and a spider web near . . . the lower latch of the screen," along with insects and spider webs on the the other side." July 1, 1999 Tr. at 73 – 74. Det. Sanders also

testified that he observed and photographed the exterior of the apartment around the bedroom window, including bushes and plants near the window, and that he did not observe any marks or any disturbance around the areas below the window, including any trampling of bushes. July 1, 1999 Tr. at 74 – 75. He later was asked in more detail about his observations and emphasized that he did not notice any kind of disturbance under the bedroom window, including no markings, footprints, or indications of trampling. July 1, 1999 Tr. at 108 – 109. He testified that he observed dead insects and dust with no evidence of disturbance on the windowsill, along with cob webs that he was "very sure to note . . . extended from the screen mesh on to the frame." July 1, 1999 Tr. at 109. He further testified that he observed various objects underneath the window on the inside of the bedroom including a fan, boxes, and other items, and that no items appeared to have been stepped on or disturbed or have footprints on them. July 1, 1999 Tr. at 109 – 110. He also testified that he did not notice any muddy footprints or indication of recent wetness or water anywhere inside the apartment, including underneath the window. July 1, 1999 Tr. at 110. He later clarified that he would not have been able to remove the window screen without disturbing the cob webs that he observed. July 1, 1999 Tr. at 140.

c. Bloomington Police Department Detective Randall McKinley

testified that he observed the exterior of the residence on June 16, 1998, and "didn't notice any scuff marks on the wall underneath the window, mud, or anything out of the ordinary there except those two holes that Mr. McNeil pointed out to me." July 2, 1999 Tr. at 169. He further testified that "to get through that window as Mr. McNeil was saying . . . you would need either a step stool, a step ladder or you would have to pry yourself up somehow to get in that window." July 2, 1999 Tr. at 170. Det. McKinley was then asked about his observations of the inside of the bedroom window and responded, "If you take a flashlight and shine it oblique or across that window seal, you can see what's laying on the surface of that real easily because the light shines across dust particles and, excuse me, spider webs and dirt and different things that accumulate on top of things. This window seal had an even coating of dust. We shined the light up and down the sides of the window frame where the screen was attached and saw spider webs, and there was even a dead bug attached to one of the spider webs. " July 2, 1999 Tr. at 173. When asked whether he saw anything disturbed as far as what he had just described, he unequivocally testified "No, there was nothing disturbed." July 2, 1999 Tr. at 174. Det. McKinley was then asked again, "And did you see anything on the window seal at the McNeil residence at 1106 North Evans Street that any of the dust or particles had been disturbed?" to

which he responded, "Absolutely not." July 2, 1999 Tr. at 175. Det. McKinley later further explained that "using a flashlight you could clearly see the spider webs, several of them, not just one or two but numerous of them went from the screen itself to the window frame. So as if that window screen had been pushed up, the spider webs all would have broke lose, the ones that were attached to the screen." July 2, 1999 Tr. at 177 – 178.

d. Even the defendant himself testified that "I thought at the time, and I still do, that the window was kind of high for it to have been entered. Somebody would need a step ladder or somebody could have or must have left markings on it or somebody was hoisted by some other person." July 6 – 7 Tr. at 72.

2. At the time the trial court found defendant guilty, the court made it clear that there was "no sign of an intruder" and recited the reasons why the defendant's theory that an intruder entered through the bedroom window and murdered Christina McNeil was not plausible. July 7, 1999 Tr. at 162 - 166. Nothing about the presence of Ms. Nowlin's DNA on defendant's bedding would have changed the court's analysis that there was no intruder—including Misook Nowlin—and that the defendant was proven guilty beyond a reasonable doubt.

3. In affirming the defendant's conviction, the Fourth District Appellate Court held that evidence concerning Misook Nowlin was "not relevant and the trial court did not abuse its discretion in precluding the use of the

evidence" as there was "no clear connection between Nowlin and Christina's death." Defendant's Exhibit 34. The presence of Misook Nowlin's DNA in the bed of a person she had had sexual relations with as recently as three days prior to Christina's death in no way changes that analysis.

4. Even if the trial court judge had been aware that Misook Nowlin would go on to commit a murder thirteen years later, that would not have changed the outcome of the defendant's trial as the trial court found no evidence of an intruder, and therefore such evidence would not have probably lead to a different result.

iv. Because this claim is not "material" or "conclusive," it must be dismissed as a matter of law.

2. *Defendant's Claim II: Ineffective Assistance of Counsel*

a. General Principles of Law Applicable to Ineffective Assistance of Counsel Claims

i. A claim of ineffective assistance of counsel must be analyzed under the two-prong test which was established by *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Under that test, a petitioner must show that counsel's representation fell below an objective standard of reasonableness, and that but for this deficiency, there is a reasonable probability that counsel's performance was prejudicial to the defense. *People v. Hickey*, 204 Ill. 2d 585, 613 (2001). "Prejudice exists when 'there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" *People v. Erickson*, 183 Ill.

2d 213, 224 (1998). A petitioner's failure to make the requisite showing of either deficient performance or sufficient prejudice defeats a claim of ineffectiveness. *People v. Morgan*, 187 Ill. 2d 500, 529-30 (1999).

ii. Effective assistance of counsel in a constitutional sense means competent, not perfect, representation. *People v. Easley*, 192 Ill. 2d 307, 344 (2000). Courts indulge in the strong presumption that counsel's performance fell within a wide range of reasonable professional assistance. *Strickland* at 690. The fact that another attorney might have pursued a different strategy is not a factor in the competency determination. *People v. Palmer,* 162 Ill. 2d 465, 476 (1994). Counsel's strategic decisions will not be second-guessed. To ruminate over the wisdom of counsel's advice is precisely the kind of retrospection proscribed by *Strickland* and its progeny. *Strickland* at 689 ("[a] fair assessment of attorney performance required that every effort be made to eliminate the distorting effects of hindsight"); *People v. Fuller*, 2015 Ill. 2d 208, 332 (2002) (issues of trial strategy must be viewed not in hindsight, but from the time of counsel's conduct, and with great deference accorded counsel's decisions).

iii. To prevail on a claim of ineffective assistance for failure to *investigate*, petitioner must show that substantial prejudice resulted and that there is a reasonable probability the final result would have been different had counsel properly investigated. *People v. Rush*, 294 Ill. App. 3d 334, 342-43 (5th Dist. 1998). Decisions concerning which witnesses to call and which evidence to present are considered to be trial strategies or tactics and ordinarily are not reviewable in the determination of whether counsel was ineffective. *People v. Munson*, 206 Ill. 2d

104, 139-40 (2002). Decisions concerning which witnesses to call at trial and what evidence to present are matters of trial strategy and cannot form the basis for a claim of ineffectiveness unless a strategy is so unsound that counsel can be said to have entirely failed to conduct any meaningful adversarial testing. *People v. Negron*, 297 Ill. App. 3d 519, 538 (1998).

b. Defendant's Claim II ("McNeil was denied his Constitutional Right to Effective Assistance of Counsel") must be dismissed as it is conclusory and non-specific, and was waived when defendant failed to raise that claim on direct appeal.

i. Defendant's only claim in this section is in ¶ 293 where he argues that this "claim is asserted to the extent that (1) this Court concludes that McNeil's trial counsel had the ability to learn of the evidence contained in this Petition supporting McNeil's actual innocence claim; and/or (2) other evidence to which McNeil does not yet have access supports this claim of ineffective assistance of counsel."

ii. This claim is waived as it could have been raised on direct appeal and was not.

iii. Even if there is some reason why it could not have been raised on direct appeal, counsel does not demonstrate how this unspecified "failure" constituted deficient performance or how it resulted in prejudice such that the result of the proceeding would have been different but for this "failure." As mentioned above, nonfactual and nonspecific claims which merely amount conclusion are insufficient to trigger an evidentiary hearing under this Act. *See People v. West*, 187 Ill.2d 418, 425 – 426 (1999); *People v. Coleman*, 183 Ill.2d 366, 381 (1998); *People v. Blair*, 215

Ill.2d 427, 453 (2005)(noting that "broad, unsupported, conclusory allegations in a postconviction petition are not allowed").

WHEREFORE, for all of the above-stated reasons, the People of the State of Illinois respectfully request that this Court dismiss the Defendant's Petition for Post-Conviction Relief in part by dismissing all claims except claims I.F. and I.G. (concerning Misook Nowlin's alleged confession).

Respectfully Submitted,

Mary Koll
Assistant State's Attorney

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorney(s) of record of all parties to the above cause by:

✓ Depositing a true and correct copy of the same in the U.S. Post Office or post office box in the City of Bloomington, Illinois, enclosed in an envelope with postage fully prepaid on the 1 day of April, 2022.

____ Hand delivering a true and correct copy of the same on the ____ day of _____, 2022.

Subscribed to and sworn before me
on this 1 day of April, 2022.

NOTARY PUBLIC

OFFICIAL SEAL
TAMI E BUCKLES
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:10/18/22