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### People v Dunn Opening Brief

J. Damian Ortiz

*The John Marshall Law School*, [6ortiz@jmls.edu](mailto:6ortiz@jmls.edu)

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2019

## People v Dunn Opening Brief 15-0198 ACCEPTED FILING 10 24 2019.pdf

J. Damian Ortiz, *John Marshall Law School*

No. 15-0198

**IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT**

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	)	
	)	
<b>PEOPLE OF THE STATE OF ILLINOIS,</b>	)	<b>Appeal from the Circuit Court of</b>
	)	<b>Cook County, Illinois</b>
<b>Plaintiff-Appellee,</b>	)	
	)	
<b>v.</b>	)	<b>Circuit Court No. 79-CR-4915</b>
	)	
<b>MAURICE DUNN,</b>	)	
	)	<b>The Honorable Paul P. Biebel, Jr.,</b>
<b>Defendant-Appellant.</b>	)	<b>Judge Presiding</b>
	)	
	)	

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**BRIEF OF PETITIONER-APPELLANT**

J. Damian Ortiz, Esq.  
**UIC John Marshall Law School  
Pro-Bono Litigation Clinic**  
315 S. Plymouth Court  
Chicago, IL 60604  
(312) 427-2737 x844

*Attorney for Petitioner-Appellant*

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**ORAL ARGUMENT REQUESTED**

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## **NATURE OF THE CASE**

Maurice Dunn (“Dunn”) was convicted of rape on September 25, 1980. While in prison, Dunn filed a direct appeal and several post-conviction petitions all maintaining his innocence. Dunn was released from prison in 2002 and is a registered sex offender. In 2014, Dunn filed a successive post-conviction petition setting forth newly discovered evidence of his innocence. The Circuit Court denied his petition, holding Dunn lacked standing to pursue post-conviction relief. Dunn filed a timely Notice of Appeal. The record was located in 2019 and Dunn filed a Motion for an Extension of Time to file the record on appeal. The extension was granted, and this appeal follows.

## **ISSUE PRESENTED**

Whether the Circuit Court’s conclusion that Maurice Dunn – who was convicted of rape and completed his prison sentence in 2002 – lacks standing under the Post-Conviction Hearing Act 725 ILCS 5/122-1 to pursue a claim of actual innocence violates his rights to Due Process and Equal Protection under the law.

## **JURISDICTION**

On December 3, 2014, the Circuit Court denied Dunn’s post-conviction petition, holding that Dunn lacks standing to pursue relief because he was not “imprisoned in the penitentiary.” C. 184-92. On December 19, 2014, Dunn filed a timely Notice of Appeal. C. 193. After difficulty locating the paper record for Dunn’s case, counsel for Dunn located the record and Dunn filed a Motion for an Extension of Time to file the record on appeal – which was granted on July 30, 2019. SEC. C. 229. The Circuit Court timely filed the record on September 19, 2019. C. 1. This Court has jurisdiction under Ill. Sup. Ct. R. 651.

## CONSTITUTIONAL AND STATUTORY PROVISIONS

Adjudication of this case involves interpretation of the Fifth and Fourteen Amendments to the United States Constitution; Article 1, Section 2 of the Illinois Constitution; and the Illinois Post-Conviction Hearing Act (“the Act”), 725 ILCS 5/122-

1. The relevant provisions are:

### **Amendment V of the Constitution of the United States of America**

No person shall be ... deprived of life, liberty, or property, without due process of law.

### **Amendment XIV of the Constitution of the United States of America**

Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

### **Constitution of the State of Illinois of 1970**

Art.1, Sec. 2. Due Process and Equal Protection. No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws.

### **Illinois Post-Conviction Hearing Act, 725 ILCS 5/122-1**

(c) Except as otherwise provided in subsection (a-5), if the petitioner is under sentence of death and a petition for writ of certiorari is filed, no proceedings under this Article shall be commenced more than 6 months after the conclusion of proceedings in the United States Supreme Court, unless the petitioner alleges facts showing that the delay was not due to his or her culpable negligence. If a petition for certiorari is not filed, no proceedings under this Article shall be commenced more than 6 months from the date for filing a certiorari petition, unless the petitioner alleges facts showing that the delay was not due to his or her culpable negligence.

When a defendant has a sentence other than death, no proceedings under this Article shall be commenced more than 6 months after the conclusion of proceedings in the United States Supreme Court, unless the petitioner alleges facts showing that the delay was not due to his or her culpable negligence. If a petition for certiorari is not filed, no proceedings under this Article shall be commenced more than 6 months from the date for filing a certiorari petition, unless the petitioner alleges facts showing that the delay was not due to his or her culpable negligence. If a defendant does not file a direct appeal, the post-conviction petition shall be filed no later than 3 years from the date of conviction, unless the

petitioner alleges facts showing that the delay was not due to his or her culpable negligence.

This limitation does not apply to a petition advancing a claim of actual innocence.

### **STATEMENT OF FACTS**

Dunn was convicted of rape after a retrial in September of 1980. R. 338. The first proceeding, in May of the same year, ended in a mistrial after the jury was unable to reach a verdict. C. 1337-38. At both trials, the State's case centered on the victim's in-court identification of Dunn at trial. C. 85, R. 59. The State offered no physical evidence linking Dunn to the attack.

The victim was assaulted around 7:40 a.m. on July 30, 1979 while walking to a commuter train station in the Beverly neighborhood of Chicago. R. 21-22. Following the attack, she escaped to a nearby home. C. 824. Shortly thereafter, she was taken to a hospital and interviewed by police. C. 829, R. 141. The victim's description of her attacker was "sketchy" and "not complete." R. 143. She could not provide any "facial description" and described her attacker broadly: "black," "five foot four to five foot seven," "medium build," "short hair," and between "twenty-three to thirty" years old. R. 143-46, C. 92. She said that her assailant wore a "jogging suit" and gym shoes. R. 59.

On July 31, 1979 at 1:00 a.m., the victim was called to a Chicago police precinct to view a lineup. C. 109. The police alerted her to the presence of "the suspect" in the lineup. C. 109. Of the five individuals presented together in the lineup, only Dunn wore "jogging"-type clothing, including shorts and gym shoes. C. 80. The other individuals wore street clothing; only one other man wore gym shoes. C. 80. Dunn was only one of two men with short hair. C. 80. The victim identified Dunn. C. 109. Two other witnesses

who saw a suspicious looking man in the vicinity of the assault failed to identify any individual in the lineup. C. 110.

Dunn received a 40-year sentence of imprisonment, serving twenty-two years before his release on parole. R. 338. Following his conviction, Dunn filed a direct appeal. SEC. C. 48. On January 11, 1984, the First District Appellate Court vacated Dunn's aggravated battery conviction. SEC. C. 69.

On January 12, 1989, Dunn filed a post-conviction petition. C. 1402-06 V.2. After over 70 continuances, Dunn's post-conviction petition was denied on June 10, 1996. C. 9-16. In 1998, Dunn appealed his conviction based on DNA testing, which was subsequently denied. C. 1829 V. 2.

In 2014, Dunn filed a subsequent post-conviction petition. C. 34. On December 3, 2014, the Circuit Court denied Dunn's petition for lack of standing. C. 184-92. On December 19, 2014, Dunn filed a Notice of Appeal. C. 193. After difficulty in locating Dunn's paper record – which was found in July 2019 – Dunn filed a motion to extend the time to file the record on appeal. SEC. C. 228. This Court granted the motion and the Circuit Court timely filed the record on September 19, 2019. SEC. C. 1.

## ARGUMENT

### **I. DUNN RETAINS STANDING UNDER THE ACT TO PURSUE HIS CLAIM OF ACTUAL INNOCENCE DESPITE HIS RELEASE FROM IMPRISONMENT**

Maurice Dunn’s 2002 release from custody and his right to pursue a claim of actual innocence under the Act are not mutually exclusive. The Act eliminates the statute of limitations for advancing a claim of innocence, regardless of custodial status. 725 ILCS 5/122-1(c). To interpret the Act otherwise would mean that the due process rights of the wrongfully convicted end one step beyond the prison gates or one minute after the conclusion of mandatory supervised release. *See People v. Washington*, 171 Ill. 2d. 487-89 (Ill. 1996) (holding that a “truly persuasive demonstration of innocence” invokes both procedural and substantive due process protections). Basic notions of fair play and protections against the “conscience-shocking” nature of imprisonment of the innocent demand otherwise. *Id.*

#### **A. The Illinois Legislature intended to create a wide avenue for Post-Conviction Petitioners pursuing relief under the Act.**

The Circuit Court’s holding that Dunn lacks standing contravenes the Illinois legislature’s intent in creating the Act. *See King v. First Capital Financial Services Corp.*, 828 N.E.2d 1155, 1169 (2005)(“The most fundamental rule of statutory construction is to give effect to the intent of the legislature”)(citing *Carroll v. Paddock*, 199 Ill. 2d 16 (2002)). The Act was created in response to concerns raised by the United States Supreme Court that Illinois lacked an adequate remedy for criminal defendants to contest denials of due process following a conviction. *People v. Correa*, 108 Ill. 2d. 541, 545 (1985)(citing *Young v. Ragen*, 337 U.S. 235, 237 (1948)). To that end, the General Assembly crafted the Act “to fill the gaps between then existing remedies and provide for

judicial review in circumstances where direct review, habeas corpus and *coram nobis* were unavailable.” *People v. Martin-Trigona*, 111 Ill. 2d. 295, 302 (1986). At its foundation, “[t]he [Act] was designed to afford to the convicted an opportunity to inquire into the constitutional integrity of the proceedings in which the judgment was entered.” *People v. Pier*, 51 Ill. 2d. 96, 98 (1972).

Under the Act’s plain language, “[a]ny person imprisoned in the penitentiary” may pursue post-conviction relief. 725 ILCS 5/122-1. Importantly, Illinois courts have long held that the Act must be “liberally construed” to afford “convicted person[s] an opportunity to present questions of deprivation of constitutional rights.” *Pier*, 51 Ill. 2d. at 98. Emphasis on the Act’s liberal construction has resulted in an expansive, evolving, and figurative interpretation of “[a]ny person imprisoned in the penitentiary.” *See, e.g., Martin-Trigona*, 111 Ill. 2d. at 301 (individuals on bond pending appeal may file petitions under the Act); *Correa*, 108 Ill. 2d. at 546 (individuals under mandatory supervised release may file petitions under the Act); *People v. Montes*, 90 Ill. App. 3d. 355, 357 (5th Dist. 1980)(individuals sentenced to probation may file petitions under the Act); *People v. Placek*, 43 Ill. App. 3d. 818, 819-20 (2d Dist. 1976)(individuals released on parole may file petitions under the Act). Thus, the Circuit Court’s limitation of the word “imprisoned” to its literal meaning was incorrect. Indeed, the opposite is true.

In 2003, amidst revelations about the wrongful convictions of capital defendants in Illinois, the Illinois General Assembly amended the Act to allow a petitioner to raise a claim of actual innocence unencumbered by any statute of limitations. 2003 Ill. Legis. Serv. P.A. 93-605 (S.B. 472). According to the legislative history, the amendment was designed to allow “someone who has new evidence and can prove actual innocence to

have that right in a post-trial petition.” Senate Transcript of the Debate on S.B. 472, State of Illinois 93rd General Assembly (May 29, 2003)(statement of Sen. Cullerton). In crafting the new avenue for claims of actual innocence, the General Assembly imposed no express restrictions on the individuals eligible to raise such claims. *See, e.g.*, Senate Transcript of the Debate on S.B. 472, State of Illinois 93rd General Assembly (November 5, 2003)(statement of Sen. Cullerton)(“In the case of post-conviction petitions, after a person’s been convicted, if they believe that they’ve got newly discovered evidence that shows a substantial basis the defendant might actually be innocent, they would [through the Act] have an opportunity to present that [evidence].”)

To the contrary, the Illinois General Assembly sought to cast a wide remedial net and minimize the future risk of the conviction of innocent individuals. Senate Transcript of the Debate on S.B. 472, State of Illinois 93rd General Assembly (May 29, 2003)(statement of Sen. Cullerton)(describing “death penalty reform” -- including the amendment to the Act to allow innocence claims – as a “revolutionary change” necessitated because “we don’t want to have happen what happened in [Illinois][again] where we had thirteen, and maybe even seventeen, people who were exonerated for not committing the crime.”) According to the National Registry of Exonerations, in 2018 alone, Illinois exonerated 49 wrongfully convicted people, three times more than any other state.<sup>1</sup> New York and Texas were the next highest with 16 exonerations each.<sup>2</sup> Thus, it is imperative that the Act allow for *all* innocence claims to move forward,

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<sup>1</sup> *Available at*, <https://www.law.umich.edu/special/exoneration/Documents/Exonerations%20in%202018.pdf>

<sup>2</sup> *Id.*

including those advanced by petitioners like Maurice Dunn who have completed a sentence of imprisonment. *See* 725 ILCS 5/122-1.

Currently, 25 states have no “custody” requirement for pursuing a post-conviction petition.<sup>3</sup> For instance, Utah allows for innocence claims by any “person who has been convicted of a felony offense.” Utah Code Ann. §§ 78B-9-402(1). Like the Illinois evidentiary requirements for claims of innocence, the Utah law focuses on “newly discovered material” and “not merely cumulative” evidence. *Id.* at §§ 78B-9-402(2)(a)(i), (iii). In similar fashion, Virginia recognizes a comparable post-conviction remedy “for a person who was convicted of a felony upon a plea of not guilty[.]” Va. Code Ann. §19.2-327.10. The petition must include “evidence [that] was previously unknown or unavailable” to the petitioner and that is “not merely cumulative, corroborative or collateral.” *Id.* at § 19.2-327.11. In fact, several other state statutes allow a post-conviction petitioner to raise *any* constitutional basis for relief, regardless of its nature, after a sentence has been fully completed. Thus, Illinois must eliminate the custody requirement.

**B. To Deny a Petitioner’s Pursuit of Post-Conviction Relief on Standing Grounds is Akin to Denial of a Petitioner’s Due Process and Equal Protection Rights.**

While Illinois courts have previously held that post-conviction relief is generally not available for petitioners who have finished a custodial sentence, the basis for the exclusion predates the 2003 “actual innocence” amendment. The benchmark case for the exclusion established that the Act may not be invoked after a sentence is complete or to

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<sup>3</sup> The list includes Alaska, Arizona, Florida, Indiana, Iowa, Minnesota, Mississippi, Nevada, New Jersey, New York, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Utah and Washington.

purge prior convictions. *People v. Dale*, 406 Ill. 238, 246 (1950). *Dale* involved a challenge to the Act under Article III of the Illinois Constitution on the basis that the Act “provides for rehearings and retrials on constitutional issues in causes finally adjudicated.” *Id.* at 244. As such, according to the argument, the law embodied an unconstitutional encroachment on the purview of the judiciary. *Id.* at 242.

In rejecting the challenge, the *Dale* majority opined that the Act invited collateral claims only and “[t]he question of guilt or innocence of the petitioner will *not* be before the court on the post-conviction proceeding[.]” *Id.* at 245 (emphasis supplied). In other words, the provisions of the Act did *not* allow for claims of actual innocence, within or outside of the statute of limitations. *Id.* at 239 (setting forth provisions of the Act as to statute of limitations without reference to “a petition advancing a claim of actual innocence”). Consistent with the now-outmoded version of the Act, *Dale* excluded from the Act’s protections “persons who [have] served their sentences and who might wish to purge their records of past convictions.” *Id.* at 246. In light of the then-existing provisions of the Act and the court’s central reasoning, this exclusion did not extend to petitioners raising “question[s] of guilt or innocence.” *Id.* at 245.

*Dale* formed the foundation for future cases limiting the Act’s use by non-prisoners for waging collateral attacks on prior convictions. *See, e.g., People v. Carrera*, 239 Ill. 2d 241, 245 (2010)(citing *Dale* to affirm that the Act’s “remedial machinery” is not available to “purge criminal records” as a means for non-prisoner petitioner to challenge his deportation); *People v. Rajagopal*, 381 Ill. App. 3d 326, 332 (1st Dist. 2008)(holding, consistent with *Dale*, that non-prisoner petitioner could not “seek to avoid deportation or any other collateral consequence of his felony conviction by invoking the

Act”); *People v. West*, 145 Ill. 2d 517, 518 (1991)(relying on *Dale* to reject non-prisoner petitioner’s attempt to “void” his prior Illinois conviction to prevent its use as an aggravating sentencing factor for a subsequent conviction); *but see People v. Steward*, 406 Ill. App. 3d 82, 92 (1st Dist. 2010)(holding that civil confinement under Sexually Violent Persons Commitment Act is not “imprisonment” under the Act and that petitioner’s actual innocence claims were not based upon newly-discovered evidence, without addressing whether due process requires that a “non-prisoner” may assert innocence claims); *People v. Dent*, 408 Ill. App. 3d 650, 652-53 (1st Dist. 2011)(citing *Dale* in support of holding that petitioner could not assert a claim of innocence as to prior conviction used to enhance subsequent sentence, without addressing due process question).

In the present case, Dunn does not seek to sidestep the collateral consequences of a just conviction. Rather, his petition raises a claim of innocence under the expansive categorical exception created by the 2003 amendment. Therefore, the narrow standing restriction established by *Dale* is wholly inapplicable to Dunn’s case. *Dale* aside, the Illinois Supreme Court has long-trumpeted the Act’s broad allowance of standing to file a post-conviction petition. For instance, in *People v. Davis*, 39 Ill. 2d 325, 326 (1968), the petitioner was tried and convicted, *in absentia* and without counsel, for forgery. He filed a post-conviction petition alleging ineffectiveness of his trial counsel and, after his release from custody, the court held a hearing on the petition. *Id.* at 327-28. Relying on *Dale*, the State asserted that the petitioner lacked standing to contest his conviction as he was no longer “deprived of his liberty.” *Id.* at 329. Noting the “obvious advantages in purging oneself of the stigma and disabilities which attend a criminal conviction,” the

court rejected the State's position. *Id.* Rather, it held that the Act should not be "so narrowly construe[d]. . . as to preclude the remedy in every case in which the petition is not filed and the hearing [not] completed before imprisonment ends." *Id.*

*Davis* is not an outlier. Subsequent decisions cemented the Illinois Supreme Court's position that the "stigma and disabilities" of a conviction persist after custodial release, requiring access to post-conviction relief. *See People v. Neber*, 41 Ill. 2d 126, 128 (1968)("[W]e will not in every case deny a post-conviction remedy simply because the post-conviction proceedings had not been completed prior to the petitioner's release from incarceration"); *People ex rel Palmer v. Twomey*, 53 Ill. 2d 479, 484 (1973)("[T]he fact that [petitioner's] term of imprisonment-has ended does not of itself serve to bar the institution of post-conviction proceedings.")

Building on the *Davis* line of cases, *People v. Lynn* held that a petitioner's challenge to a conviction is not "rendered moot" simply because the underlying sentence is complete. *People v. Lynn*, 102 Ill. 2d 267, 272 (1984). In so holding, the court acknowledged that a post-conviction petition challenging a sentence is, of course, moot following the petitioner's completion of that sentence. *Id.* A challenge to a conviction itself, it reasoned, is different as "the nullification of a conviction may have important consequences to a defendant." *Id.* at 273 (internal citations omitted). Therefore, a petition attacking a conviction does not contemplate "mere abstract proposition[s]." *Id.* at 272. To the contrary, the deleterious effects of a criminal conviction are tangible and enduring.

The description in *Davis* and *Lynn* of the Act as an instrument chiefly designed to challenge a conviction, irrespective of any restraints on liberty, is especially compelling with respect to claims of actual innocence. The catharsis accompanying exoneration, by

itself, is of far greater “consequence” than “nullification of a conviction” on any other basis. *See Lynn*, 102 Ill. 2d at 272-73. Further, the “stigma and disabilities” adjoining a criminal conviction – nowhere more acute and persistent than for sex-related offenses – all but vanish upon a determination of innocence. *See Davis*, 39 Ill. 2d at 329. Therefore, Dunn’s standing to challenge his conviction under the Act fits squarely within the framework established by *Davis* and *Lynn* – and outside of *Dale*’s limited restriction.

If the statute is interpreted to mean those solely in custody, all convicted released persons have no way to assert claims of constitutional deprivation of rights. Dunn’s claim of innocence hits at the heart of both procedural and substantive due process protections. *See Washington*, 171 Ill. 2d. at 487-89. As a matter of procedural due process, the Act provides Dunn’s only channel to present his claims of innocence to this Court. While Dunn has tirelessly fought against his wrongful conviction for decades, the claims advanced in his most recent petition are, as the law requires, based on newly discovered evidence. To prevent him from pursuing justice due to his completion of his sentence would be “fundamentally unfair.” *Id.*

Dunn remains subject to the onerous conditions of the Illinois sex offender registry. Those conditions – while regulatory – impose significant residential, employment, and travel restrictions and “include criminal sanctions for failure to register.” *Miranda v. Madigan*, 888 N.E.2d 158, 162 (Ill. App. Ct. 2008); *see also Martin-Trigona*, 111 Ill. 2d. at 300 (holding that petitioner on appeal bond constituted a “prisoner” under the Act as he “could not leave the confines of the State without permission of the court, could not depart the country[,] and was restricted in his ability to change his place of residence within the State.”)

The Act's essential origins in concert with the unique and powerful nature of actual innocence claims require that this Court allow Dunn's petition to proceed. The Act was created to ensure that convicted defendants, like Dunn, are not victimized by "gaps" in the judicial process and left with no meaningful recourse to challenge "the constitutional integrity" of the proceedings against them. *See Martin-Trigona*, 111 Ill. 2d. at 302; *Pier*, 51 Ill. 2d. at 98. Since its passage, Illinois courts have interpreted the Act liberally and consistent with its promise of open access to relief. *See Pier*, 51 Ill. 2d. at 98. In amending the Act to accommodate claims of actual innocence brought at *any* time, the General Assembly, too, remained faithful to the Act's core principles. Thus, Dunn's claim of innocence hits at the heart of both procedural and substantive due process protections, especially in light of the Act's grounding in due process and the centrality of Dunn's case for innocence to fundamental concepts of justice.

### CONCLUSION

**WHEREFORE**, for all the foregoing reasons, this Court must conclude that Dunn has standing to pursue his innocence claim and remand the case accordingly.

Respectfully submitted,

**MAURICE DUNN**

By: /s/ J. Damian Ortiz  
J. Damian Ortiz, Esq.  
Attorney for Petitioner

Dated: October 23, 2019

J. Damian Ortiz, Esq.  
**UIC John Marshall Law School**  
**Pro-Bono Litigation Clinic**  
315 S. Plymouth Court  
Chicago, IL 60604  
(312) 427-2737 x844  
jdortiz@uic.edu

**CERTIFICATE OF COMPLIANCE WITH SUPREME  
COURT RULE 341(c)**

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statements of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 13 pages.

By: /s/ J. Damian Ortiz

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J. Damian Ortiz, Esq.  
Attorney for Petitioner

J. Damian Ortiz, Esq.  
**UIC John Marshall Law School**  
**Pro-Bono Litigation Clinic**  
315 S. Plymouth Court  
Chicago, IL 60604  
(312) 427-2737 x844  
jdortiz@uic.edu

**CERTIFICATE OF SERVICE**

I hereby certify that on October 23, 2019, I caused true and correct copies of the foregoing Brief of Petitioner-Appellant in Case No. 15-0198 and a Separate Record to be served with the Clerk of the Appellate Court of Illinois, First District and other parties of record by using the E-filing system Odyssey and by the following methods upon:

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Cook County State's Attorney  
Cook County State's Attorney's Office  
309 Richard J. Daley Center  
Chicago, IL 60602  
Email: [eserve.criminalappeals@cookcountyil.gov](mailto:eserve.criminalappeals@cookcountyil.gov)

Kwame Raoul  
Illinois States Attorney  
100 West Randolph Street  
Chicago, IL 60601  
Email: [eserve.criminalappeals@atg.state.il.us](mailto:eserve.criminalappeals@atg.state.il.us)

By: /s/ J. Damian Ortiz  
J. Damian Ortiz, Esq.  
Attorney for Petitioner

J. Damian Ortiz, Esq.  
Donna Brown, Law Student  
Amanda Guertler, Law Student  
**UIC John Marshall Law School**  
**Pro-Bono Litigation Clinic**  
315 S. Plymouth Court  
Chicago, IL 60604  
(312) 427-2737 x844  
[jdortiz@uic.edu](mailto:jdortiz@uic.edu)

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**APPENDIX  
TO THE APPELLANT’S BRIEF**

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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CRIMINAL DIVISION**

---

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Plaintiff-Respondent,	)	Successive Post-Conviction
	)	
v.	)	No. 79C4915
	)	
MAURICE DUNN,	)	Hon. Paul P. Biebel, Jr.
	)	Judge Presiding
Defendant-Petitioner.	)	

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**ORDER**

Petitioner, Maurice Dunn, seeks post-conviction relief under 725 ILCS 5/122-1 *et seq.* (the "Act") from the judgment of conviction entered against him on September 25, 1980. A jury convicted Petitioner of rape and aggravated battery, and the trial court sentenced him to 40 years incarceration. Petitioner served 22 years of his sentence before he was released on parole. He has now completed his sentence. As a result of his conviction, Petitioner is required to register as a sex offender pursuant to the Sex Offender Registration Act, 730 Ill. Comp. Stat. 150/1 *et seq.* In this successive petition he argues that: (1) he has standing under the Post-Conviction Hearing Act to raise a claim of actual innocence; and (2) he is actually innocent of the crime for which he was convicted in 1980.

**BACKGROUND and PROCEDURAL HISTORY**

The conviction at issue stems from the July 30, 1979 rape of the victim, Constance Dourdy. As recounted by the Appellate Court in the opinion, *People v. Dunn*, 306 Ill. App. 3d 75, 77 (1<sup>st</sup> Dist. 1999), the evidence at Petitioner's the second trial established that at about 7:45 a.m. on July 30, 1979, the victim was attacked by a man as she was walking to a southside Chicago train station. The man forced her into a secluded area where the victim

was able to clearly see her attacker's face when he got on top of her and began choking her. During the attack, the victim was able to see her attacker's face a few more times. Despite the victim's struggle, the man raped her. When the victim identified Petitioner in court as her attacker, the victim said, "And I looked right at your face. I saw your face. I'll never forget your face. Ever." She also stated that Petitioner was wearing a dark green jogging suit with yellow stripes on the sleeves. Susan Kelly testified that minutes before the attack she too was going to the train station when she passed a man dressed like the attacker. She stated that Petitioner resembled that man.

Other evidence showed that Petitioner's father-in-law lived near the train station, and Petitioner's wife was living with him. Petitioner presented an alibi claim that he was in Harvey, Illinois, where he resided.

The jury was unable to reach a verdict at Petitioner's initial trial, and on May 17, 1980, a mistrial was declared. In September 1980, Petitioner was retried. Petitioner was found guilty of rape, aggravated battery, and aggravated battery on a public way, and sentenced to an extended prison term of 40 years in the Illinois Department of Corrections.

On direct appeal, Petitioner contended that he received ineffective assistance of counsel because of defense counsel's lack of preparation at the second trial; that the trial court erred in denying his motion to suppress the victim's in-court identification of him; that he was not proven guilty beyond a reasonable doubt; that there was no indictment for aggravated battery while on a public way; that the trial court abused its discretion in sentencing Petitioner to an extended term; and that his second trial violated double jeopardy. The Appellate Court vacated Petitioner's conviction for aggravated battery while on a public way, but affirmed his remaining convictions and sentence. *People v. Dunn*, No. 1-80-2898 (1<sup>st</sup> Dist. 1983) (unpublished order under Supreme Court Rule 23).

In January 1989, Petitioner filed a *pro se* post-conviction petition claiming: (1) ineffective assistance of counsel; (2) that the State withheld material evidence favorable to him; (3) that his constitutional rights were violated because the State used peremptory challenges to exclude black jurors; (4) that his request for a reduction of sentence was proper; (5) that the trial court erred in denying his motion to suppress the victim's in-court identification; (6) that the trial court abused its discretion in sentencing defendant to an extended term; (7) that his second trial was barred by double jeopardy; and (8) that he was not proven guilty beyond a reasonable doubt. *People v. Dunn*, 306 Ill. App. 3d 75, 77 (1<sup>st</sup> Dist. 1999).

In December 1995, the public defender, on behalf of Petitioner, filed a motion to compel genetic testing. In April 1996, the public defender withdrew the motion for genetic testing, and on June 10, 1996, the trial court dismissed Petitioner's post-conviction petition with prejudice. Petitioner filed a notice of appeal on January 23, 1998. In June 1999, the Appellate Court affirmed the dismissal of the substantive rulings of the trial court, but reversed the decision and remanded the matter to determine whether any conclusive result was obtainable from DNA testing which would support Petitioner's post-conviction claim of actual innocence. *Dunn*, 306 Ill. App. 3d at 81.

On remand, on September 15, 2000, Circuit Court Judge Dennis A. Dernbach ordered the pants to be released "to the State's Attorney of Cook County who will forward the exhibit to the Illinois State Crime Laboratory in Chicago," and that the "laboratory is hereby ordered to examine the article for the presence of semen and other physical evidence which may be useful to identify its source." On January 30, 2001, a forensic scientist with the Illinois State Police sent a report to the Violent Crimes Unit in the Chicago Police

Department. The report indicated that he found no evidence of semen or blood but that “[m]icroscopy evidence (hairs, fibers, debris) was collected in this case.” *Id.* at 3.

On March 5, 2004, the trial court dismissed Petitioner’s petition for DNA testing. Once again, in 2010 Petitioner appeared before this Court for DNA testing on the hairs that were collected from the pants pursuant to 725 ILCS 5/116-3. The testing was inconclusive.

Since 2011, Petitioner has been before this Court seeking to vacate the conviction entered against him in 1980. The DNA testing conducted by Petitioner over the last decade and a half has resulted in no new evidence that would support a claim for relief under Section 2-1401 of the Civil Code. See 735 ILCS 5/2-1401(c)(2014). Petitioner has been represented by several attorneys. Most recently, Petitioner has filed a successive petition for post-conviction relief and orally requested leave to file.

#### **ANALYSIS**

The threshold issue in this case involves Petitioner’s legal standing to file a post-conviction petition under indictment number 79C4915. Petitioner has acknowledged the difficulty he faces in bringing his claim under the Act. A significant number of pages in his post-conviction petition are dedicated to his thoughtful argument that Petitioner has standing to file such a pleading under the Act because he raises a claim of actual innocence. In support of this position, Petitioner relies on many sources including legal opinions from this jurisdiction as well as others (none of which directly support his position—which is certainly true in light of the *Downin* opinion, discussed *infra*), legislative comments, public policy arguments, and secondary sources. According to Petitioner, the Act permits a him to assert a claim of actual innocence at any time.

His reading of the Act and the relevant case law is misguided. In interpreting the Act, this Court is guided by the familiar rules of statutory construction. The fundamental rule of

statutory construction is to ascertain and give effect to the intent of the legislature. *King v. First Capital Financial Services Corp.*, 215 Ill. 2d 1, 26 (2005). The best indicator of the legislature's intent is the language of the statute, which must be accorded its plain and ordinary meaning. *King*, 215 Ill. 2d at 26. In this case the statute speaks clearly.

The legislature created a standing requirement when it wrote the Post-Conviction Hearing Act. The Act states “any person imprisoned in the penitentiary may institute a proceeding under this Article.” 725 ILCS 5/122-1(a) (West 2014). Only persons imprisoned in a penitentiary may file a petition for post-conviction relief, and such relief under the Act is not applicable to persons sentenced to jail, reformatories and similar institutions. *People v. Warr*, 54 Ill. 2d 487, 491-92 (1973)(emphasis added). A defendant is “imprisoned” for purposes of the Act when his liberty is actually constrained by the State. *People v. Vinokur*, 2011 Ill. App. (1st) 90798 ¶6; quoting *People v. Rajagopal*, 381 Ill. App. 3d 326 (1<sup>st</sup> Dist. 2008). A petitioner serving his mandatory supervised release (also known as parole) may file a petition for post-conviction relief because he may be re-imprisoned for violation of the terms of his parole. *People v. Bethel*, 363 Ill. Dec. 590 (5th Dist. 2012). When a defendant is no longer constrained by the state, he has no standing to file a petition under the Act. *Vinokur*, at ¶6. A legal obligation to register as a sex offender does not give a petitioner standing to file a post-conviction petition under the Post-Conviction Hearing Act. *People v. Downin*, 394 Ill. App. 3d 141 (3d Dist. 2009).

Petitioner is unable to file a petition for post-conviction relief because he is no longer imprisoned in the penitentiary (or serving a term of MSR). The standing requirement apparent on the face of Section 122-1 precludes Petitioner from filing his petition under the Act. A plain reading of the statute and a survey of the relevant case law clearly shows that Petitioner's position is untenable.

Nevertheless, Petitioner argues that the language of Section 122-1(c), which discusses the timeliness requirement, also modifies the “imprisoned in a penitentiary” standing requirement. In addition to the standing requirement, a petitioner must also timely file his petition for post-conviction relief. A petition under the Act may be commenced within a reasonable time after a person’s conviction. 725 ILCS 5/122-1(a-5)(emphasis added). For cases involving a sentence other than death, as in this case, the legislature defined “reasonable time” in the following clearly articulated way:

“no proceedings under [the Post-Conviction Hearing Act] shall be commenced more than 6 months after the conclusion of proceedings in the United States Supreme Court, unless the petitioner alleges facts showing that the delay was not due to his or her culpable negligence. If a petition for certiorari is not filed, no proceedings under this Article shall be commenced more than 6 months from the date for filing a certiorari petition, unless the petitioner alleges facts showing that the delay was not due to his or her culpable negligence. If a defendant does not file a direct appeal, the post-conviction petition shall be filed no later than 3 years from the date of conviction, unless the petitioner alleges facts showing that the delay was not due to his or her culpable negligence.” 725 ILCS 5/122-1(c)(2014).

The exception to the timeliness requirement states: “This limitation does not apply to a petition advancing a claim of actual innocence.” *Id.* Therefore, a petitioner advancing a claim of actual innocence may file a post-conviction without fear of running afoul of the timeliness requirements of the Act. The language discussing the exception to the timeliness requirement does not explicitly make any amendments to the standing requirement discussed at the beginning of the Act.

The statutory language that Petitioner relies upon to demonstrate that he has standing under the Act to bring a post-conviction claim of actual innocence is misplaced. The Section 122-1(c) concludes: “This limitation does not apply to a petition advancing a claim of actual innocence.” Taking the plain and ordinary meaning of the legislature’s language here shows that the exception is expressly limited to the context in which it is

written. "This limitation" relates back to the timeliness requirement discussed in Section 122-1(c). The only reasonable interpretation is that the exception for claims of actual innocence applies only to the timeliness requirement and modifies the earlier language that a claim may be brought "within a reasonable time after a person's conviction."

Petitioner's assertion that a claim of actual innocence may be brought at any time, regardless of a petitioner's custodial status or the amount of time between his conviction and the filing of a petition is not supported by the Act. He asks this Court to rule that a petitioner may file for post-conviction relief so long as he fulfills either the standing OR meets the timeliness exception. Such an interpretation of the act is incongruous with the Act itself. It appears that Petitioner conflates two independent and distinct requirements contained in the Act, the timeliness requirement and the standing requirement. The timeliness exception for a claim of actual innocence is distinct from the standing requirement and does not modify it.

Petitioner relies on a number of cases beginning with *People v. Davis*, 235 N.E. 634 (Ill. 1968), and extending to *e.g. People v. Neber*, 242 N.E.2d 179 (Ill. 1968), *People v. Lynn*, 464 N.E.2d 1031 (Ill. 1984). Petitioner argues that each of these cases stand for the proposition that the Act may be used by a petitioner to vacate a conviction and eliminate the collateral consequences of that conviction at any point in time. None of these cases is directly on-point. Each of these cases arose prior to the 2003 amendment that established the timeliness exception for assertions of actual innocence. It is important to note that the legislature could have adopted the reasoning found in the *Davis* line of cases and codified the proposition that Petitioner now argues. The legislature did not.<sup>1</sup>

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<sup>1</sup> Public Act 93-605 established the timeliness exception that Petitioner now relies upon. It is interesting that the legislature also passed 725 ILCS 5/116-3 with P.A. 93-605, which provides an avenue to a petitioner to demonstrate his actual innocence through the use of forensic evidence regardless of his

This Court is guided by recent case law that is directly on-point supports this Court's interpretation of the Act. In the previously cited case of *People v. Downin*, the Appellate Court addressed a very similar situation. See *Downin*, 394 Ill. App. 3d 141 (3d Dist. 2009), appeal denied, 235 Ill. 2d 594 (2010). The petitioner in *Downin* was convicted of aggravated criminal sexual abuse and sentenced to a 60 day term of incarceration and a 30-month term of probation. As a result of his conviction he was required to register as a sex offender for the remainder of his life. After his probation expired he filed a post-conviction petition under the Act, and asserted a claim of actual innocence. *Downin*, 394 Ill. App. 3d at 142. He attached affidavits from members of his family as well as his former employer who claimed that they had been told by the victim that her allegations against the petitioner were untrue. *Id.* The trial court granted the State's motion to dismiss, finding that because petitioner was not "imprisoned in the penitentiary" he lacked standing under the Act. *Id.*

In a well-reasoned opinion, the Appellate Court affirmed the ruling of the trial court. "[L]ifetime registration as a sex offender is not a constraint on liberty sufficient to bring it within the [Post-Conviction Hearing] Act." *Id.* at 146. In so holding, the Appellate Court expressly rejected the position that Petitioner is now advancing--that the Act is to be liberally construed to provide relief to a petitioner who has been denied his constitutional rights. *Downin*, at 147. That court noted that "Relief under the Act is not available to defendants who have completed their sentences and merely seek to purge their criminal records." *Id.* (citation omitted).

Like the petitioner in *Downin*, Petitioner has successfully completed his parole. Many years have passed since the completion of his sentence and his filing of this petition. There is no denying that Petitioner is now before this Court with the intent to purge his criminal

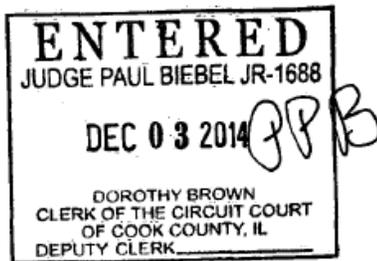
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custodial status. It is apparent that the legislature made a deliberate decision to maintain the standing requirement of the Act subsequent to the 2003 revisions.

record and be relieved of his legal obligation to register as a sex offender. The Act was not intended to serve this purpose. See *People v. Downin, supra*. A petitioner may not circumvent the statutory standing requirement of the Act by asserting a claim of actual innocence. This Court lacks jurisdiction to adjudicate Petitioner's assertion of actual innocence, and this Court makes no determination as to the merits of that claim.

**CONCLUSION**

Petitioner lacks standing under the Act. Therefore, Petitioner's request for leave to file a successive petition for post-conviction relief is hereby DENIED.



**ENTERED:**

A handwritten signature in cursive script, appearing to read "Paul P. Biebel, Jr.", written over a horizontal line.

Hon. Paul P. Biebel, Jr.  
Circuit Court of Cook County  
Criminal Division

**DATED:** December 3, 2014

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT - CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS  
*Respondent*

Case No. 79-CR-4915

v.

MAURICE DUNN,  
*Petitioner*

Honorable Paul J. Siebel  
Trial Judge

DONALD BROWN  
CLERK OF THE CIRCUIT COURT  
OF COOK COUNTY, ILL.

2014 DEC 19 5 PM 2:05

FILED  
*[Signature]*

NOTICE OF APPEAL

An appeal is taken on the Order of Judgment described below:

APPEAL TO: First District Appellate Court

APPELLANT'S NAME: Maurice Dunn

APPELLANT'S ADDRESS: 2744 Poplar Court  
Crete, IL 60417

APPELLANT'S ATTORNEY: Katie Anderson, Esq.  
The John Marshall Law School Pro Bono Clinic  
315 Plymouth Court  
Chicago, IL 60604

OFFENSES: Rape, Aggravated Battery

JUDGMENT: Finding of Guilty

DATE OF JUDGMENT OR SENTENCE: December 3, 2014 ✓

LENGTH OF SENTENCE: 40 years

NATURE OF ORDER APPEALED: Dismissal of post-conviction petition

Respectfully submitted,  
KATIE ANDERSON

By: *[Signature]*  
One of Appellant's Attorneys



No. 15-0198  
IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

v.

MAURICE DUNN,

Defendant-Appellant.

Appeal from the Circuit Court of  
Cook County, Illinois

Circuit Court No. 79 CR 4915

The Honorable Paul P. Biebel, Jr,  
Judge Presiding

FILED  
2019 AUG -2 PM 3:27  
CLERK OF THE  
CIRCUIT COURT  
CRIMINAL DIVISION

**ORDER**

This cause coming before this Court on Motion of MAURICE DUNN, Defendant-Appellant, all parties having been notified, and the Court being fully advised of the premises.

**IT IS HEREBY ORDERED** that Defendant-Appellant's motion for an extension of time up to and including September 19, 2019 to file the record on appeal and for the Circuit Court of Cook County to prepare and e-file the record on appeal is hereby

GRANTED / ~~DENIED~~.

*Final, no further extensions*

**ORDERED & ENTERED:**

*J. Smith*  
\_\_\_\_\_  
JUSTICE

Date: \_\_\_\_\_

J. Damian Ortiz  
The John Marshall Law School  
Pro Bono Program  
315 S. Plymouth Ct.  
Chicago, IL 60604  
(312) 427-2737 ext. 477

**ORDER ENTERED**

JUL 30 2019

APPELLATE COURT FIRST DISTRICT

APPEAL TO THE APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT  
FROM THE CIRCUIT COURT OF THE COOK JUDICIAL CIRCUIT  
COOK COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS

Plaintiff/Petitioner

Reviewing Court No: 1-15-0198

Circuit Court No: 1979C00491501

Trial Judge: THOMAS J. BYRNE

v.

MAURICE DUNN

Defendant/Respondent

E-FILED  
Transaction ID: 1-15-0198  
File Date: 9/19/2019 10:06 AM  
Thomas D. Palella  
Clerk of the Appellate Court  
APPELLATE COURT 1ST DISTRICT

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09/18/2019	<u>ROPPREPARED980284</u>	R 782-R 826

APPEAL TO THE APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT  
FROM THE CIRCUIT COURT OF THE COOK JUDICIAL CIRCUIT  
COOK COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS

Plaintiff/Petitioner

Reviewing Court No: 1-15-0198

Circuit Court No: 1979C00491501

Trial Judge: THOMAS J. BYRNE

v.

MAURICE DUNN

Defendant/Respondent

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CHICAGO, ILLINOIS 60602

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FIRST JUDICIAL DISTRICT  
FROM THE CIRCUIT COURT OF THE COOK JUDICIAL CIRCUIT  
COOK COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS

Plaintiff/Petitioner

Reviewing Court No: 1-15-0198

Circuit Court No: 1979C00491501

Trial Judge: THOMAS J. BYRNE

v.

MAURICE DUNN

Defendant/Respondent

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