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## Appellate court ruling opens door on voluntary guilty pleas, innocence

The National Registry of Exonerations recently released a report on false convictions in the United States since 1989. The numbers are jaw-dropping. The 2,265 exonerates in its database served a combined 20,080 years behind bars.

Faced with these staggering numbers, courts have become increasingly involved with convicted defendants' claims of actual innocence.

A recent case from the 1st District Illinois Appellate Court presented an actual innocence claim in what the court characterized as a "unique situation." Here the defendant was never tried for the underlying offenses. Instead, he entered what he conceded to be a voluntary guilty plea. The issue then was whether a voluntary guilty plea should preclude a post-conviction claim of actual innocence. *People v Germaine Shaw*, 2018 IL App (1st) 152994 (decided Sept. 28, 2018).

Germaine Shaw was charged with home invasion and aggravated criminal sexual assault against a victim identified only as M.J. The victim identified Shaw at a lineup and he later confessed and signed a written confession. In 2002, he was sentenced to a total of 34 years imprisonment.

Eleven years later, in 2013, Shaw filed a post-conviction petition alleging actual innocence. He attached a notarized affidavit from a person named Coe. Coe averred that several days after the home invasion he spoke with M.J., who was a friend of his grandmother.

She told him that her attacker was a man named Benjamin whom she had previously employed as a handyman. Coe stated that M.J. told him that the police had coerced her into picking Shaw out of the lineup. She said she felt sorry for Shaw, but that her family pressured her not to correct the mistake. Coe said after many years he decided to come forward in order to correct an injustice.

The Cook County Circuit Court granted the state's motion to dismiss the petition, finding that the

claim both was untimely and, in any event, had been waived by Shaw's conceded voluntary guilty plea. On appeal, Shaw alleged only that the court erred by dismissing the petition where he had made a substantial showing of actual innocence.

The 1st District begins by distinguishing between two different forms of actual innocence: the so-called "free-standing claim" of actual innocence in which innocence is the sole basis for relief, as opposed to the "gateway claim" in which innocence is only used as a pathway to get to an underlying constitutional issue. The U.S. Supreme Court only recognizes innocence in the latter sense, as a "gateway" to other claims.

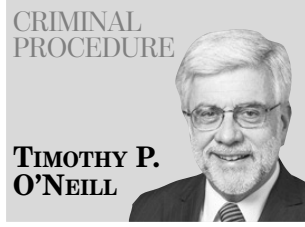
Illinois, however, goes beyond this crabbed interpretation. Over two decades ago, the Illinois Supreme Court held that a determination that an innocent person has been wrongfully convicted is a violation of both substantive and procedural due process under the Illinois Constitution. *People v Washington*, 171 Ill.2d 475 (1996).

Yet the 1st District noted that Illinois courts (as well as courts in other states) have "struggled with whether to recognize, and how to evaluate, such claims of actual innocence after a defendant has

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pleaded guilty." Illinois appellate decisions "have expressed doubt" on the issue, although no decision has categorically barred such a claim. The Illinois Supreme Court has not addressed the issue.

Shaw cites appellate decisions from five states rejecting the possibility that a person who has voluntarily pleaded guilty could later assert a claim of actual innocence. Other state courts, however, have emphasized that a defendant may choose to plead guilty for a variety of reasons unrelated to actual guilt.



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For example, the proffered deal may simply be too good to pass up, even for someone not guilty. And, as one court noted, holding a person in prison who has committed no crime would seem to be the quintessential violation of substantive due process.

After considering the cases on each side of the issue, the 1st District decided that a person who has made a voluntary guilty plea should not be precluded from raising a free-standing actual innocence claim in Illinois. Holding otherwise would be a violation of both procedural and substantive due process under the Illinois Constitution.

Shaw agreed with those courts that have held that the decision to enter a guilty plea can often be the result of a defendant engaging in a cost-benefit analysis that takes into account the uncertainty of the trial process as well as the possibility of a harsher sentence.

Yet simply allowing a person who has pleaded guilty to bring a claim of actual innocence does not end the court's analysis. Shaw then addressed the issue of what the standard of proof should be for a person asserting such a claim.

In the usual case of an Illinois petitioner who was convicted after trial who is now asserting "actual innocence," the petitioner must show that the exculpatory evidence is newly discovered; that the evidence is material and not merely cumulative; and that it is of such conclusive character that it would probably change the result on retrial. And the burden is on the petitioner to prove these elements by a preponderance of the evidence.

Shaw establishes a trade-off. If actual innocence is being claimed by a person who made a voluntary guilty plea, the court will require more from the petitioner in the way of proof than it requires from someone who went to trial. Shaw requires the petitioner who pleaded guilty to present a "truly persuasive demonstration of innocence" in the form of "compelling evidence."

It also increases his burden of proof from "preponderance" to "clear and convincing evidence." "Clear and convincing" has been defined as a standard more stringent than "preponderance" while not quite approaching proof "beyond a reasonable doubt."

Applying these principles, the court then held that Shaw did not meet this stringent burden. It characterized the affidavit as coming from a noneyewitness describing a conversation that occurred more than 13 years before he tendered his affidavit.

Moreover, the evidence presented was neither scientific evidence, physical evidence, nor an eyewitness account. The 1st District thus concluded that the affidavit did not contain "compelling evidence" that presented a "truly persuasive demonstration of innocence." Shaw thus affirmed the circuit court's dismissal of the petition.

Shaw's ultimate failure to obtain relief should not obscure the importance of this decision.

The 1st District has made it clear that the existence of a guilty plea will not preclude a prisoner from asserting a claim of actual innocence in Illinois.

Shaw is an important step in the war against wrongful convictions.