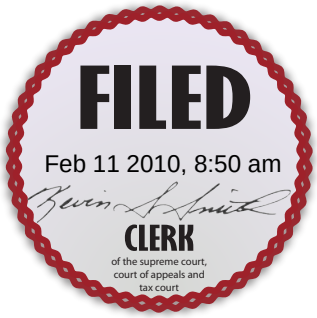

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IN THE
COURT OF APPEALS OF INDIANA

ROBERT HOLT,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0908-PC-804
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Mark Stoner, Judge
Cause No. 49G06-0408-PC-139320

February 11, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Robert L. Holt appeals the denial of his amended petition for post-conviction relief.

We affirm.

ISSUE

Whether the post-conviction court erred in denying Holt's amended petition for post-conviction relief.

FACTS

The pertinent facts underlying Holt's amended petition for post-conviction relief were described as follows in our memorandum opinion on his direct appeal:

> On June 28, 2004, S.T., who was thirteen years old at the time, flirted with Holt, who was thirty-five years old, at a gas station in Indianapolis. S.T. gave Holt her phone number, and he called her on July 20, 2004, to tell her that he was on his way to her house. After a short visit, Holt left, but returned a couple of hours later. During that second visit, S.T., Holt, and S.T.'s little sister were sitting in Holt's car when another car pulled up and parked in front of Holt's car. Some men got out of the other car and, when Holt got out of his car, the men fired guns at Holt. Holt sustained three gunshot wounds and was treated at a local hospital.
>
> On July 28, 2004, Holt picked up S.T. in his car, and she lied and told him that she was fifteen years old. Holt lied and told S.T. that he was nineteen years old. They went to S.T.'s house, where only S.T.'s twin sister was present, and S.T. and Holt went upstairs to a bedroom. Holt performed oral sex on S.T. and then had sexual intercourse with her. A few days later, Holt returned to visit S.T., but she had learned that Holt had lied about his name and age. Holt left S.T.'s house after a confrontation.
>
> The State charged Holt with two counts of child molesting, as Class A felonies, and two counts of attempted sexual misconduct with a minor, as Class B felonies. In addition, the State alleged that Holt was a repeat sexual offender and an habitual offender. On the first day of trial, the State

> filed a motion to amend the charging information by interlineations to change the word "fourteen (14)" to "sixteen (16)" due to a clerical error. The trial court granted that motion over Holt's objection. The jury found Holt not guilty of the two child molesting counts but guilty of the two attempted sexual misconduct with a minor counts. Holt waived a jury trial on the repeat sexual offender and habitual offender counts, and the trial court adjudicated him on both counts.
>
> At sentencing, the trial court . . . impos[ed] concurrent twenty-year sentences for the two Class B felony convictions in this case, enhanced by thirty years for the habitual offender adjudication, for a total sentence of fifty years.

Holt v. State, Cause No. 49A05-0508-CR-482, slip op. at 2-4 (Ind. Ct. App. September 29, 2006). Subsequently, Holt filed a direct appeal to this court, wherein he argued, *inter alia*, insufficiency of the evidence; on September 29, 2006, we affirmed the trial court in all respects. *See id.* On October 4, 2006, Holt filed a petition for transfer to our supreme court, which was denied on November 14, 2006. On September 21, 2007, he filed a *pro se* petition for post-conviction relief, which he amended on February 26, 2009. On May 14, 2009, the post-conviction court conducted an evidentiary hearing on Holt's challenge to the sufficiency of the evidence; on July 1, 2009, it issued findings of fact and conclusions of law, denying Holt's amended petition for post-conviction relief.

DECISION

Holt argues that the post-conviction court committed clear error in denying his amended petition for post-conviction relief because the evidence presented at trial was insufficient to sustain his convictions. The State counters that *res judicata* operates to bar

our consideration of Holt's sufficiency challenge because he has already unsuccessfully raised that claim on direct appeal.[1]

> *Res judicata* prevents the repetitious litigation of disputes that are essentially the same. The doctrine of *res judicata* is divided into two branches: claim preclusion and issue preclusion. Claim preclusion applies where a final judgment on the merits has been rendered and acts as a complete bar to a subsequent action on the same issue or claim between those parties and their privies.
>
> 'In order for a claim to be precluded under the doctrine of res judicata, the following four requirements must be satisfied: (1) the former judgment must have been rendered by a court of competent jurisdiction; (2) the former judgment must have been rendered on the merits; (3) the matter now in issue was, or could have been, determined in the prior action; and (4) the controversy adjudicated in the former action must have been between the parties to the present suit or their privies.'

Wright v. State, 881 N.E.2d 1018, 1021 (Ind. Ct. App. 2008) (quoting *Afolabi v. Atlantic Mortg. & Investment Corp*., 849 N.E.2d 1170, 1173 (Ind. Ct. App. 2006)). "A court has the power to revisit prior decisions of its own . . . in any circumstance, although as a rule courts should be loath[ ] to do so in the absence of extraordinary circumstances such as where the initial decision was clearly erroneous and would work manifest injustice." *Leatherwood v. State*, 880 N.E.2d 315, 319 (Ind. Ct. App. 2008).

Holt argues that in light of *Aplin v. State*, 889 N.E.2d 882 (Ind. App. 2008), and *Gibbs v. State*, 898 N.E.2d 1240 (Ind. Ct. App. 2008), fundamental fairness requires us to revisit our prior decision. Specifically, he contends that because his victim was thirteen years old, and, therefore, "was not between the ages of fourteen (14) and sixteen (16) as

[1] The State also argues that the doctrine of the law of the case operates to bar our consideration of Holt's sufficiency claim. The doctrine of the law of the case provides that "an appellate court's determination of a legal issue binds the trial court and ordinarily restricts the court on appeal in any subsequent appeal involving the same case and relevantly similar facts." *Hopkins v. State*, 782 N.E.2d 988, 990 (Ind. 2003).

required by [Indiana Code section] 35-42-4-9," *Aplin* and *Gibbs* require us to find that the evidence was insufficient to sustain his convictions. Holt's Br. at 8. We disagree.

Holt's reliance upon *Aplin* and *Gibbs* is misplaced. Those cases involved adult police detectives who posed as underage girls in on-line chat rooms. Adult male defendants Aplin and Gibbs had arranged to meet with the "girls" for sexual encounters and were arrested when they went to the designated meeting locations. Aplin and Gibbs were later convicted of various sex offenses, including attempted sexual misconduct with a minor. In overturning their convictions, we concluded that attempted sexual misconduct of a minor requires that the intended victim be a minor. *Gibbs*, 898 N.E.2d at 1244 (citing *Aplin*, 889 N.E.2d at 884). Thus, we concluded that because the intended victims had, in fact, been adults, the State had not presented sufficient evidence to sustain the convictions. Here, it is undisputed that Holt's victim was a minor; thus, we are not persuaded that *Aplin* and *Gibbs* have meaningful implications for the instant case such that we would feel compelled to revisit our previous decision.

The facts reveal that Holt unsuccessfully raised sufficiency of the evidence on direct appeal, and subsequently, raised it again at the post-conviction level. Generally, when a reviewing court decides a claim on direct appeal, the doctrine of *res judicata* applies, thereby precluding its review in post-conviction proceedings. *Ben-Yisrayl v. State*, 738 N.E.2d 253, 258 (Ind. 2000). *See Overstreet v. State*, 877 N.E.2d 144, 150 n.2 (Ind. 2007) ("Although differently designated, an issue previously considered and determined in a defendant's direct appeal is barred for post-conviction review on grounds

of prior adjudication."). *See also Loveless v. State*, 896 N.E .2d 918, 920 (Ind. Ct. App. 2008) ("If [an issue] was raised on appeal, and decided adversely, it is *res judicata*.").

Res judicata bars our consideration of Holt's sufficiency challenge; moreover, because he has not demonstrated that our prior decision "was clearly erroneous and would work manifest injustice," or that "extraordinary circumstances" otherwise existed, we decline to revisit it. *Leatherwood*, 880 N.E.2d at 319.

Affirmed.

KIRSCH, J., and MAY, J., concur.