

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Elijah Roberson,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

December 28, 2020  
Court of Appeals Case No.  
20A-CR-1666  
Appeal from the Lake Superior  
Court  
The Honorable Samuel L. Capps,  
Judge  
The Honorable Natalie Bokota,  
Magistrate  
Trial Court Cause No.  
45G04-0912-FA-57

**Tavitas, Judge.**

## Case Summary

- [1] Elijah Roberson appeals from the summary denial of his second petition for post-conviction relief (“PCR”). We affirm.

### Issue

- [2] The sole issue on appeal is whether the trial court properly denied Roberson’s second petition for PCR as an unauthorized successive petition for PCR.

### Facts

- [3] Pursuant to a guilty plea, Roberson was convicted of child molesting, a Class A felony, on November 13, 2010. On September 13, 2011, this Court affirmed Roberson’s sentence. *Roberson v. State*, 45A03-1011-CR-564, slip. op. p. 2 (Ind. Ct. App. June 24, 2011). On October 4, 2011, Roberson, pro se, filed a petition for PCR, which was subsequently amended. On May 21, 2012, a post-conviction court granted Roberson’s amended petition for PCR.<sup>1</sup>
- [4] On August 27, 2013, and August 7, 2015, respectively, Roberson filed motions for leave to file successive petitions for PCR with this Court. This Court denied both motions. *Roberson v. State*, No. 45A04-1308-SP-00442; *Roberson v. State*, No. 45A03-1508-SP-01100. On July 6, 2020, Roberson filed a second petition

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<sup>1</sup> Roberson’s Appendix does not include the post-conviction court’s order granting PCR; however, the record includes a joint motion in which Roberson and the State sought the grant of Roberson’s amended petition for PCR. In pertinent part, the joint motion provides: “The State agrees that the Credit Restricted Felon Statute was erroneously applied to Roberson’s case and relief should be granted.” Roberson’s App. Vol. II p. 48.

for PCR before the trial court. On July 10, 2020, the trial court summarily denied the petition for PCR on the following grounds: “[Roberson] has previously litigated a petition for [PCR]. Therefore, [Roberson] must seek permission to file a successive petition for [PCR] from the Indiana Court of Appeals if he wishes to further challenge his conviction or sentence.”

Roberson’s App. Vol. II p. 30. Roberson filed a motion to correct error on August 13, 2020, which was denied. Roberson now appeals.

### **Analysis**

[5] Roberson’s challenge to the trial court’s summary denial of his second petition for PCR is unavailing. “The Court’s rules permit a person convicted of a crime in an Indiana state court to challenge the conviction and sentence collaterally in a post-conviction proceeding.” *Wrinkles v. State*, 776 N.E.2d 905, 907 (Ind. 2002); Ind. Post-Conviction Rule 1. Indiana Post-Conviction Rule 1(12), specifying the procedure for requesting a second, or successive collateral review, provides that, before a petitioner may file a successive post-conviction relief petition, the petitioner must request and receive leave to pursue a successive petition from either this Court or the Indiana Supreme Court.

[6] When a trial court encounters an improper successive petition for post-conviction relief, it should dismiss the petition. *Love v. State*, 52 N.E.3d 937, 939-40 (Ind. Ct. App. 2016); *see also Young v. State*, 888 N.E.2d 1255, 1257 (Ind. 2008) (affirming the dismissal of an improper successive petition); *Azania v. State*, 738 N.E.2d 248, 250 (Ind. 2000) (“It was procedurally improper to file the

petition without authorization from this court. . . . The [trial court] is therefore directed to dismiss the [PCR petition].”). Here, Roberson previously litigated a petition for PCR and was, thus, required to follow the procedure outlined in Post-Conviction Rule 1(12) for filing a successive petition. *See Young*, 888 N.E.2d at 1257. After this Court denied Roberson’s request for authorization to bring successive petitions for PCR on August 27, 2013, and August 7, 2015, Roberson, nonetheless, filed a second petition for PCR on July 6, 2020. In response, the trial court properly summarily denied the petition as an unauthorized successive petition for PCR brought in violation of Post-Conviction Rule 1(12). We affirm the trial court’s judgment.

### **Conclusion**

[7] The trial court properly denied Roberson’s unauthorized successive petition for PCR. We affirm.

[8] Affirmed.

Bailey, J., and Robb, J., concur.