

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

Corey Bullock,
Appellant-Petitioner

v.

State of Indiana,
Appellee-Respondent

April 30, 2024

Court of Appeals Case No.
23A-PC-1906

Appeal from the Marion Superior Court
The Honorable Peggy Hart, Magistrate

Trial Court Cause No.
49D27-1909-PC-37635

Memorandum Decision by Judge Kenworthy
Judges May and Vaidik concur.

Kenworthy, Judge.

Case Summary

- [1] Corey Bullock appeals the trial court’s denial of his petition for post-conviction relief. He argues his trial counsel was ineffective for failing to ask the trial court to enter judgments of conviction on jury verdicts. We affirm.

Facts and Procedural History

- [2] In 2014, the infant daughter of Bullock’s girlfriend stopped breathing while in Bullock’s care. She was taken to the hospital where tests showed she had suffered severe brain and bodily injuries. She later died of blunt-force injury to the head. The State charged Bullock with Count 1: murder; Count 2: aggravated battery; and Count 3: neglect of a dependent. At trial, the jury returned guilty verdicts on Counts 2 and 3 but was unable to reach a verdict on Count 1. The trial court declared a mistrial. It did not enter judgments of conviction on Counts 2 and 3, and neither party asked the trial court to do so. But two Chronological Case Summary entries using the word “judgment” suggested it had.
- [3] The State planned to retry Bullock on Count 1. Bullock’s counsel then moved to dismiss. She argued Bullock was convicted of a lesser included offense under Count 2, so double jeopardy principles barred retrial on Count 1. In response, the State argued retrial would not present a double-jeopardy problem because the trial court had not yet entered judgment of conviction on Count 2.

- [4] The trial court held a hearing on the motion to dismiss. Counsel argued whether judgments of conviction had been entered and how to proceed if they had not. The trial court stated: “It’s my normal practice to enter judgment of conviction at sentencing.” *Prior Case Tr. Vol. 2* at 86. Later, the trial court reiterated: “Our judgments of conviction usually go at sentencing.” *Id.* at 89.
- [5] In a written order, the trial court denied the motion to dismiss. The trial court found it had not entered judgments of conviction on Counts 2 and 3. It also stated “without exception” it enters judgment of conviction at sentencing rather than when the jury returns a verdict. *Prior Case Appellant’s App. Vol. 2* at 214 n.1. Citing *Cleary v. State*, 23 N.E.3d 664 (Ind. 2015), the trial court determined it was not required to enter judgments of conviction on lesser offenses when a jury is hung on greater charges. The trial court concluded: “Perhaps judgment of conviction could be entered on the two counts [for which] verdicts [were] rendered. However, given the charges as drafted, the evidence presented, and the arguments heard, prudence suggests that this Court not enter judgment on Counts [2] and [3].” *Id.* at 216. Because judgments were not entered, the State was allowed to retry Bullock on all three counts.
- [6] On retrial, Bullock waived his right to a jury. The trial court found Bullock guilty of Counts 1 and 3 and not guilty of Count 2. The trial court imposed concurrent sentences of fifty years on Count 1 and 545 days on Count 3.
- [7] On direct appeal, a panel of this Court affirmed Bullock’s convictions. *See Bullock v. State*, 106 N.E.3d 531 (Ind. Ct. App. 2018), *trans. denied*. The panel

acknowledged the State would have been barred from retrying Bullock if the trial court had entered judgments of conviction on Counts 2 and 3. *Id.* at 536. But because the trial court did not, the State was free to retry Bullock. *Id.*

[8] In 2019, Bullock petitioned for post-conviction relief. He alleged his trial counsel was ineffective by failing to ask the trial court to enter judgments of conviction on the jury verdicts.¹ He argued he suffered prejudice because his maximum sentence would have been thirty-two years if convicted of Counts 2 and 3, rather than the fifty years he received under Count 1 after retrial.

[9] Following a hearing, the post-conviction court found Bullock failed to establish ineffective assistance of trial counsel. According to the court’s order, the failure to file a motion for judgment on the verdicts “was not substandard performance on the part of Bullock’s trial counsel. Further, there is no evidence that [the] trial court would necessarily have granted the motion given its ruling on the subsequent defense motion to dismiss.” *Appellant’s App. Vol. 2* at 76.

Bullock failed to establish ineffective assistance of counsel.

[10] “A petitioner who has been denied post-conviction relief appeals from a negative judgment[.]” *McCary v. State*, 761 N.E.2d 389, 391 (Ind. 2002). Accordingly, he must convince us “the evidence as a whole leads unerringly

¹ Bullock raised two other arguments, but the post-conviction court found they were waived. Bullock does not raise them on appeal.

and unmistakably to a decision opposite that reached by the post-conviction court.” *Id.*

[11] An ineffective assistance of counsel claim must satisfy the two components set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *McCary*, 761 N.E.2d at 392. First, the defendant must show deficient performance, which is representation falling below an objective standard of reasonableness or involving errors so serious the defendant did not have the “counsel” guaranteed by the Sixth Amendment. *Id.* “Second, the defendant must show prejudice: a reasonable probability . . . that, but for counsel’s errors, the result of the proceeding would have been different.” *Id.* A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Id.* “The two prongs of the *Strickland* test are separate and independent inquiries.” *Timberlake v. State*, 753 N.E.2d 591, 603 (Ind. 2001). If it is easier to dispose of an ineffectiveness claim because there is a lack of sufficient prejudice, we should follow that course. *Id.*

[12] Bullock’s sole argument is the trial court could have entered judgments of conviction on the jury verdicts had his trial counsel asked the court to do so.² Yet the mere fact the trial court *could* have granted such a motion does not mean the trial court *would* have granted it. To prevail on an ineffective

² Bullock concedes the trial court was not mandated to enter judgments on Counts 2 and 3 when the jury deadlocked on Count 1. *See Cleary*, 23 N.E.3d at 668 (holding a jury verdict does not have the same legal effect as a judgment of conviction, and double jeopardy does not bar retrial when a jury enters a guilty verdict on lesser charges but hangs on greater charges).

assistance claim based on trial counsel's failure to file a motion, the petitioner must show the motion would have succeeded. *Talley v. State*, 51 N.E.3d 300, 303 (Ind. Ct. App. 2016), *trans. denied*.

[13] It is unlikely the trial court would have granted Bullock's motion even if it were made. The trial court stated "without exception" it entered judgments of conviction at sentencing. *Prior Case Appellant's App. Vol. 2* at 214 n.1. The trial court probably would not have changed its standard practice to prevent Bullock's retrial on a murder charge. In its order on the motion to dismiss, the trial court also contemplated "[p]erhaps judgment of conviction could be entered" on Counts 2 and 3 but declined to do so. *Id.* at 216. Because the trial court had already considered and decided whether to enter judgments of conviction on the jury verdicts, there is no reasonable probability the result of the proceedings would have been different if Bullock's counsel had so moved.

Conclusion

[14] Bullock failed to show he received ineffective assistance of trial counsel.

[15] Affirmed.

May, J., and Vaidik, J., concur.

ATTORNEY FOR APPELLANT

Russell W. Brown, Jr.
The Region Lawyers, Inc.
Merrillville, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Indiana Attorney General

George P. Sherman
Supervising Deputy Attorney General
Indianapolis, Indiana