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PRO SE APPELLANT:

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**IN THE
COURT OF APPEALS OF INDIANA**

KEVIN M. CARDWELL,
Appellant-Petitioner,

vs.

STATE OF INDIANA,
Appellee-Respondent.

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No. 34A02-0802-CR-128

APPEAL FROM THE HOWARD CIRCUIT COURT
The Honorable Lynn Murray, Judge
Cause No. 34C01-9201-CF-1

July 15, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary¹

After the trial court denied Kevin M. Cardwell's *pro se* "Motion for Change of Venue from Judge in Breach of Contract Proceedings" and "Motion to Correct Errors and Reconsideration on Breach of Contract," Cardwell, *pro se*, now appeals.² In this appeal, he challenges the validity of a 1993 guilty plea to child molesting as a Class B felony and the trial judge's refusal to recuse herself. Specifically, he alleges that there has been a "breach of contract" because he was not notified at the time of his guilty plea that his parental rights to his child could be terminated and that the trial judge was prejudiced against him. Because Cardwell's motions are essentially successive petitions for post-conviction relief, which he has not received permission to file, we dismiss.

Facts and Procedural History

On January 2, 1992, the State charged Cardwell with two counts of child molesting as a Class B felony for allegedly performing deviate sexual conduct on a three year old and a five year old between January and September 1991. The State later filed an information seeking to have Cardwell sentenced as a habitual offender and charged him with a third count of child molesting as a Class B felony. Pursuant to a plea agreement, Cardwell pled guilty to the second count of child molesting and the State agreed to dismiss the other two counts of child molesting along with the habitual offender

¹ We hereby grant Cardwell's Motion for Leave to File Belated Reply Brief.

² It is unclear what rulings Cardwell is now appealing. We have reviewed his Appellant Case Summary, in which he purports to appeal a "Judgment notwithstanding the verdict," a "Judgment (guilty plea)," and a dismissal order, all apparently issued on "1-25-08." Appellant Case Summary p. 1. Because the trial court's only notations in the Chronological Case Summary regarding January 25, 2008, pertain to it reaffirming an earlier denial of a breach of contract claim and a motion to change venue, we understand his appeal to pertain to these motions.

charge. Following a sentencing hearing, the trial court found the following aggravators: Cardwell is a repeat offender with two prior convictions for child molesting and aggravated offenses against children, and he has violated a term of his probation not to be alone with children. The court found Cardwell's guilty plea to be the only mitigating circumstance. Concluding that the aggravating circumstances far outweigh the mitigating circumstance, the court sentenced Cardwell to a term of twenty years.

Cardwell filed a *pro se* petition for post-conviction relief on December 18, 1995. An evidentiary hearing was held in March 2001, after which the court denied relief. Thereafter, Cardwell filed a *pro se* notice of appeal. This Court dismissed the appeal and denied Cardwell's request for rehearing and reconsideration. In addition to numerous documents filed since that time, on December 27, 2007, Cardwell filed a *pro se* "breach of contract" claim, motion to change venue, and motion for modification of sentence, all of which were denied. Consequently, Cardwell filed a *pro se* "Motion for Change of Venue from Judge in Breach of Contract Proceedings" and "Motion to Correct Errors and Reconsideration on Breach of Contract." On January 25, 2008, the trial court noted that these motions requested the same relief as the denied motions of December 27, 2007, and thereby reaffirmed those denials. Cardwell, *pro se*, now appeals.³

Discussion and Decision

³ Cardwell has submitted two Appendices for our review. We direct his attention to the Indiana Appellate Rules, which require for every Appendix a table of contents "specifically identify[ing] each item contained in the Appendix, including the item's date," Ind. Appellate Rule 50(C), documents to be arranged in a particular order, Ind. Appellate Rule 51(B), and pages to be "numbered at the bottom consecutively, without obscuring the Transcript page numbers, regardless of the number of volumes the Appendix requires," Ind. Appellate Rule 51(C). Cardwell's failure to adhere to these rules has hindered our review on appeal.

Cardwell purports to appeal the trial court’s denial of his “Motion for Change of Venue from Judge in Breach of Contract Proceedings” and “Motion to Correct Errors and Reconsideration on Breach of Contract.”⁴ He sets forth a “breach of contract” claim maintaining that he was not notified at the time of his guilty plea that his parental rights could be terminated. He also contends that the trial judge was prejudiced against him.

The Indiana Rules of Appellate Procedure provide a process by which a person convicted of a crime can directly appeal a conviction. *Bellamy v. State*, 765 N.E.2d 520, 521 (Ind. 2002). If unsuccessful on appeal, the person can file a petition for post-conviction relief if the claim falls within particular categories. *Id.*; *see* Ind. Post-Conviction Rule 1(1). If still unsuccessful, the Indiana Rules of Procedure for Post-Conviction Remedies provide a potential avenue through which a petitioner can file a successive petition for post-conviction relief; however, either this Court or the Supreme Court must grant permission for the petitioner to do so. *Members v. State*, 851 N.E.2d 979, 981 n.2 (Ind. Ct. App. 2006); *see* Ind. Post-Conviction Rule 1(12). If a petitioner files a successive petition for post-conviction relief without obtaining proper leave, the court must dismiss for lack of jurisdiction. *See State ex rel. Woodford v. Marion Superior Court*, 655 N.E.2d 63, 66 (Ind. 1995) (holding that the lower court’s dismissal

⁴ The State’s interpretation of Cardwell’s argument is that he is appealing the trial court’s order denying his motion for modification of sentence. To the extent that this is true, we agree with the State that Cardwell has failed to make a cogent argument in this regard and has therefore waived the issue on appeal. *See* Ind. Appellate Rule 46(A)(8)(a) (“The argument must contain the contentions of the appellant on the issues presented, supported by cogent reasoning.”); *Lyles v. State*, 834 N.E.2d 1035, 1050 (Ind. Ct. App. 2005) (holding that failure to develop a cogent argument waives the issue for appellate review), *trans. denied*. However, we note that in his Reply Brief, Cardwell claims that he is not appealing this ruling. Appellant’s Reply Br. p. 1.

of a successive post-conviction petition fully accorded with the law because leave had not been granted).

Cardwell's motions are substantively petitions for post-conviction relief. Because Cardwell's first petition for post-conviction relief has already been adjudicated, his only alternative is to file a successive petition for post-conviction relief comporting with Indiana Post-Conviction Rule 1(12). However, he has not obtained permission to file a successive petition for post-conviction relief, and we therefore lack jurisdiction.

Dismissed.

MAY, J., and MATHIAS, J., concur.