

## 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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Jason C. Burkett,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

December 20, 2021

Court of Appeals Case No.  
20A-PC-1570

Appeal from the Cass Circuit  
Court

The Honorable Stephen R. Kitts II,  
Judge

Trial Court Cause No.  
09C01-1903-PC-4

**Bailey, Judge.**

## Case Summary

- [1] Jason C. Burkett (“Burkett”), pro se, files a petition seeking a writ of mandamus remanding this case back to the post-conviction court on the grounds that it erred when it failed to conduct a hearing and/or summarily rule upon all of the issues Burkett raised in his successive petition for post-conviction relief (“PCR”) and the several amendments that appended additional allegations thereto. A motions panel of this Court granted, in part, the petition for a writ and reinstated Burkett’s appeal that previously had been dismissed without prejudice.
- [2] We dismiss Burkett’s appeal without prejudice because there has been no final judgment regarding his successive petition for PCR, and we are without jurisdiction to hear this interlocutory appeal. Furthermore, we reconsider the motions panel’s order granting a writ of mandamus, and we deny the same as inappropriate under the procedural circumstances of this case. We remand this matter to the post-conviction court with specific instructions to conduct further proceedings.

## Facts and Procedural History

- [3] Burkett was convicted of multiple felonies in 2004, and his convictions were affirmed in his direct appeal. *Burkett v. State*, No. 09A02-0410-CR-883, slip op. (Ind. Ct. App. March 28, 2005). Burkett subsequently filed a petition for PCR which was ultimately denied on appeal. *See Burkett v. State*, No. 09A02-1205-

PC-356, 2013 WL 150257 (Ind. Ct. App. Jan. 15, 2013) (“*Burkett II*”); *Burkett v. State*, No. 09A02-1404-PC-233, 2015 WL 575996 (Ind. Ct. App. Feb. 11, 2015) (“*Burkett III*”).

[4] In February of 2019, this Court granted Burkett’s request to file a successive PCR petition concerning allegations that the Indiana Department of Correction wrongfully denied him credit time for his completion of an approved vocational program, and Burkett filed that successive petition in the post-conviction court on March 19, 2019. Burkett subsequently filed three additional documents he entitled “amendments” to his successive PCR petition. App. v. II at 52, 83, 96. Each of those documents appended to the successive petition adds issues, including some issues already raised and finally determined against Burkett in his prior trial, appellate, and PCR proceedings. That is, each of the three alleged “amendments” to Burkett’s successive PCR petition did not restate the allegations in that petition, but instead added separate, additional allegations. Collectively, the successive petition and the three documents purported to be amendments constitute the operative pleading in this matter.

[5] In an order dated August 4, 2020, the post-conviction court addressed only the issues Burkett raised in his third “amendment” to his successive PCR petition, and the court denied Burkett relief on only those issues. On August 25, 2020, Burkett appealed the August 4 order. However, Burkett subsequently requested that this Court remand the case to the post-conviction court for an evidentiary hearing and findings on the unaddressed issues raised in his successive PCR petition and the other two “amendments” that added additional claims thereto.

On November 20, 2020, we granted Burkett’s motion, dismissed the appeal without prejudice, and remanded the matter to the post-conviction court “for further proceedings.” *Id.* at 191.

[6] On remand, Burkett filed a motion for partial summary judgment and requested a hearing on the same. On May 7, 2021, the post-conviction court denied, without a hearing, the motion for partial summary judgment due to the “existence of genuine issues of material fact.” *App. v. V* at 147. On May 20, 2021, Burkett filed requests for evidentiary hearings on his motion for partial summary and his successive petition for PCR, but no such hearings were held.

[7] On June 16, 2021, Burkett filed in this appellate court a Petition for a Writ of Mandamus. The petition asks that we issue a writ compelling the post-conviction court to comply with our November 20, 2020, order in which we remanded the matter so that the post-conviction court could address Burkett’s successive PCR petition and amendments thereto. On July 8, 2021, the motions panel of this Court issued an order in which it noted that, “[o]n further review, [it] determined there is nothing further for the trial court to do to prepare this matter for appeal.” *App. v. VI* at 63. The order “granted in part” the Petition for a Writ of Mandamus, reinstated the appeal that had been dismissed without prejudice on November 20, 2020, and ordered briefing. *Id.* Burkett filed a Motion to Reconsider the reinstatement of his appeal, which we denied.

## Discussion and Decision

[8] The post-conviction court has never ruled upon the remaining issues Burkett raised in his original successive petition for PCR and the series of additional documents appending additional claims thereto (i.e., what Burkett called “amendments” to the successive PCR petition). This Court has jurisdiction in all appeals from “final judgments” and certain interlocutory orders.<sup>1</sup> Ind. Appellate Rule 5(A), (B). Our applicable<sup>2</sup> appellate rule provides that a “judgment is a final judgment if ... it disposes of all claims as to all parties.” App. R. 2(H)(1). The post-conviction court has not disposed of all claims Burkett raised in his successive PCR petition and the first and second documents called “amendments” in which he raised additional post-conviction claims. Therefore, there has been no final judgment in this matter, and we are without jurisdiction. Burkett’s reinstated appeal is dismissed without prejudice.

[9] Furthermore, a writ of mandamus is not appropriate or necessary in this matter. This Court has authority to issue writs in aid of its appellate jurisdiction. App. R. 8; Ind. Original Action Rule 1(F). Such authority includes issuing a writ to enforce our decisions “where a trial court issues a ruling upon remand that is inconsistent with an appellate decision previously rendered in the same action.”

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<sup>1</sup> Appellate Rule 14 describes instances in which interlocutory orders may be appealed, none of which apply to this matter.

<sup>2</sup> Appellate Rule 2(H) provides additional definitions of a “final judgment” that are not applicable in this case.

*See KeyBank Nat. Ass'n v. Michael*, 770 N.E.2d 369, 374 (Ind. Ct. App. 2002) (citing *Tyson v. State*, 593 N.E.2d 175 (Ind. 1992)), *trans. denied*. However, even in such instances, a writ is the appropriate remedy “only in those comparatively few instances where it would serve the interest of judicial economy or serve to prevent an irreparable harm.” *Id.* Thus, a writ is not appropriate where the traditional procedural path would adequately resolve the matter. *See id.*

[10] Here, the post-conviction court has not issued a ruling that is inconsistent with our November 20, 2020, order; rather, the post-conviction court has not yet issued any ruling at all on the merits of Burkett’s successive PCR petition and the documents adding additional claims to that petition. We note that Burkett filed the instant petition for a writ of mandamus only a little over one month after the post-conviction court denied his motion for partial summary judgment and less than one month after he filed his request for a hearing on his successive PCR petition. There is no need in this case for the “extraordinary remedy of issuing a writ” when a remand to the post-conviction court with instructions will suffice. *Id.*

[11] We remand this matter to the post-conviction court with instructions that it issue a final ruling—either summarily or following a hearing<sup>3</sup>—on Burkett’s

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<sup>3</sup> We note that Burkett is not necessarily entitled to an evidentiary hearing on each of the remaining claims raised in his successive PCR petition and the related documents, as he asserts in his appellate brief. To the extent those pleadings conclusively show that Burkett is entitled to no relief, the post-conviction court may summarily deny them. *See* Ind. Post-Conviction Rule 1(4)(f). If a party moves for summary disposition under Post-Conviction Rule 1(4)(g) and it appears from the pleadings, depositions, answers to interrogatories, admissions, stipulations of fact, and any affidavits submitted that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law, the post-conviction court may rule upon such

successive PCR petition regarding credit time and his remaining purported amendments thereto.<sup>4</sup>

[12] Appeal dismissed without prejudice, petition for writ of mandamus denied, and matter remanded with instructions.

Mathias, J., and Altice, J., concur.

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pleadings without an evidentiary hearing. If, on the other hand, there is an issue of material fact, the post-conviction court must hold an evidentiary hearing. *See* P-C.R. 1(4)(g).

<sup>4</sup> It appears from our review of the record that most, if not all, the claims Burkett raised in his “amendments” to his successive PCR petition have either already been finally adjudicated and determined adversely to him or were ascertainable and available to him, but not raised, at the time of his trial, direct appeal, or prior PCR action. *See Burkett II*, 2013 WL 150257, at \*6 (deciding effectiveness of trial counsel adversely to Burkett in his first PCR appeal); *Burkett III*, No. 2015 WL 575996, at \*4 (deciding effectiveness of appellate counsel adversely to Burkett in his PCR appeal following remand). Of course, where the claims were already finally adjudicated adversely to Burkett, those claims are *res judicata* and may be summarily denied on that ground; and where the claims were previously ascertainable and available to Burkett but not raised, those claims are waived and may be summarily denied on that ground. *See e.g., Gibson v. State*, 133 N.E.3d 673, 681 (Ind. 2019) (noting, in post-conviction proceedings, “[i]ssues available on direct appeal but not raised are waived, while issues litigated adversely to the defendant are *res judicata*”).