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IN THE
COURT OF APPEALS OF INDIANA

A.C.,
Appellant-Petitioner,

v.

State of Indiana,
Appellee-Respondent.

December 19, 2022
Court of Appeals Case No.
22A-PC-1215
Appeal from the
Cass Circuit Court
The Honorable
Stephen R. Kitts II, Judge
Trial Court Cause No.
09C01-2106-PC-3

Foley, Judge.

[1] A.C. (“Petitioner”) was convicted of Level 6 felony assisting a criminal and was sentenced to time served and one day of probation to facilitate an alternative out-of-state placement as a victim of human trafficking. In June 2021, Petitioner filed a petition for post-conviction relief, seeking relief under the

Vacatur Statute, Indiana Code section 35-38-10-2. The post-conviction court denied the petition, and Petitioner appeals from that denial, arguing that the post-conviction court erred in denying her petition because she met the elements of the Vacatur Statute, and the post-conviction court did not have discretion to deny her petition as a matter of public policy. Because we find that the post-conviction court erred in denying Petitioner's petition for post-conviction relief, we reverse and remand with instructions to vacate Petitioner's conviction pursuant to Indiana Code section 35-38-10-2.

Facts and Procedural History

- [2] When Petitioner was fifteen years old, she was in the foster care system. She met T.M. through social media and became the victim of sex trafficking by T.M. In December 2015, Petitioner and T.M. were involved in an FBI sting operation, in which T.M. was arrested and prosecuted for Level 3 felony promotion of human trafficking of a minor. After the sting operation, Petitioner was placed at Bashor Children's Home to receive treatment for her substance abuse and human trafficking abuse. When Petitioner completed her treatment program at Bashor, she was placed in a group home.
- [3] At the age of seventeen, Petitioner ran away from the group home and was staying with a friend when she met J.J., of whom Petitioner also became a victim of sex trafficking. Petitioner lived with J.J., J.J.'s sister, and the sister's boyfriend in an apartment in Indianapolis. J.J. carried a gun and threatened and hurt others, including Petitioner. During the months that Petitioner lived with J.J., he arranged for Petitioner, who was under eighteen at the time, to

meet and complete sex acts with men at least five times a day. J.J. kept the money from the transactions and provided Petitioner with cocaine and alcohol prior to every sex act.

[4] In June 2017, when Petitioner was seventeen years old, J.J. negotiated with B.R. for Petitioner to perform sex acts with B.R. in Logansport, Indiana. J.J. and a friend of his drove Petitioner to B.R.'s home, but when Petitioner approached the home, she found that there were other men there, which was not part of the negotiation, and B.R. told her that he had no cash to pay her. Instead of performing any sex acts, Petitioner walked back to J.J.'s vehicle, and B.R. followed her. J.J. was angry, and he exited his vehicle and robbed B.R. of his wallet at gunpoint. At the time, Petitioner was under the influence of cocaine and alcohol and was frantic.

[5] J.J. and Petitioner left and headed to a gas station. At the gas station, J.J. handed Petitioner a credit card to buy gas. When Petitioner tried to use the card, it was declined, and she returned the card to J.J. They then returned to Indianapolis. Petitioner later learned that the credit card she attempted to use belonged to B.R. Sometime after this, J.J. had his two sisters beat up Petitioner, which caused injuries to Petitioner's face. Petitioner ran away from J.J.'s home because she was scared of him. After running away from J.J.'s home, Petitioner called DCS, and she was placed at an adolescent treatment program for substance abuse treatment.

[6] The State charged Petitioner with Level 3 felony attempted armed robbery and Level 3 felony conspiracy to commit armed robbery in June 2017 for what transpired with B.R. Although Petitioner was a juvenile, she was arrested, charged as an adult, and held in the Cass County Jail. While the case was pending, Petitioner was identified as a victim of human trafficking by a Special Agent with the Department of Homeland Security. In March 2018, Petitioner, who was eighteen years old at the time, pleaded guilty to Level 6 felony assisting a criminal in exchange for dismissal of the pending Level 3 felony charges. At sentencing, the trial court received testimony about placement options for Petitioner to receive treatment as a victim of human trafficking. The trial court sentenced Petitioner to 460 days, with 458 days as time served, and one day of probation. Petitioner was then released to the Kristy Love Foundation in Louisville, Kentucky, a survivor-based rehabilitation program and group home for victims of human trafficking.

[7] On June 15, 2021, Petitioner filed a petition for post-conviction relief seeking to have her Level 6 felony assisting a criminal conviction vacated under Indiana Code section 35-38-10-2. At the post-conviction relief hearing, the post-conviction court heard testimony from Petitioner about her history of being a victim of human trafficking and the circumstances of the underlying offense. She testified that she was a minor and under the influence of cocaine and alcohol when J.J. drove her to meet with and perform sex acts with B.R. She explained that, at the time of the offense, she was living with J.J., who would arrange for her to meet and have sex with five different men on average each

day and that he would regularly provide her with drugs and alcohol, and she would typically be under the influence of drugs and alcohol during each sexual encounter. Further, Petitioner testified that J.J. would keep all the money from these sexual transactions and that J.J. owned a gun and would threaten and abuse her while she lived with him.

[8] At the post-conviction relief hearing, Katherine Kimmer, the Director of Anti-Trafficking Initiatives at the Indiana Coalition to End Sexual Assault and Human Trafficking, testified as an expert in the field of human trafficking. She testified that it was particularly important to connect Petitioner with the appropriate resources and services upon her release to prevent further victimization of Petitioner especially because Petitioner had already been identified by the federal government as a child victim of human trafficking. Kimmer testified that most of the children that are victims of human trafficking come from the foster care system or the juvenile justice system where they are deprived of a safe family and safe environment and that they search for these needs in unsafe spaces and places.

[9] The post-conviction court denied Petitioner's petition for post-conviction relief. Petitioner now appeals.

Discussion and Decision

[10] Petitioner argues that the post-conviction court erred when it denied her petition for post-conviction relief. Post-conviction proceedings are civil in nature, and petitioners bear the burden of proving their grounds for relief by a

preponderance of the evidence. Ind. Post-Conviction Rule 1(5). When a petitioner appeals from the denial of post-conviction relief, the petitioner stands in the position of one appealing from a negative judgment. *Edmonson v. State*, 87 N.E.3d 534, 537 (Ind. Ct. App. 2017). “To prevail on appeal from the denial of post-conviction relief, the petitioner must show the evidence leads ‘unerringly and unmistakably to a conclusion opposite that reached by the post-conviction court.’” *Id.* (quoting *Humphrey v. State*, 73 N.E.3d 677, 681 (Ind. 2017)). “We do not defer to the post-conviction court’s legal conclusions, but ‘a post-conviction court’s findings and judgment will be reversed only upon a showing of clear error—that which leaves us with a definite and firm conviction that a mistake has been made.’” *Id.* (quoting *Humphrey*, 73 N.E.3d at 682).

[11] In filing her petition for post-conviction relief, Petitioner sought relief under Indiana’s Vacatur State, Indiana Code section 35-38-10-2. That statute states:

A person who committed an offense that did not result in bodily injury to another person is entitled to have the person’s conviction vacated if the person proves by a preponderance of the evidence that:

- (1) the person was a trafficked person at the time the person committed the offense;
- (2) the offense did not result in bodily injury to another person; and
- (3) at the time the person committed the offense, the person was:

(A) coerced; or

(B) under the control of;

another person.

Ind. Code § 35-38-10-2. A “trafficked person” is a person who was the victim of human trafficking, regardless of whether the person who committed the human trafficking offense was charged, tried, or convicted. I.C. § 35-38-10-1.

Under statute, “coercion” means, but is not limited to a person:

(1) causing or threatening to cause physical harm to a human trafficking victim;

....

(5) using blackmail or threatening to cause financial harm for the purpose of exercising financial control over the human trafficking victim; or

(6) facilitating or controlling a human trafficking victim’s access to a controlled substance.

I.C. § 35-42-3.5-0.5(b)(1), (5), (6).

[12] Accordingly, in order to have her conviction for Level 6 felony assisting a criminal vacated under the Vacatur Statute, Petitioner was required to prove that she was a trafficked person at the time she committed the offense, that the offense did not result in any bodily injury to another person, and that at the time she committed the offense, Petitioner was coerced or under the control of

another person. During the post-conviction proceedings, the parties agreed that Petitioner was a seventeen-year-old trafficked person at the time of the offense and that the offense did not result in bodily harm to another person.¹ Therefore, the only prong of the Vacatur Statute that was in dispute at the post-conviction relief hearing was whether Petitioner was coerced or under the control of another person at the time she committed the underlying offense.

[13] The post-conviction court asserts two separate reasons for denying the petition. First, the court determined “[w]hether [Petitioner] qualifies for vacatur or expungement under any particular statute is irrelevant,” that it did not need to decide the case based on the Vacatur Statute, and that the “entire proceeding was unnecessary.” Appellant’s Conf. App. Vol. II pp. 13–14. Instead, the post-conviction court determined that Petitioner was entitled to a reduction of her Level 6 felony conviction to a misdemeanor under Indiana Code section 35-50-2-7. Under that statute, a Level 6 felony conviction can be converted to Class A misdemeanor conviction if a person files a petition, and the trial court makes particular findings. I.C. § 35-50-2-7(d). Reducing a felony conviction to a misdemeanor is not the same as vacating a criminal conviction, and it was not the relief sought by Petitioner. Petitioner specifically sought to have her prior conviction vacated under the Vacatur Statute and at no time pleaded or

¹ Although the State conceded during the post-conviction proceedings that Petitioner had met the first prong of the Vacatur Statute and that Petitioner was a trafficked person at the time she committed the offense, the post-conviction court stated, in its order, that “[w]hile the [c]ourt has *serious* reservations about Petitioner’s claim with respect to the first prong, the *State* has conceded it, and, therefore, the [c]ourt shall not analyze it.” Appellant’s Conf. App. Vol. II p. 9 (emphasis in original).

requested relief under I.C. § 35-50-2-7(d). It is not relevant whether Petitioner may have been entitled to some form of alternate relief. The court must resolve the petition before it.

[14] In enacting the Vacatur Statute, the General Assembly determined that a trafficked person who meets the statutory elements should be entitled to have their conviction vacated. I.C. § 35-38-10-2. The relief is not discretionary if the statutory elements are met. *Id.* (trafficked person “is entitled to have” conviction vacated). The post-conviction court therefore did not have discretion to make a determination that the statute was “irrelevant” or that the proceedings were “unnecessary.” Appellant’s Conf. App. Vol. II p. 14. A determination on the necessity for and availability of this form of relief for trafficked individuals is not committed to the trial court. The post-conviction court erred by denying Petitioner’s petition on the basis that an alternate remedy existed.

[15] We now turn to the merits of Petitioner’s request for relief under the Vacatur Statute. At the hearing, Petitioner presented evidence that, at the time she committed the offense, she was: (1) a minor victim of human trafficking; (2) involved in a transaction to perform sex acts for money set up by J.J., who kept all of the money she earned; (3) under the influence of cocaine and alcohol given to her by J.J. daily and before she performed the sex acts; and (4) threatened by J.J., who was armed with a gun. This evidence was unrefuted by the State at the post-conviction hearing, and on appeal, the State concedes that Petitioner presented evidence to support that she was coerced or under the

control of another person when she committed the underlying offense, and that the post-conviction court's denial of her petition should be reversed.

[16] The post-conviction court further erred in its statement that, even though it did not decide the case under the Vacatur Statute, “[i]f the [c]ourt *were* going to base a decision on this statute, the [c]ourt’s position would be that she has not met her burden as a matter of public policy, because characterizing these circumstances as ‘coercion’ or ‘control,’ would be an insult to victims of coercion and control.” *Id.* at 13 (emphasis in original). The Vacatur Statute does not include a public policy exception. As we have already stated, there is no discretion, and if a petitioner presents evidence by a preponderance of the evidence on the three prongs, the petitioner “is entitled” to have the conviction vacated. *See* I.C. § 35-38-10-2. Here, Petitioner presented undisputed evidence at the post-conviction hearing to satisfy the three prongs of the Vacatur Statute, and the post-conviction court erred when it denied her petition for post-conviction relief.

[17] The post-conviction court stated in its order that finding Petitioner was under “coercion” or “control” at the time of the crime “would be an insult to victims of coercion and control.” There is no factual support for this finding. Petitioner’s testimony at the post-conviction hearing was uncontroverted. The post-conviction court’s order fails to provide any support for its conclusion that Petitioner was not truthful in her account or otherwise not credible. Petitioner clearly met her burden of proof under the Vacatur Statute and is entitled to the relief afforded by that statute.

[18] We, therefore, reverse the post-conviction court's denial of Petitioner's petition and remand with instructions to grant the relief sought by Petitioner and to vacate her conviction for Level 6 felony assisting a criminal.

[19] Reversed and remanded.

Robb, J., and Mathias, J., concur.