MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

William M. Roberts, Sr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 21, 2023

Court of Appeals Case No. 23A-PC-1979

Appeal from the Steuben Circuit Court

The Honorable Allen N. Wheat, Judge

Trial Court Cause No. 76C01-2010-PC-5

Memorandum Decision by Judge Mathias
Judges Riley and Crone concur.

Mathias, Judge.

[1] William M. Roberts, Sr. appeals the post-conviction court's denial of his petition for post-conviction relief. Roberts raises the following two issues for our review:

> 1. Whether the post-conviction court clearly erred when it concluded that Roberts did not receive ineffective assistance of trial counsel.
>
> 2. Whether the post-conviction court erred when it rejected Roberts's claim that his guilty plea was not made knowingly, intelligently, and voluntarily.

[2] We affirm.

Facts and Procedural History

[3] Between September 2008 and March 2009, Roberts lived with C.H. and C.H.'s two daughters, E.H. and M.H., in Steuben County. E.H. was seven years old and M.H. was five years old. During that time, Roberts repeatedly molested both girls by forcing them to perform oral sex on him.

[4] In August 2009, the State charged Roberts with two counts of Class A felony child molesting. Thereafter, both E.H. and M.H. separately testified in depositions to Roberts's molestations of them. They also each testified that they saw Roberts molest the other child. Roberts also submitted to a polygraph examination with a stipulation as to the admissibility in court of any results from that examination. The polygraph examiner determined that Roberts was being deceptive when Roberts denied molesting the girls.

[5] After the polygraph examination, Roberts admitted to the examiner that he had exposed his penis to E.H. and M.H. and that the girls had "put their mouths on his penis." Ex. Vol. 3, p. 134. Roberts then wrote purported apology letters to both of the girls. In those letters, Roberts apologized for "what [he] allowed [them] to do to [him]." *Id.* at 136.

[6] In January 2011, Roberts entered into a written plea agreement with the State. Pursuant to his plea agreement, Roberts agreed to plead guilty to one count of Class A felony child molesting. In exchange, the State agreed to dismiss the second count. The plea agreement provided that Roberts would be sentenced to a "term of imprisonment of THIRTY (30) YEARS suspended except TWENTY (20) YEARS," with the ten suspended years to be served on probation. *Id.* at 33. At Roberts's change-of-plea hearing, the court advised him of his rights and of the terms of his plea agreement. Roberts informed the court that he understood and that he wished to plead guilty in accordance with the plea agreement. Thereafter, the court accepted the plea agreement, entered judgment of conviction against Roberts, and sentenced him pursuant to the plea agreement.

[7] In February 2012, Roberts wrote a letter to the court and stated that his "original" plea agreement required the court to enter a thirty-year sentence with ten years executed, ten years suspended to probation or parole, and ten years suspended without supervision. *Id.* at 78. He stated that his current sentence will require more executed time than he thought he had agreed to serve, and he asked the court to revise his sentence accordingly. The court denied that

request. Over the next several years, Roberts wrote several similar requests to the court, with details frequently varying between his requests. The court repeatedly denied the requests.

[8] In October 2020, Roberts filed a petition for post-conviction relief, which he later amended. In his amended petition, Roberts alleged that his trial counsel had rendered ineffective assistance when she had failed to advise him that his conviction for Class A felony child molesting would result in him being a credit-restricted felon who would have to serve at least 85% of his executed time. He also alleged that his guilty plea was not knowingly, intelligently, and voluntarily entered into because he was unaware of the credit-restricted status that attached to his conviction.

[9] The post-conviction court held a fact-finding hearing on Roberts's amended petition. Roberts's trial counsel submitted an affidavit and stated that she did not recall any relevant details of Roberts's case due to the passage of time. Roberts testified that his trial counsel had never informed him of the credit-restricted status to which he would be assigned as a result of his conviction, and he further testified that, had he known that status, he would not have pleaded guilty.

[10] Following the fact-finding hearing, the post-conviction court entered findings of fact and conclusions of law and denied Roberts's petition for post-conviction relief. In relevant part, the court found and concluded that, had Roberts gone to trial, there was no "plausible" scenario in which Roberts "would have been

acquitted." Appellant's App. Vol. 2, p. 75. The court further found and concluded that, had Roberts been convicted of both Class A felony allegations, he would have faced a possible sentence of 100 years—which also would have been under the same credit-restricted status. Accordingly, the court concluded that Roberts had not suffered any prejudice from the lack of advisement or his lack of knowledge about the credit-restricted status that attached to his conviction, and the court denied his petition. This appeal ensued.

Standard of Review

[11] Roberts appeals the post-conviction court's denial of his petition for post-conviction relief. Our standard of review in such appeals is clear:

> "The petitioner in a post-conviction proceeding bears the burden of establishing grounds for relief by a preponderance of the evidence." *Campbell v. State*, 19 N.E.3d 271, 273-74 (Ind. 2014). "When appealing the denial of post-conviction relief, the petitioner stands in the position of one appealing from a negative judgment." *Id.* at 274. In order to prevail on an appeal from the denial of post-conviction relief, a petitioner must show that the evidence leads unerringly and unmistakably to a conclusion opposite that reached by the post-conviction court. *Weatherford v. State*, 619 N.E.2d 915, 917 (Ind. 1993). Further, the post-conviction court in this case entered findings of fact and conclusions of law in accordance with Indiana Post-Conviction Rule 1(6). Although we do not defer to the post-conviction court's legal conclusions, "[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." *Ben-Yisrayl v. State*, 729 N.E.2d 102, 106 (Ind. 2000) (internal quotation omitted).

Humphrey v. State, 73 N.E.3d 677, 681-82 (Ind. 2017).

Roberts's trial counsel did not render ineffective assistance.

[12] Roberts first contends that the post-conviction court erred when it found that he was not denied the effective assistance of trial counsel.

> When evaluating an ineffective assistance of counsel claim, we apply the two-part test articulated in *Strickland v. Washington*, 466 U.S. 668 (1984). *See Helton v. State*, 907 N.E.2d 1020, 1023 (Ind. 2009). To satisfy the first prong, "the defendant must show deficient performance: representation that fell below an objective standard of reasonableness, committing errors so serious that the defendant did not have the 'counsel' guaranteed by the Sixth Amendment." *McCary v. State*, 761 N.E.2d 389, 392 (Ind. 2002) (citing *Strickland*, 466 U.S. at 687-88). To satisfy the second prong, "the defendant must show prejudice: a reasonable probability (i.e.[,] a probability sufficient to undermine confidence in the outcome) that, but for counsel's errors, the result of the proceeding would have been different." *Id.* (citing *Strickland*, 466 U.S. at 694).

Id. Failure to satisfy either of the two prongs will cause the claim to fail. *French v. State*, 778 N.E.2d 816, 824 (Ind. 2002). Indeed, most ineffective assistance of counsel claims can be resolved by a prejudice inquiry alone. *Id.*

[13] Synthesizing precedent from the Supreme Court of the United States, our Supreme Court recently recognized that,

> in order to prove they would have rejected the guilty plea and insisted on trial, defendants must show some special circumstances that would have supported that decision. Defendants cannot simply say they would have gone to trial[;]

> they must establish rational reasons supporting why they would have made that decision.

Bobadilla v. State, 117 N.E.3d 1272, 1284 (Ind. 2019) (discussing *Hill v. Lockhart*, 474 U.S. 52 (1985)). That analysis requires a fact-specific review of a particular defendant's circumstances. *Id.* at 1286 (discussing *Lee v. United States*, 582 U.S. 357 (2017)). And, that review, in turn,

> instructs that even a defendant who faced slim chances of winning at trial can still show prejudice—i.e., that he would have rejected a plea and insisted on trial—where his particular circumstances show that it would have been rational for him to take a chance on a trial resulting in **possible** [consequences of special concern] over a guilty-plea resulting in **mandatory** [consequences of special concern].

Id. (bold font in original). However, again,

> defendants cannot establish prejudice in these situations by merely claiming, "Had I been advised correctly, I would have gone to trial." Defendants must produce evidence supporting such claims. Indeed, *Lee* tells us, "Courts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies. Judges should instead look to contemporaneous evidence to substantiate a defendant's expressed preferences."

Id. (quoting *Lee*, 582 U.S. at 369).

[14] Applying that precedent to this record, we cannot say that the post-conviction court clearly erred when it concluded that Roberts failed to show prejudice resulting from his trial counsel's apparent mis-advice or incorrect advice on the

credit-time classification to which Roberts was to be subjected following his guilty plea. First, it would not have been rational for Roberts to take a chance on trial to avoid the credit-time restriction. His chances at trial were not just slim; there was, as the post-conviction court aptly found, no plausible chance that Roberts would have been acquitted, which was the only outcome that would have avoided the credit-time restriction. Indeed, the State's evidence included not just the victims' consistent and corroborating testimonies, but Roberts's own admissions, apology letters, and failed polygraph results. It would have been emphatically *irrational* for Roberts, in those circumstances and with his apparent concern for the executed time he would actually serve, to reject this plea agreement and insist on trial.

[15] Second, Roberts has presented no evidence contemporaneous with his guilty plea to substantiate his purported preference either for a lesser credit-restriction (which would have been contrary to law) or for less time served. His written plea agreement and the trial court's advisements to him in accepting his plea made clear that he would serve twenty years executed. Credit time *might* reduce a given defendant's actual time served, but any such reduction is not guaranteed at the time a defendant pleads guilty or is otherwise convicted, and nothing in the plea colloquy demonstrates that Roberts had been mis-advised on that point.

[16] Still, Roberts asserts that there is contemporaneous evidence to substantiate his belief that he would serve less executed time. In particular, he first references a statement he made during his sentencing on his plea agreement, after the trial

court had accepted the agreement, in which he stated that he had changed his mind and wanted to withdraw his plea. But he did not say why, and there was no contemporaneous discussion of his credit time at that moment. The trial court interpreted Roberts's statement to be a protestation of innocence, which the court rejected as it had already accepted his plea. This does not support Roberts's contention on appeal.

[17] Roberts also cites his various letters to the court following his sentencing. The trial court sentenced Roberts on his guilty plea in May 2011. Roberts's first letter to the court was in February 2012, and he wrote various letters over the next several years. A letter nine months later, to say nothing of the later letters, is not contemporaneous evidence, and the post-conviction court was not obliged to rely on it.

[18] Accordingly, we cannot say the post-conviction court erred when it denied Roberts's allegation that he received ineffective assistance from his trial counsel.

Roberts entered into his guilty plea knowingly, intelligently, and voluntarily.

[19] Roberts also asserts that the post-conviction court erred when it did not grant him relief on the basis that his guilty plea had not been entered into knowingly, intelligently, and voluntarily.[1] A valid guilty plea depends on "whether the plea

[1] The post-conviction court did not specifically address this issue in its findings and conclusions. Accordingly, our review on this issue is *de novo*. *Allen v. State*, 749 N.E.2d 1158, 1170 (Ind. 2001).

represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *Gibson v. State*, 133 N.E.3d 673, 697 (Ind. 2019) (quoting *Hill*, 474 U.S. at 56). And a showing of an invalid guilty plea requires the petitioner in a post-conviction proceeding to show prejudice:

> Some petitions [for post-conviction relief] allege in substance a promise of leniency in sentencing. In other words, the claim is that a different result was predicted or guaranteed to result from a plea. . . . *Whether viewed as ineffective assistance of counsel or an involuntary plea, the postconviction court must resolve the factual issue of the materiality of the bad advice in the decision to plead,* and postconviction relief may be granted if the plea can be shown to have been influenced by counsel's error. However, if the postconviction court finds that the petitioner would have pleaded guilty even if competently advised as to the penal consequences, the error in advice is immaterial to the decision to plead and there is no prejudice.

Segura v. State, 749 N.E.2d 496, 504-05 (Ind. 2001) (emphasis added), *disapproved of in part on other grounds in Bobadilla*, 117 N.E.3d at 1286-87.

[20] For the same reasons Roberts is unable to show prejudice on his claim of ineffective assistance of counsel, he is unable to show prejudice on his claim that his guilty plea was invalid. We therefore affirm the post-conviction court's judgment.

Conclusion

[21] For all of these reasons, we affirm the post-conviction court's denial of Roberts's petition for post-conviction relief.

[22] Affirmed.

Riley, J., and Crone, J., concur.