

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

Artavius G. Richards,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

March 15, 2024

Court of Appeals Case No.
23A-PC-484

Appeal from the Allen Superior Court
The Honorable Frances C. Gull, Judge

Trial Court Cause No.
02D06-1812-PC-93

Memorandum Decision by Judge May
Judges Vaidik and Kenworthy concur.

May, Judge.

- [1] Artavius G. Richards appeals following the post-conviction court’s dismissal of his petition for post-conviction relief because of his failure to timely submit his case by affidavit, and the post-conviction court’s subsequent denial of his motion to correct error. Richards argues the post-conviction court should have excused his failure because he proceeded pro se and lacked legal training. We affirm.

Facts and Procedural History

- [2] In February 2016, Richards killed three people during an armed robbery. *Richards v. State*, 02A04-1703-CR-646, 2017 WL 6029399 (Ind. Ct. App. Dec. 6, 2017), *trans. denied*. The State convicted Richards of three counts of felony murder,¹ and the trial court sentenced him to an aggregate term of 190 years imprisonment. *Id.* We affirmed Richards’s convictions on appeal, *id.*, and our Indiana Supreme Court denied Richards’s petition for transfer.
- [3] On December 3, 2018, Richards filed his petition for post-conviction relief. Attorney Jonathan Chenoweth of the State Public Defender’s Office entered his appearance for Richards on December 20, 2018. On March 7, 2022, Attorney Chenoweth moved to withdraw his appearance, and the post-conviction court granted the motion on March 8, 2022.

¹ Ind. Code § 35-42-1-1(2) (2014).

[4] On March 28, 2022, the State moved for the post-conviction court to require Richards to submit his case by affidavit. The post-conviction court granted the State's motion on April 7, 2022, and issued an order that provided:

The Petitioner is granted until 7/12/2022 to submit his case for post-conviction relief by affidavit pursuant to Rule PC 1, Section 9(b) of the Indiana Rules of Procedure for Post-Conviction Remedies. The State is granted until 8/12/2022 to file a response. The parties shall submit proposed findings of fact and conclusions of law on or before 9/12/2022. Time for ruling pursuant to TR 53.2 shall begin to run on 9/12/2022. The Petitioner shall promptly notify the court if he wishes to engage counsel to represent him in this matter.

THE PETITION FOR POST-CONVICTION RELIEF MAY BE DISMISSED if the Petitioner does not (1) submit his case for post-conviction relief by affidavit, (2) submit a written request for additional time in which to submit his case by affidavit, or (3) notify the court that he wishes to engage counsel to represent him, ON OR BEFORE THE DATE SPECIFIED FOR SUBMITTING HIS CASE BY AFFIDAVIT.

(App. Vol. II at 80) (emphases in original).

[5] On July 11, 2022, Richards moved to continue the deadline for him to submit his evidence by affidavit. The post-conviction court granted Richards's motion and stated: "Defendant to file his case by Affidavit on or before December 30, 2022. State granted until January 30, 2023 to file its Response. Findings of Fact and Conclusions of Law due on or before March 3, 2023." (*Id.* at 5.) Richards did not submit any evidence before the December 30, 2022, deadline. The State moved to dismiss Richards's petition for post-conviction relief on

January 10, 2023, and the post-conviction court granted the State’s motion. Richards filed a motion that he denominated “Petitioner’s Motion for Reconsideration to Dismissal by the State Motion,” (Appellant’s App. Vol. 2 at 41), and the post-conviction court denied Richards’s motion on February 10, 2023.²

Discussion and Decision

[6] Initially, we note Richards proceeds pro se. We hold pro se litigants to the same standard as trained attorneys and afford them no inherent leniency because of their self-represented status. *Zavodinik v. Harper*, 17 N.E.3d 259, 266 (Ind. 2014). Pro se litigants “are bound to follow the established rules of procedure and must be prepared to accept the consequences of their failure to do so.” *Basic v. Amouri*, 58 N.E.3d 980, 983-84 (Ind. Ct. App. 2016), *reh’g denied*. “One of the risks that a [litigant] takes when he decides to proceed pro se is that he will not know how to accomplish all of the things that an attorney would know how to accomplish.” *Smith v. Donahue*, 907 N.E.2d 553, 555 (Ind. Ct. App. 2009), *trans. denied, cert. denied*, 558 U.S. 1074 (2009).

[7] Richards appeals the post-conviction court’s order denying his “Petitioner’s Motion for Reconsideration to Dismissal by the State Motion” that asked the

² The post-conviction court’s order also noted that Richards filed a belated motion for continuance and a motion styled “Petition’s [sic] Nunc Pro Tunc Objection to State’s Motion to Dismiss Petition for Post-Conviction Relief,” (Appellant’s App. Vol. 2 at 24), contemporaneously with his “Petitioner’s Motion for Reconsideration to Dismissal by the State Motion,” but the post-conviction court took no action on those additional pleadings.

post-conviction court to reconsider its order dismissing his petition for post-conviction relief. Because Richards’s motion was filed after a final judgment, it was effectively a motion to correct error.³ See *In re Scott David Hurwich 1986 Irrevocable Trust*, 59 N.E.3d 977, 980 (Ind. Ct. App. 2016) (motion to reconsider filed after a final judgment should be treated as a motion to correct error). We review a trial court’s order on a motion to correct error for an abuse of discretion. *Brewer v. Clinton Cnty. Sheriff’s Off.*, 206 N.E.3d 1158, 1164 (Ind. Ct. App. 2023), *trans. denied*. “An abuse of discretion occurs if the trial court’s decision is against the logic and effect of the facts and circumstances that were before the court.” *Id.* Often, we must review the propriety of the trial court’s underlying judgment to determine whether it abused its discretion by denying the motion to correct error. *Id.* We generally review a trial court’s ruling on a motion to dismiss for an abuse of discretion. *Brittingham v. State*, 208 N.E.3d 669, 672 (Ind. Ct. App. 2023). If, however, the motion to dismiss involves a pure question of law, we review it de novo. *Id.*

[8] Richards takes issue with the facts that an additional attorney was not appointed to represent him after Attorney Chenoweth withdrew and that the post-conviction court did not hold an evidentiary hearing on his petition.

³ The State asks us to dismiss Richards’s appeal because he did not file his notice of appeal within thirty days of when the trial court issued its order dismissing his petition for post-conviction relief. See Ind. App. R. 9. However, Richards did file his notice of appeal within thirty days of the trial court’s order denying his motion to correct error, and therefore, Richards timely initiated his appeal. See, e.g., *Cavinder Elevators, Inc. v. Hall*, 726 N.E.2d 285, 289 (Ind. 2000) (plaintiff timely initiated appeal when he filed his notice of appeal within thirty days after motion to correct error was deemed denied).

However, “[t]he right to counsel in post-conviction proceedings is guaranteed by neither the sixth amendment of the United States Constitution nor Article 1, Sec. 13 of the Indiana Constitution.” *Neville v. State*, 663 N.E.2d 169, 174 (Ind. Ct. App. 1996). In addition, Indiana Post-Conviction Rule 1, section 9(b) states:

In the event petitioner elects to proceed pro se, the court at its discretion may order the cause submitted upon affidavit. It need not order the personal presence of the petitioner unless his presence is required for a full and fair determination of the issues raised at an evidentiary hearing.

Thus, the trial court was well within its discretion to expect Richards to proceed without counsel and to order the parties to submit their documentary evidence. *See, e.g., Smith v. State*, 822 N.E.2d 193, 201-02 (Ind. Ct. App. 2005) (holding trial court acted within its discretion when it ordered parties to submit evidence by affidavit and denied petition for post-conviction relief without holding an evidentiary hearing), *trans. denied*.

[9] Richards acknowledges that he failed to timely submit his evidence by the post-conviction court’s December 30, 2022, deadline, but he asserts “[i]t is only through Richards’ unfamiliarity with the ‘legalese’ used by the court, that he mistakenly believed that he actually had time to file.” (Appellant’s Br. at 13.) However, Richards’ argument is unavailing. For one, the post-conviction court’s orders were written in clear, unambiguous language. Second, as explained above, longstanding precedent holds that pro se litigants in Indiana state courts are to be held to the same standards as attorneys. “[I]t is the duty of

an attorney and his client to keep apprised of the status of matters before the court.” *Sanders v. Carson*, 645 N.E.2d 1141, 1144 (Ind. Ct. App. 1995).

Therefore, we hold the post-conviction court did not abuse its discretion in dismissing Richards’s petition.⁴ *See, e.g., McClure v. State*, 71 N.E.3d 845, 848 (Ind. Ct. App. 2017) (holding post-conviction relief petitioner who did not submit affidavits or other evidence by deadline was not entitled to relief), *trans. denied*. As the post-conviction court did not abuse its discretion in dismissing Richards’s petition, it also did not abuse its discretion when it denied the motion to correct error stemming therefrom.

Conclusion

[10] The post-conviction court did not abuse its discretion when it ordered Richards to submit his case by affidavit or when it did not appoint new counsel for him. The post-conviction court also did not abuse its discretion when it dismissed Richards’s petition for post-conviction relief after he failed to submit evidence by the established deadline. We accordingly affirm the post-conviction court’s denial of Richards’s motion to correct error.

⁴ Richards also alleges in his brief that there is “a purported ‘agreement’ made between the Allen county prosecutor’s office, the attorneys and the Allen Superior court” to withhold documents from him. (Appellant’s Br. at 8) (underline in original). However, Richards’s allegations of a conspiracy are nothing more than bald assertions, and we need not consider them. *See Young v. Butts*, 685 N.E.2d 147,149 (Ind. Ct. App. 1997) (“We will not consider bald assertions made in an appellate brief[.]”). Moreover, on September 12, 2022, the trial court denied Richards’s “Motion to Compel Full Discovery Production of Documents and Record for a Pro-Se Petitioner in Post-Conviction Relief Proceedings” and stated that “the Public Defender’s Office has previously provided the discoverable portions of the client file.” (App. Vol. 2 at 52.)

[11] Affirmed.

Vaidik, J., and Kenworthy, J., concur.

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