MEMORANDUM DECISION

IN THE
Court of Appeals of Indiana

Joseph Edwards Barner,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

May 1, 2024

Court of Appeals Case No.
23A-PC-1439

Appeal from the Lake Superior Court

The Honorable Kathleen A. Sullivan, Magistrate

Trial Court Cause No.
45G03-2011-PC-37

Memorandum Decision by Judge Mathias
Judges Tavitas and Weissmann concur.

Mathias, Judge.

[1] Joseph Barner appeals the post-conviction court's denial of his petition for post-conviction relief following an evidentiary hearing. Barner presents two issues for our review:

> 1. Whether the post-conviction court clearly erred when it found that he had received effective assistance of trial counsel.
>
> 2. Whether the post-conviction court clearly erred when it found that the State did not commit a *Brady* violation.

[2] We affirm.

Facts and Procedural History

[3] In January 2018, the trial court accepted Barner's plea of guilty but mentally ill to murder, a felony, and two counts of aggravated battery, as Level 3 felonies. The factual basis for his guilty plea was summarized as follows:

> Carmelle Erbie Cajuste, Christine Lobo and Gladson Pointejour are the victims in [this case]. The Petitioner and Carmelle Erbie Cajuste were previously in a dating relationship. Carmelle Erbie Cajuste lived at 1350 Truman Street in Hammond, Lake County, Indiana with her cousins, Christine Lobo and Gladson Pointejour. On the morning of January 23, 2017, the Petitioner went to Carmelle Erbie Cajuste's residence and shot all three victims. He fatally shot Carmelle Erbie Cajuste in the head. The Petitioner shot Christine Lobo in the left frontal scalp of the head, resulting in a hospital stay. Christine Lobo had multiple skull fragments remaining in her head. The Petitioner shot Gladson Pointejour in his upper torso, rendering Gladson Pointejour unable to complete activities of daily living, such as

> feeding, bathing, dressing, grooming, and communicating. The Petitioner admitted that he had been diagnosed with schizoaffective disorder, bipolar disorder, depression, and anxiety. The Parties stipulated that the Petitioner was mentally ill at the time of the commission of the offenses on January 23, 2017.

Appellant's App. Vol. 2, p. 229. In his plea agreement, Barner agreed to an aggregate sentence of seventy-six years, and the trial court sentenced Barner accordingly.

[4] In November 2020, Barner filed a pro se petition for post-conviction relief, and he later filed two amended petitions. Barner argued that he was denied the effective assistance of trial counsel when he pleaded guilty but mentally ill, and he argued that the State had committed a *Brady* violation when it withheld certain evidence regarding Pointejour's medical treatment. Following a hearing, the trial court denied Barner's petition. This appeal ensued.

Discussion and Decision

Standard of Review

[5] Barner appeals the post-conviction court's denial of his petition for post-conviction relief. Our standard of review is well-settled:

> "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 postconviction 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).

Issue One: Effective Assistance of Trial Counsel

[6] Barner first contends that the post-conviction court clearly erred when it found that he received 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.*

[7] Here, Barner contends that his counsel's deficient performance led to his guilty but mentally ill plea. Specifically, Barner argues that his counsel: failed to adequately assess his incompetency; coerced him into pleading guilty but mentally ill; should have advised against pleading guilty but mentally ill in light of the evidence; and overlooked evidence or failed to investigate evidence regarding Barner's intent and self-defense claim. Each of Barner's arguments is merely a request that we reweigh the evidence, which we will not do on appeal. In any event, we need not address the merits of Barner's contentions regarding his counsel's deficient performance because he has not shown that he was prejudiced by any of the allegations of deficient performance. *See id.*

[8] As our Supreme Court has explained,

> 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; emphasis added).

[9] In his brief on appeal, Barner does not direct us to any evidence showing special circumstances that would have supported a rational decision to reject his guilty but mentally ill plea. Thus, Barner has not satisfied the prejudice prong of his claim of ineffective assistance of counsel. *See French*, 778 N.E.2d at 824. Indeed, it would have been *irrational* for Barner to go to trial given the overwhelming evidence of his guilt. As the post-conviction court found, surveillance footage showed Barner "driving around the victims' residence" around the time of the shootings, and, in his statement to police, Barner admitted to shooting the three victims. Appellant's App. Vol. 2, p. 238. The post-conviction court also found

that Barner, who had previously been convicted of attempted murder, faced a possible aggregate sentence of ninety years to 165 years if he had foregone the plea agreement.

[10] Barner has not shown that, in light of the evidence and possible sentence, it would have been a rational choice to go to trial. The post-conviction court did not clearly err when it found that Barner received effective assistance of trial counsel.

Issue Two: *Brady* Violation

[11] Barner also contends that the post-conviction court clearly erred when it found no *Brady* violation as a result of the State's late disclosure of Pointejour's medical records.[1] However, this issue was known and available but not raised in a direct appeal, and it is waived and unavailable for post-conviction review. *See Hooker v. State*, 799 N.E.2d 561, 569 (Ind. Ct. App. 2003), *trans. denied*.

[12] Waiver notwithstanding, as we have explained:

> In *Brady v. Maryland*, the United States Supreme Court held that "the suppression by the prosecution of evidence favorable to the accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." 373 U.S. 83, 87 (1963). "To prevail on a *Brady* claim, a defendant must establish: (1) that the prosecution suppressed evidence; (2) that the evidence was

[1] The State had informed defense counsel that it was struggling to obtain Pointejour's medical records, and it was finally able to turn them over after Barner's plea agreement was entered but prior to sentencing.

> favorable to the defense; and (3) that the evidence was material to an issue at trial." *Minnick v. State*, 698 N.E.2d 745, 755 (Ind. 1998) (citing *Brady*, 373 U.S. at 87). Evidence is material under *Brady* "only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A 'reasonable probability'' is a probability sufficient to undermine confidence in the outcome." *United States v. Bagley*, 473 U.S. 667, 682 (1985). However, the State will not be found to have suppressed material evidence if it was available to a defendant through the exercise of reasonable diligence. *Conner v. State*, 711 N.E.2d 1238, 1246 (Ind. 1999). "Favorable evidence" includes both exculpatory evidence and impeachment evidence. *See Prewitt v. State*, 819 N.E.2d 393, 401 (Ind. Ct. App. 2004), *trans. denied*. Suppression of *Brady* evidence is constitutional error warranting a new trial. *Turney v. State*, 759 N.E.2d 671, 675 (Ind. Ct. App. 2001), *trans. denied*.

Bunch v. State, 964 N.E.2d 274, 297-98 (Ind. Ct. App. 2012), *trans. denied*.

[13] Barner contends that the victim's medical records "could have been examined by an expert witness [who could have given] testimony on the topic of bullet trajectories," which, Barner argues, could have supported a self-defense theory. Appellant's Br. at 102. Thus, Barner asserts that the late-produced evidence "was material and important to a fact and issue at trial." *Id.* at 101. Barner does not support that argument with citation to any relevant evidence, such as an expert's report supporting his claim. His argument on this issue is pure speculation, and we reject it.

[14] The post-conviction court found and concluded that the medical records were "not exculpatory or in any way favorable to the defense." Appellant's App. Vol. 2, p. 234. Barner does not direct us to evidence showing otherwise. The post-

conviction court did not clearly err when it rejected Barner's claim of a *Brady* violation.

[15] Affirmed.

Tavitas, J., and Weissmann, J., concur.

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