

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE  
**Court of Appeals of Indiana**

Timothy Manges,  
*Appellant-Petitioner*

v.

State of Indiana,  
*Appellee-Respondent*

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April 24, 2024

Court of Appeals Case No.  
23A-PC-1602

Appeal from the Elkhart Superior Court  
The Honorable Teresa L. Cataldo, Judge

Trial Court Cause No.  
20D03-2107-PC-000021

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**Memorandum Decision by Judge Felix**  
Chief Judge Altice and Judge Bradford concur.

**Felix, Judge.**

## **Statement of the Case**

[1] This court authorized Timonthy Manges to file a successive petition for post-conviction relief (the “SPCR Petition”). After Manges filed the SPCR Petition, the SPCR court mistakenly denied Manges’ petition as being unauthorized but later reversed course after Manges filed a motion to correct error (the “MTCE”). Seemingly important here, Manges attached to the MTCE an undated and unfiled petition to file a belated appeal as well as a copy of this court’s order granting Manges permission to file the SPCR Petition. After an evidentiary hearing, the SPCR court determined that the only matter pending was Manges’s petition to file a belated appeal and denied the same. Manges now appeals and raises one issue for review: Whether the SPCR court entered sufficient findings of fact and conclusions of law on the SPCR Petition under Indiana Post-Conviction Rule 1(6).

[2] Although we conclude the SPCR court entered sufficient findings on the issues raised in the SPCR Petition, because the SPCR court mistakenly used its findings to deny a motion for a belated appeal that had not been authorized by this court instead of the SPCR Petition, we remand with instructions to the SPCR court to enter an order denying the SPCR Petition.

## **Facts and Procedural History**

[3] In late 2001, a jury found Manges guilty of child molesting as a Class A felony in Cause 20D03-0012-CF-00186. In early 2002, the trial court sentenced

Manges to 50 years in the Indiana Department of Correction. At the sentencing hearing, the trial court advised Manges of his right to appeal, and Manges expressly declined the appointment of appellate counsel. Shortly thereafter, Manges, pro se, initiated an appeal. Manges later hired private counsel to represent him on appeal, but that counsel failed to timely file an appellant's brief, which resulted in this court dismissing Manges's appeal. Manges's private counsel eventually withdrew, and Manges filed a pro se petition with this court seeking permission to file a belated appeal. In 2005, this court granted Manges's petition to file a belated appeal, and in 2007, this court affirmed Manges's conviction and sentence, *Manges v. State*, 860 N.E.2d 928, No. 20A05-0504-CR-181, slip op. (Ind. Ct. App. Jan. 24, 2007). The Indiana Supreme Court denied transfer. *Manges v. State*, 869 N.E.2d 452 (Ind. 2007).

[4] In October 2007, Manges filed a PCR petition, which the PCR court denied in 2010. Manges appealed, and this court affirmed the trial court's denial. *Manges v. State*, 933 N.E.2d 590, No. 20A05-1003-PC-186, slip op. (Ind. Ct. App. Sept. 16, 2010). The Indiana Supreme Court denied transfer. *Manges v. State*, 940 N.E.2d 830 (Ind. 2010).

[5] On April 14, 2021, Manges petitioned this court for permission to file a SPCR petition. On June 18, 2021, this court granted Manges's petition to file a SPCR petition. On July 8, 2021, Manges, pro se, filed the SPCR Petition in Cause 20D03-2107-PC-00021. In the SPCR Petition, Manges alleges he was denied assistance of counsel while pursuing (1) his petition to file a belated appeal, (2) his belated direct appeal, and (3) his first PCR petition.

- [6] On August 2, 2021, the SPCR court dismissed the SPCR Petition as an improperly filed successive petition. On August 31, 2021, Manges, by counsel, filed the MTCE, requesting the SPCR court “correct error in regard to the August 2, 2021, Order dismissing Petitioner’s Petition for Post-conviction Relief.” Appellant’s App. Vol. II at 29. The MTCE focuses solely on the SPCR Petition and makes no mention of a petition for permission to file a belated appeal. However, Manges attached two exhibits to the motion: (A) the SPCR Petition and (B) our June 18, 2021, order. Notably, attached to the SPCR Petition was an undated and unfiled Petition for Permission to File a Belated Appeal in Manges’s underlying criminal case (the “Belated Appeal Petition”). In the SPCR Petition, Manges specifically states the Belated Appeal Petition is an attachment to the SPCR Petition: “That appeal was dismissed when [direct appeal counsel] failed to file an Appellant’s Brief. See attached Petition.” Appellant’s App. Vol. II at 44–45.
- [7] At a hearing on February 17, 2022, the SPCR court confirmed that Manges received permission to file the SPCR Petition, confirmed that it had granted Manges’s MTCE allowing him to proceed with the SPCR Petition, and acknowledged that the SPCR Petition was currently pending. On April 5, 2023, the SPCR court held an evidentiary hearing, at which Manges proceeded pro se.
- [8] On June 19, 2023, the SPCR court issued its order on the evidentiary hearing, finding the only matter pending was the Belated Appeal Petition and denying

the same. In particular, the SPCR court's order states in relevant part as follows:

This cause came on for evidentiary hearing . . . on Petitioner's Petition for Permission to File Belated Appeal Pursuant to P-C.R. 2 filed herein on July 8, 2021. Said Petition is based on a grant by the Indiana Court of Appeals allowing Petitioner to file for successive post-conviction relief. . . .

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40. On June 18, 2021, the Indiana Court of Appeals issued an Order authorizing Petitioner to file a successive petition for post-conviction relief. . . .

\* \* \*

42. The first this Court was aware of the June 18, 2021, Court of Appeals Order granting Petitioner the opportunity to file for Permission to File Belated Appeal was on August 31, 2021, when Petitioner, by counsel, Mark Small, filed a Motion to Correct Error on the basis that the Court of Appeals had granted Petitioner permission to file a successive petition for post-conviction relief. . . .

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45. . . . The Court also noted that Petitioner had been granted the opportunity to file a successive petition for post-conviction relief in Cause No. 20D03-2107-PC-00021, and that no other matters were pending.

\* \* \*

48. Based on the aforementioned detailed Procedural Background, the Court hereby finds that there are no further matters pending in the underlying criminal case . . . or in the original post-conviction [case]. Pursuant to the Indiana Court of Appeals Order dated June 18, 2021, granting Petitioner permission to file a successive petition for post[-conviction] relief, and this Court’s order dated September 1, 2021, granting Petitioner’s Motion to Correct Error, the only matter pending is in Cause NO. 20D03-2107-PC-00021, to-wit: Petitioner’s Petition for Permission to File Belated Appeal Pursuant to P-C.R. 2.

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60. To file a belated appeal, a defendant must be an “eligible defendant” under P-C. R 2, which provides, in relevant part: an eligible defendant for purposes of this Rule is a defendant who, but for the defendant’s failure to do so timely, would have the right to challenge on direct appeal a conviction or sentence after a trial or plea of guilty by filing a notice of appeal, filing a motion to correct error, or pursuing an appeal. P-C R. 2 also requires defendants to prove they failed to file a timely notice of appeal, they were not at fault for the failure, and they have been diligent in requesting permission to file a belated notice of appeal. Course v. State, 158 N.E.3d 388, 391, (Ind. Ct. App. 2020). There is substantial room for debate as to what constitutes diligence and lack of fault on the part of the defendant as those terms appear in P-C. R. 2. Some factors that may be considered are the defendant’s level of awareness of his procedural remedy, age, education, familiarity with the legal system, whether the defendant was informed of his appellate rights, and whether he committed an act or omission with [sic] contributed to the delay. Moshenek v. State, 868 N.E.2d 419, 424 (Ind. 2007). Also, relevant as to diligence are the overall passage of time, the extent to which the defendant was aware of relevant facts, and the degree to which delays are attributable to other parties. Id.

61. . . . Petitioner is actually now seeking permission to file a second belated appeal under P-C.R. 2 . . . .

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70. . . . [T]here is no basis for Petitioner to be permitted to file a second belated direct appeal.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that Petitioner’s Petition for Permission to File Belated Appeal Pursuant to P-C.R. 2 is hereby DENIED.

Appellant’s App. Vol. II at 115, 122–25, 128–29, 135 (emphases in original).

[9] This appeal ensued.

## **Discussion and Decision**

[10] Manges argues that the SPCR court did not enter findings of fact and conclusions of law on any issues raised in the SPCR Petition, as required by Post-Conviction Rule 1(6), and instead addressed an issue that was not raised in the SPCR Petition, namely, the Belated Appeal Petition. First, we observe that our June 18, 2021, order only gave Manges permission to file a SPCR petition; our order says nothing of a petition to file a belated appeal. We also observe that the Belated Appeal Petition was an attachment to the SPCR Petition and not a separate matter for the SPCR court to consider. Thus, as of the April 2023 evidentiary hearing, the only matter pending before the SPCR court was the SPCR Petition.

[11] Indiana Post-Conviction Rule 1(6) explicitly requires “specific findings of fact and conclusions of law on all issues presented.” When a court fails to enter findings of fact and conclusions of law on an issue presented, remand for entry of such findings and conclusions on that issue is appropriate. *Dowdell v. State*, 720 N.E.2d 1146, 1152 (Ind. 1999). As our Supreme Court has explained:

The principal purpose of findings of fact “is to have the record show the basis of the trial court’s decision so that on review the appellate court may more readily understand the former’s view of the controversy.” *Love v. State*, 257 Ind. 57, 59, 272 N.E.2d 456, 458 (1971) (quoting 3 William F. Harvey, *Indiana Practice* 426 (1970)). Findings of fact must be “sufficient to enable this Court to dispose of the issues upon appeal.” *Taylor v. State*, 472 N.E.2d 891, 892 (Ind. 1985).

*Dowdell*, 720 N.E.2d at 1152.

[12] The SPCR court’s order, by its plain language, addresses only the Belated Appeal Petition. The SPCR court has not yet ruled on the SPCR Petition. However, the findings in the SPCR court’s order adequately address all three issues Manges raises in the SPCR Petition. We review the SPCR court’s findings for clear error and will only reserve if we are left “with a definite and firm conviction that a mistake has been made.” *Bobadilla v. State*, 117 N.E.3d 1272, 1279 (Ind. 2019) (quoting *Humphrey v. State*, 73 N.E.3d 677, 682 (Ind. 2017)).

[13] Concerning Manges’s first two claims—that he was denied counsel while pursuing a belated appeal—the SPCR court found that Manges “unequivocally



declined the appointment of appellate counsel” when he initiated his first direct appeal, Appellant’s App. Vol. II at 128, Manges hired private counsel to represent him in that appeal, and “[t]he record is devoid of any entry indicating that [Manges] ever requested the appointment of appellate counsel after [private counsel] withdrew his Appearance and permission to pursue belated appeal was granted” *id.* at 129–30. Additionally, Manges “persisted in filing pro se Motions in pursuit of his appeal.” *Id.* at 130. Our review of the record confirms these findings.

[14] As for Manges’s third claim—that he was denied assistance of counsel during his first PCR proceedings—the SPCR court found that State Deputy Public Defender Cynthia Maricle, who initially represented Manges in his first PCR proceedings, reviewed the record in Manges’s underlying criminal case and “determined there were no meritorious issues for appeal under either P-C. R. 1 or P-C. R. 2” and therefore “moved to withdraw.” Appellant’s App. Vol. II at 134. The record supports these findings. Specifically, Maricle testified that she met with Manges and discussed the claims in his first PCR petition as well as any other potential claims. Before she withdrew from Manges’s first PCR cause, Maricle sent Manges a letter explaining why she had determined he did not have any meritorious PCR claims. Maricle testified that she still believed Manges’s first PCR petition presented no meritorious claims. Based on its findings, the SPCR court determined this claim was without merit because Post-Conviction Rule 1(9)(c) allowed Maricle to withdraw her appearance.

[15] The SPCR court analyzed these facts through the prism of a petition to file a belated appeal rather than through the prism of a petition for post-conviction relief. That is, the SPCR court used these findings to conclude that Manges was not eligible to file a belated appeal under Post-Conviction Rule 2 and ultimately deny that petition; it did not make a decision regarding the SPCR Petition, nor did it rule on that petition. Although the SPCR court's findings and conclusions on the issues raised in the SPCR Petition are not erroneous, the SPCR court mistakenly entered an order denying an unauthorized motion for belated appeal instead. We therefore remand with instructions to the SPCR court to enter an order denying the SPCR Petition.

[16] Remanded.

Altice, C.J., and Bradford, J., concur.

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