

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.

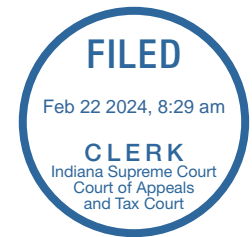


IN THE
Court of Appeals of Indiana

Billy Ray Barker,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



February 22, 2024

Court of Appeals Case No.
23A-PC-1751

Appeal from the Madison Circuit Court

The Honorable David A. Happe, Judge

Trial Court Cause No. 48C04-2304-PC-14

Memorandum Decision by Judge Foley
Judges Pyle and Tavitas concur.

Foley, Judge.

- [1] Billy Ray Barker (“Barker”) appeals the trial court’s summary denial of his successive petition for post-conviction relief (“PCR”) challenging the revocation of his parole after he was convicted of new criminal charges. Barker raises two issues for our review, but we find one issue dispositive: whether Barker’s successive petition for PCR was unauthorized. We affirm.

Facts and Procedural History

- [2] On December 20, 1993, Barker was sentenced to fifty years executed in the Indiana Department of Correction (“DOC”) for Class A felony voluntary manslaughter. On December 12, 2013, Barker filed his first petition for PCR seeking additional credit time after completing several education/treatment programs pursuant to Indiana Code section 35-50-6-3.3. The State filed a response objecting to Barker’s petition, and subsequently, the trial court denied the petition. On October 6, 2018, Barker was released on parole. While on parole, Barker was arrested for several new criminal offenses. The Delaware Circuit Court found probable cause for Barker’s new arrest and ordered that he be held in the Delaware County Jail on bond. Subsequently, the Indiana Parole Board issued and served a parole violation warrant for the revocation of Barker’s parole.
- [3] On November 9, 2021, Barker was convicted of Level 4 felony unlawful possession of a firearm by a serious violent felon, Level 5 felony criminal recklessness, and Class B misdemeanor criminal mischief. As a result of these

convictions, Barker was sentenced to an aggregate executed sentence of fifteen years.

- [4] On April 7, 2022, the Indiana Parole Board held a parole revocation hearing, and Barker pleaded not guilty to the violation. The Board found that Barker violated the conditions of his parole because he was convicted of new crimes and ordered that Barker be committed to the DOC to serve the remaining fifteen years of his voluntary manslaughter sentence.
- [5] Barker filed the instant PCR petition challenging the revocation of his parole after he was convicted of new criminal charges. The State moved for summary disposition, arguing that Barker’s petition was an unauthorized successive petition because he had already litigated a petition for PCR concerning this criminal matter, and he had not sought permission pursuant to Post-Conviction Rule 1(12). The trial court granted the State’s motion for summary disposition and summarily denied Barker’s petition for post-conviction relief, concluding that Barker’s petition was an unauthorized successive petition because Barker “has filed at least one prior petition for post-conviction relief.” Appellant’s App. Vol. 2 p. 7. Barker now appeals.

Discussion and Decision

- [6] Barker, who appeals *pro se*, “is held to the same rules of procedure as a trained attorney and is afforded no inherent leniency simply by virtue of being self-represented.” *Zavodnik v. Harper*, 17 N.E.3d 259, 266 (Ind. 2014). Barker claims that the trial court abused its discretion when it summarily denied his

petition for post-conviction relief. “Post-conviction proceedings are civil proceedings in which a defendant may present limited collateral challenges to a conviction and sentence.” *Bautista v. State*, 163 N.E.3d 892, 896 (Ind. Ct. App. 2021) (quoting *Gibson v. State*, 133 N.E.3d 673, 681 (Ind. 2019), *cert. denied*). Generally, a person convicted of a crime in an Indiana state court can seek collateral review of that conviction and sentence in a post-conviction proceeding only once. *See Baird v. State*, 831 N.E.2d 109, 114 (Ind. 2005), *cert. denied*); Ind. Post-Conviction Rule 1. To proceed with each “successive” post-conviction claim, petitioners need court permission, which will be granted if they establish a “reasonable possibility” of entitlement to post-conviction relief. P-C.R. 1(12)(a), (b). It is appropriate for a trial court to deny a successive PCR through a summary disposition. *Brown v. State*, 131 N.E. 3d 740, 743 (Ind. Ct. App. 2019), *cert. denied*.

[7] Because Barker appeals from the denial of his petition, he is appealing from a negative judgment. *Bautista*, 163 N.E.3d at 896. Therefore, Barker must establish that “the evidence, as a whole, unmistakably and unerringly points to a conclusion contrary to the post-conviction court’s decision.” *Id.* (quoting *Wilkes v. State*, 984 N.E.2d 1236, 1240 (Ind. 2013)). In other words, Barker must convince this court that there is no way within the law that the court below could have reached the decision it did. *Id.*

[8] This court reviews the grant of a motion for summary disposition in post-conviction proceedings on appeal in the same way as a motion for summary judgment in a civil matter. *Brown v. State*, 131 N.E.3d 740, 742 (Ind. Ct. App.

2019) (citing *Norris v. State*, 896 N.E.2d 1149, 1151 (Ind. 2008)), *cert. denied*. As a result, we apply a de novo standard of review. *Id.* “Summary disposition should be granted only if ‘there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.’” *Komyatti v. State*, 931 N.E.2d 411, 415–16 (Ind. Ct. App. 2010) (quoting P-C. R. 1(4)(g)). This court draws all reasonable inferences in favor of the non-moving party. *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014).

[9] Before Barker filed the instant PCR petition challenging the revocation of his parole, he had previously filed a PCR petition seeking additional credit time in the same criminal matter after completing several education/treatment programs pursuant to Indiana Code section 35-50-6-3.3. A petition seeking educational credit time is treated as a petition for post-conviction relief. *See Young v. State*, 888 N.E.2d 1255, 1256 (Ind. 2008) (treating a petition seeking educational credit time as a petition for PCR, noting that “post-conviction proceedings are the appropriate procedure for considering properly presented claims for educational credit time”). The State responded to Barker’s initial PCR petition and, subsequently, the trial court denied Barker’s PCR petition. To properly file the successive petition for PCR challenging the revocation of his parole, Barker was required to follow the Indiana Rules of Post-Conviction Remedies. One such rule requires that Barker request authorization from an appellate court to file the successive PCR petition challenging the revocation of his parole. *See* P-C. R. 1(12)(a). Barker did not do so, rendering his petition challenging the revocation of his parole an unauthorized successive petition for

PCR. Therefore, the trial court properly granted the State's motion for summary disposition, ultimately denying Barker's unauthorized successive petition for PCR.

[10] Affirmed

Pyle, J., and Tavitas, J., concur.

APPELLANT PRO SE

Billy R. Barker
Pendleton, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Abigail R. Recker
Deputy Attorney General
Indianapolis, Indiana