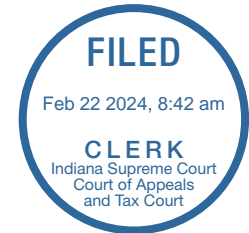


MEMORANDUM DECISION

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.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

Rickey R. Armour,
Appellant-Petitioner

v.

State of Indiana,
Appellee-Respondent

February 22, 2024

Court of Appeals Case No.
23A-PC-1890

Appeal from the Allen Superior Court
The Honorable Steven O. Godfrey, Judge

Trial Court Cause No.
02D05-2301-PC-2

Memorandum Decision by Judge Crone
Judges Bailey and Pyle concur.

Crone, Judge.

- [1] Rickey R. Armour, pro se, appeals the denial of his petition for post-conviction relief. We find his arguments waived for lack of cogency and therefore affirm.

Facts and Procedural History

- [2] In November 2017, December 2017, and January 2018, Fort Wayne police coordinated a total of three controlled buys during which a confidential informant entered Armour's vehicle at a location chosen by Armour and purchased varying amounts of heroin from him. Eight days after the last buy, on January 30, 2018, police executed a search warrant at a home that Armour was seen leaving shortly before the last two buys. Armour and his girlfriend were inside the home. Police seized a handgun, a cell phone that was used to communicate with the informant, over eighteen grams of heroin, over \$1,000 in cash, and two digital scales. Male clothing, paperwork bearing Armour's name, and a safe to which Armour had the key were also found in the home.
- [3] Armour was charged with four counts of possession of cocaine or a narcotic drug with intent to deliver, one for each of the three controlled buys and one for the heroin found in the home. He was also charged with unlawful possession of a firearm by a serious violent felon and maintaining a common nuisance. A jury found Armour guilty as charged, and he was sentenced to twenty-five years. On direct appeal, Armour's counsel raised a sufficiency issue and an instructional issue. This Court affirmed Armour's convictions in June 2019.

[4] In January 2023, Armour filed a petition for post-conviction relief and waived representation by the Indiana Public Defender. Armour asserted that his trial counsel was ineffective in failing to file a pretrial motion to suppress the evidence seized from the home. He also asserted that his appellate counsel was ineffective in failing to raise an alleged speedy trial violation, failing to raise a double jeopardy claim, and failing to argue that the evidence seized from the home should have been suppressed. The State filed a motion to require Armour to submit his case by affidavit, which the post-conviction court granted. In July 2023, the court denied Armour’s petition. Armour now appeals.

Discussion and Decision

[5] “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* (2020)). “A defendant who files a petition for post-conviction relief ‘bears the burden of establishing grounds for relief by a preponderance of the evidence.’” *Id.* (quoting Ind. Post-Conviction Rule 1(5)). “Because the defendant is appealing from the denial of post-conviction relief, he is appealing from a negative judgment[.]” *Id.* “Thus, the defendant 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, Armour must convince us “that there is no way within the law that the court below could have reached the decision it did.” *Id.*

[6] Armour has brought this appeal pro se, “but this does not mean that we will treat his brief any differently than we would if he were represented by counsel.” *Receveur v. Buss*, 919 N.E.2d 1235, 1238 n.4 (Ind. Ct. App. 2010), *trans. denied*. A litigant who elects to proceed pro se will be held to the same procedural rules “as trained legal counsel and must be prepared to accept the consequences of his action.” *Shepherd v. Truex*, 819 N.E.2d 457, 463 (Ind. Ct. App. 2004). “These consequences include waiver for failure to present cogent argument on appeal.” *Basic v. Amouri*, 58 N.E.3d 980, 984 (Ind. Ct. App. 2016). The purpose of the appellate rules, especially Indiana Appellate Rule 46, is to aid and expedite review, as well as to relieve this Court of the burden of searching the record and briefing the case. *Shepherd*, 819 N.E.2d at 463. “We will not become an advocate for a party, or address arguments that are inappropriate or too poorly developed or expressed to be understood.” *Lowrance v. State*, 64 N.E.3d 935, 938 (Ind. Ct. App. 2016) (citation and quotation marks omitted), *trans. denied* (2017).

[7] Appellate Rule 46(A)(8)(a) provides that an appellant’s argument “must contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on, in accordance with Rule 22.” Armour’s arguments on his ineffectiveness claims include only three citations to the record, none of which relate to his fact-

sensitive speedy trial claim.¹ We will not search the record and develop that issue or any other issue for him. Many of Armour’s contentions are merely conclusory,² and others are just plain wrong.³ Also, his citations to authority are, at best, statements of legal principles divorced from any coherent analysis.

[8] “A brief should not only present the issues to be decided on appeal, but it should be of material assistance to the court in deciding those issues.” *Young v. Butts*, 685 N.E.2d 147, 151 (Ind. Ct. App. 1997). Armour’s brief falls far short of this mark. We find Armour’s arguments waived for lack of cogency and therefore affirm.⁴

¹ Two of the citations are to Armour’s girlfriend’s trial testimony that he did not reside at the home in which the heroin and handgun were seized, but that does not mean that the evidence was inadmissible. *See Manning v. State*, 459 N.E.2d 1207, 1211 (Ind. Ct. App. 1984) (“Where a defendant has no proprietary or possessory interest in the property being searched or seized, he lacks standing to challenge that search or seizure.”). The third citation relates to the search warrant application, which Armour never introduced into the record.

² *See, e.g.*, Appellant’s Br. at 10 (baldly asserting that trial counsel was ineffective in failing to file motion to suppress evidence seized in home when Armour’s girlfriend “stated that Armour doesn’t reside at her residence”).

³ For example, regarding his double jeopardy argument, Armour asserts that he “was convicted of dealing in cocaine or a narcotic drug and possession with intent to deliver arising out of the same event.” Appellant’s Br. at 8. As indicated above, the four charges of possession with intent to deliver were based on four separate events that occurred on four different dates and involved four separate quantities of heroin.

⁴ Armour attempts to remedy some of his original brief’s defects in his reply brief, but this is prohibited. *See Michaels v. Johnson*, 223 N.E.2d 585, 587 (Ind. Ct. App. 1967) (stating that appellant may not remedy defects of original brief in reply brief because appellee would have no opportunity to respond). Because we find Armour’s substantive arguments waived, we need not address his argument that the post-conviction court erred in hearing the case by affidavit.

[9] Affirmed.

Bailey, J., and Pyle, J., concur.

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