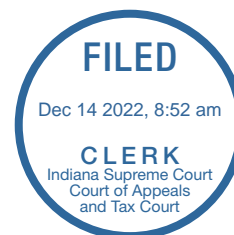


MEMORANDUM DECISION

Pursuant to [Ind. Appellate Rule 65\(D\)](#), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Anthony C. Martin,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 14, 2022

Court of Appeals Case No.
22A-PC-102

Appeal from the Allen Superior
Court

The Honorable Frances M.C. Gull,
Judge

Trial Court Cause No.
02D05-1606-PC-74

Mathias, Judge.

[1] Anthony C. Martin, *pro se*, appeals the Allen Superior Court’s denial of his petition for post-conviction relief. Martin raises six issues for our review, which we consolidate and restate as the following two issues:

1. Whether the post-conviction court abused its discretion in denying certain requests made by Martin.
2. Whether the post-conviction court erred when it denied Martin’s petition for post-conviction relief.

[2] We affirm.

Facts and Procedural History

[3] The facts underlying Martin’s convictions for Class B felony robbery, Class D felony resisting law enforcement, and for being a habitual offender were set out by our Court in Martin’s direct appeal:

Around 12:45 a.m. on July 23, 2013, Tyler Zoda, Devon Stewart, and Cory Clemmer were sitting in the back of their truck eating pizza in the parking lot of Papa John’s Pizza near State Street and Maplecrest Road in Fort Wayne, Indiana. Zoda walked over to the Shell gas station and convenience store (“Shell station”) at 6321 East State Street, which was located next door to the parking lot, to buy something to drink. After Zoda left, Stewart and Clemmer saw what they believed to be a red Ford Explorer driving quickly past. The vehicle was loud, and Stewart and Clemmer observed it drive past them several times and circle the Shell station. On their last observation of the Explorer, Stewart and Clemmer saw it near the car wash located behind the Shell station, driving rapidly away. As they watched, the Explorer hit a bump, causing the car wash door to open, and drove away from the area of Maplecrest Road.

At approximately the same time that night, a man, later identified as Frederick Freeman, entered the Shell station, wearing a dark hat, a white covering over his lower face, a dark shirt, and gloves, and pointed a silver handgun at the clerk, Dalvir Singh. Freeman told Singh to give him the money, and Singh opened the cash register, pulled out the money tray, containing approximately \$300, and placed it on the counter. Freeman took the money tray, exited the Shell station, turned left, and ran toward Maplecrest Road.

While the robbery was occurring, Justin Douglas and some friends drove up to a gas pump outside the Shell station, and Douglas exited the car. As he approached the Shell station, he observed the robbery in progress. Freeman pointed the handgun at Douglas and told him to leave. Douglas went back to the car and told the driver to leave. As they drove away, Douglas called the police, reported the robbery, and gave a description of Freeman and the direction he traveled. Zoda, who was inside the shell station at the time of the robbery, also called 911 immediately after Freeman left.

At approximately 12:50 a.m., officers from the Fort Wayne Police Department heard the dispatch regarding the armed robbery and responded to the Shell station. They spoke with the witnesses and viewed the surveillance video of the robbery. The surveillance video showed that Freeman came from the area of the car wash when he entered the Shell station, and when he left, he went back toward the car wash area. The officer radioed a description of Freeman, his direction of travel, and a description of the vehicle involved to other officers in the area.

Fort Wayne Police Department Officer Robert Hollo (“Officer Hollo”) was patrolling in the area of State Street and Coliseum Boulevard at around 12:50 a.m. in an unmarked vehicle when he received the radio broadcast of the robbery at the Shell station and heard that a red Ford Explorer had been observed circling

the Shell station and was most likely the suspect vehicle. At 1:01 a.m., Officer Hollo was at the intersection of Lake Avenue and Coliseum Boulevard and saw a red Ford Explorer matching the description of the vehicle involved in the robbery turning in front of him southbound on Coliseum Boulevard. Officer Hollo radioed dispatch and informed them of the license plate number of the Ford Explorer. Officer Hollo then began to follow the Explorer southbound on Coliseum Boulevard. As he did so, the Explorer began driving erratically, accelerating, weaving in and out of lanes, and passing traffic.

Officer Angie Reed arrived to assist Officer Hollo in a fully marked patrol vehicle and followed Officer Hollo's vehicle. At that time, Officer Hollo activated his vehicle's overhead lights to initiate a traffic stop of the Explorer. The Explorer made an immediate turn onto Reynolds Street at a high rate of speed, ignoring Officer Hollo's attempt to stop it, and accelerated. Officer Hollo followed and activated his siren while pursuing the Explorer. The pursuit continued, reaching speeds of seventy to seventy-five miles per hour and lasted about two minutes, ending at Anthony Boulevard and Hayden Street, where the Explorer turned into a parking lot. As soon as the Explorer reached the parking lot, Freeman, who was the front seat passenger, attempted to exit the Explorer while it was still moving. Freeman was stuck in the seatbelt, and his foot dragged on the pavement, which caused his shoe and sock to come off. Freeman eventually freed himself, exited the Explorer, and fled on foot westbound toward Lillie Street. Officer Hollo radioed to other officers Freeman's description and his direction of flight and stayed with the Explorer until other officers arrived. Officer Hollo ordered the driver, who was later identified as Martin, to exit the Explorer. Martin initially did not comply with the order, but eventually did so. When he did exit the Explorer, Martin was holding an object that he refused to drop, and he refused to comply with any other orders given by Officer Hollo. When Officer Hollo threatened to tase Martin and pulled his Taser from

his belt, Martin dropped the object he was holding, which was later discovered to be a cell phone, and fled in the same direction [that] Freeman had. Martin was apprehended when he fell in the yard of a house. Freeman was subsequently discovered in a bush in front of a house on Lillie Street. Both men were taken into custody.

The police recovered \$198 in cash and a striped shirt where Freeman had been hiding in the bush. Inside the Explorer, the police found two black baseball caps, two pairs of gloves, and a dark colored sweatshirt. They also recovered a black cell phone on the front passenger seat and a cell phone lying on the ground outside the driver's door. Zoda and Singh were transported to the scene of the arrest; Zoda was unable to identify either Freeman or Martin, and Singh positively identified Freeman as the man who robbed the Shell station. The cell phones recovered from the scene were forensically examined, and it was discovered that there were twelve telephone calls and ten text messages between the two cell phones in the four days prior to the robbery. A text message between the phones on July 20, 2013[,] referred to a "lick," which is common street slang for a robbery.

The State charged Martin with Class B felony robbery and Class D felony resisting law enforcement and alleged that he was a habitual offender. A bifurcated jury trial was held; in the first phase, the jury found Martin guilty of both robbery and resisting law enforcement, and in the second phase, Martin was found to be a habitual offender. The trial court sentenced him to twenty years for Class B felony robbery, enhanced by thirty years for the habitual offender finding, and three years for Class D felony resisting law enforcement, which was ordered to be served concurrently to the other sentence for an aggregate sentence of fifty years executed. . . .

Martin v. State, No. 02A03-1407-CR-243, 2015 WL 1577166, at *1-3 (Ind. Ct. App. Apr. 8, 2015) (citation to the record omitted), *trans. denied*.

[4] On direct appeal, Martin argued that the State had failed to present sufficient evidence to support his conviction for Class B felony robbery. He also argued that his fifty-year sentence was inappropriate. We affirmed his conviction and sentence. *Id.* at *4-5.

[5] Thereafter, Martin filed a *pro se* petition for post-conviction relief, which he later amended. The State moved to have the cause submitted upon affidavit, which the trial court granted over Martin's objection. Martin then provided a lengthy affidavit alleging numerous errors committed by his trial and appellate counsels, which errors he believed demonstrated ineffective assistance of counsel. Martin also moved for a change of judge in the post-conviction court. The post-conviction court denied Martin's motion for a change of judge and denied his petition for post-conviction relief. This appeal ensued.

1. The Post-Conviction Court Did Not Abuse Its Discretion in Denying Certain Requests Made by Martin.

[6] We initially address Martin's arguments that the post-conviction court abused its discretion in ruling on certain requests. On these issues, Martin challenges the post-conviction court's exercise of discretion. Thus, we review the court's decisions for an abuse of that discretion, which occurs only when the post-conviction court's judgment is clearly against the logic and effect of the facts

and circumstances before the court. *E.g.*, *State v. Katz*, 179 N.E.3d 431, 440 (Ind. 2022).

[7] We first address Martin’s argument that the post-conviction court abused its discretion when it denied his motion for a change of judge. Martin’s request was premised on his belief that the post-conviction court judge held a personal bias against him, which belief he based on her judicial rulings against him during his trial and sentencing as well as her role in prosecuting Martin’s co-defendant nearly two decades before the instant offenses. *See* Appellant’s App. Vol. 2, pp. 36-38. But “[a] trial court’s adverse rulings on judicial matters do not indicate a personal bias toward a defendant that calls into question the trial court’s impartiality,” *Harrison v. State*, 707 N.E.2d 767, 790 (Ind. 1999), and neither does a judge’s former prosecution of a third party in a prior cause, *cf. Calvert v. State*, 498 N.E.2d 105, 107 (Ind. Ct. App 1986) (requiring a judge to disqualify himself where he had previously served as a prosecutor in the same case now before him as the judge). Therefore, the trial court did not abuse its discretion when it denied Martin’s motion for a change of judge.

[8] Martin also argues that the post-conviction court abused its discretion when it ordered his cause to be submitted upon affidavit, over Martin’s objection, rather than determined at a fact-finding hearing. But our post-conviction rules expressly allow post-conviction courts to order *pro se* petitions to be submitted upon affidavit, and the decision to do so is within the post-conviction court’s discretion. *Ind. Post-Conviction Rule 1(9)(b)*; *see, e.g., Smith v. State*, 822 N.E.2d 193, 200-02 (Ind. Ct. App. 2005), *trans. denied*. Thus, it is not enough to argue,

as Martin does, that the post-conviction court cannot do as it did here; it expressly can. We therefore cannot say that the post-conviction court abused its discretion when it ordered Martin's cause submitted upon affidavit.

[9] Relatedly, Martin asserts that the post-conviction court abused its discretion when it denied his request to issue subpoenas to his trial counsel, to his appellate counsel, and to various third parties who Martin asserted would have supported an unpursued alibi defense at his trial. However, Martin explained in his affidavit in support of his petition for post-conviction relief what he believed the substance of each of those witnesses' testimony likely would have been. Thus, the court had the relevant information before it, and we therefore cannot say that the court abused its discretion when it denied Martin's request to issue subpoenas.

[10] Finally, we briefly acknowledge Martin's statements in his brief on appeal that the post-conviction court did not have jurisdiction over him, or that the court erred when it adopted the State's proposed findings of fact and conclusions of law in denying his petition. Neither of these apparent arguments are supported by cogent reasoning, and we reject them without further discussion.¹ See [Ind. Appellate Rule 46\(A\)\(8\)\(a\)](#).

¹ Martin also attempts to raise several issues for the first time in his Reply Brief on appeal. Those issues are not properly before us, and we do not consider them. *E.g.*, *Bowman v. State*, 51 N.E.3d 1174, 1179-80 (Ind. 2016) (quoting *Curtis v. State*, 948 N.E.2d 1143, 1148 (Ind. 2011)).

2. The Post-Conviction Court Did Not Err When It Denied Martin’s Petition for Post-Conviction Relief.

[11] We thus turn to Martin’s arguments on the merits of 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.” *Gibson v. State*, 133 N.E.3d 673, 681 (Ind. 2019) (citing Ind. Post-Conviction Rule 1(1)(b)). “The scope of potential relief is limited to issues unknown at trial or unavailable on direct appeal.” *Id.*

[12] A petitioner who files a petition for post-conviction relief “bears the burden of establishing grounds for relief by a preponderance of the evidence.” P-C.R. 1(5); *Humphrey v. State*, 73 N.E.3d 677, 681 (Ind. 2017). A petitioner appealing from the denial of post-conviction relief appeals from a negative judgment:

Thus, the [petitioner] must establish that the evidence, as a whole, unmistakably and unerringly points to a conclusion contrary to the post-conviction court’s decision. In other words, the [petitioner] must convince this Court that there is no way within the law that the court below could have reached the decision it did. We review the post-conviction court’s factual findings for clear error, but do not defer to its conclusions of law.

Wilkes v. State, 984 N.E.2d 1236, 1240 (Ind. 2013) (citations and quotation marks omitted). We will not reweigh the evidence or judge the credibility of witnesses and will consider only the probative evidence and reasonable inferences flowing therefrom that support the post-conviction court’s decision. *Hinesley v. State*, 999 N.E.2d 975, 981 (Ind. Ct. App. 2013), *trans. denied*.

[13] In his petition for post-conviction relief, Martin raised numerous allegations of ineffective assistance of trial and appellate counsel. As our Supreme Court has made clear:

Ineffective assistance of counsel claims are evaluated under the well-known, two-part test articulated in *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). To prevail, [the petitioner] must show that: (1) counsel’s performance was deficient based on prevailing professional norms; and (2) the deficient performance prejudiced the defense. *Ward v. State*, 969 N.E.2d 46, 51 (Ind. 2012) (citing *Strickland*, 466 U.S. at 687, 104 S. Ct. 2052). “Failure to satisfy either prong will cause the claim to fail.” *French v. State*, 778 N.E.2d 816, 824 (Ind. 2002).

In analyzing whether counsel’s performance was deficient, the Court first asks whether, “‘considering all the circumstances,’ counsel’s actions were ‘reasonable under prevailing professional norms.’” *Wilkes v. State*, 984 N.E.2d 1236, 1240 (Ind. 2013) (quoting *Strickland*, 466 U.S. at 668, 104 S. Ct. 2052). Counsel is afforded considerable discretion in choosing strategy and tactics, and judicial scrutiny of counsel’s performance is highly deferential. *Id.*

There is a strong presumption that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Stevens v. State*, 770 N.E.2d 739, 746 (Ind. 2002). Counsel is afforded considerable discretion in choosing strategy and tactics and these decisions are entitled to deferential review. *Id.* at 746-47 (citing *Strickland*, 466 U.S. at 689, 104 S. Ct. 2052). Furthermore, isolated mistakes, poor strategy, inexperience, and instances of bad judgment do not necessarily render representation ineffective. *Id.* at 747 (citations omitted).

To demonstrate prejudice, “the [petitioner] must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694, 104 S. Ct. 2052.

Conley v. State, 183 N.E.3d 276, 282-83 (Ind. 2022) (internal alteration omitted).

[14] In his brief on appeal, Martin argues that he received ineffective assistance of trial counsel for each of the following reasons: because his trial counsel failed to challenge the trial court’s jurisdiction; because his counsel failed to argue that the State was estopped from prosecuting him; because his counsel did not move for discharge; because his counsel failed to challenge the selection of the jury; because his counsel did not challenge the State’s striking of certain potential jurors; because his trial counsel did not inform the trial court of alleged out-of-court derogatory comments made by a court employee; because his trial counsel did not challenge the validity of a probable-cause affidavit; because his counsel did not challenge the validity of proceedings that occurred before Martin was represented by counsel; because his counsel failed to sufficiently challenge the credibility of certain witnesses; because his counsel failed to review evidence and locate various potential witnesses; because his counsel failed to object to the admission of certain evidence under [Indiana Evidence Rule 403](#); because his counsel failed to investigate a defense of duress; because his counsel failed to tender an accomplice liability instruction; because his counsel failed to introduce Martin’s mental health records; because his counsel failed to

investigate the Fort Wayne Police Department's policies as to inventory searches; because his counsel did not challenge underlying warrants, searches, and "chain of command of evidence"; because his counsel did not allege a civil conspiracy between the State, the prosecution, the public defender's office, and the local police department; and because his counsel did not argue mitigating circumstances at sentencing. Appellant's Br. at 15-29. Martin further alleges that his appellate counsel rendered ineffective assistance by not allowing Martin to proceed with his direct appeal *pro se* and by not arguing ineffective assistance of trial counsel on direct appeal. *Id.* at 29-30.

[15] However, Martin's list of alleged errors of his trial and appellate counsels is not sufficient to meet his burden on appeal of showing that the post-conviction court's judgment is contrary to law. At no point in his recitation of alleged errors does Martin assert, let alone demonstrate, that any of the alleged unmade challenges and arguments would have been successful if made, or that the alleged failures to object would have been granted. Similarly, at no point in his brief does Martin "show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." [Conley](#), 183 N.E.3d at 282-83. That is, Martin fails to argue on appeal that any of the alleged errors resulted in demonstrable prejudice to him.

[16] We acknowledge that Martin has proceeded *pro se* in the post-conviction court and in this appeal. However, our case law has long recognized that *pro se* litigants "are held to the same standard[s]" as attorneys in presenting arguments to this Court. *E.g.*, [Smith v. State](#), 822 N.E.2d 193, 203 (Ind. Ct. App. 2005),

trans. denied. It was Martin’s burden to present this Court with a full and complete argument necessary to meet his appellate burden; “[a] court which must search the record and make up its own arguments because a party has not adequately presented them runs the risk of becoming an advocate rather than an adjudicator,” which we will not do. *Thomas v. State*, 965 N.E.2d 70, 77 n.2 (Ind. Ct. App. 2012), *trans. denied*. As Martin has failed to meet his burden on appeal, we affirm the post-conviction court’s denial of his petition for post-conviction relief.

Conclusion

[17] For all of the above-stated reasons, we affirm the post-conviction court’s denial of Martin’s request for a change of judge, his requests for an evidentiary hearing and related subpoenas, and the denial of his petition for post-conviction relief.

[18] Affirmed.

Robb, J., and Foley, J., concur.