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IN THE
COURT OF APPEALS OF INDIANA

Bradley C. Back,
Appellant-Petitioner,

v.

State of Indiana,
Appellee-Respondent

January 27, 2021

Court of Appeals Case No.
20A-PC-1173

Appeal from the Dearborn
Superior Court

The Honorable Jonathan N.
Cleary, Judge

Trial Court Cause No.
15D01-1910-PC-14

May, Judge.

- [1] Bradley C. Back appeals the post-conviction court's denial of his petition for post-conviction relief. He presents two issues for our review, which we restate as:

1. Whether the post-conviction court erred when it denied his petition for post-conviction relief based on his allegation that he received ineffective assistance of counsel; and
2. Whether the post-conviction court erred when it sua sponte corrected a clerical error in the original trial record.

We affirm.

Facts and Procedural History

[2] On April 16, 2017, an explosion occurred at Back's home. The explosion was centered in Back's bedroom and Back had a "black material" that looked "ashy" on his face. (Ex. Vol. I at 95.) Michael Eggleston, an explosive enforcement officer with the Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives, who examined the evidence collected from the scene, testified at Back's sentencing hearing regarding the nature of the explosive found at the scene:

[T]his device consisted of a project box, in the bottom of the project box was a quantity of powder identified by laboratory analysis as Pryodex which is a black powder substance. The top of the box contained some nuts that in technical terms for explosives is shrapnel. Shrapnel is added for the specific purpose of an antipersonnel effect. It's there for the specific purpose of either causing property damage, personal injury, that it's something in addition to the explosion that is designed to have an additional effect and causing [sic] damage. The device itself was taped and it looked like it at one point in time was taped to be concealed in some type of plastic baggie. The best to kind of equate this to a known object would be a claymore mine. You

have explosives, then you have shrapnel on top, and it was designed to focus that explosive energy in a certain direction.

(*Id.* at 31.)

- [3] Upon further investigation, police learned Back's family had requested a welfare check on Back a few weeks earlier because they found "rubber gloves, a handgun, rope, zip ties, and duct tape" in Back's belongings; police characterized these items as an "abduction kit[.]" *Back v. State*, 2018 WL 4040264 at *2 (Ind. Ct. App. August 20, 2018). The day after these items were found, Back entered a mental health treatment facility. Following the explosion, a search of Back's tablet revealed internet searches for "cold cases, mob hits, how gas engines work, temperature that ignitor fluid ignites, homemade explosives, SUV tank location, pressure cooker bombs, phone tracker searches, and firearm searches." *Id.* Police were advised that Back and his girlfriend, Tracy Henderson, had recently broken up. Additionally,

a tablet search revealed repeated, continual trolling and search of his ex-girlfriend, Tracy Henderson's Facebook account. Also, that Defendant had made numerous attempts to Ms. Henderson's Facebook account to be sent directly to him, he had left letters on Ms. Henderson's car at her work; Defendant came to Ms. Henderson's work, and Defendant gave Ms. Henderson's Children Easter cards after the break up. . . . [Also] Defendant had numerous smart phone apps such as Hover Watch, Bluff, and Spoof that could be used to locate or track someone and make a phone number look like it was a different phone number.

Id. Based thereon, on April 18, 2017, the State charged Back with Level 5 felony manufacturing or possessing a destructive device,¹ Level 5 felony attempt to manufacture a destructive device,² and Level 6 felony criminal recklessness.³ On April 25, 2017, the State further alleged Back committed Level 2 felony possession of a destructive device.⁴

[4] Back hired Robert Hammerle to represent him in the matter. Throughout the case, Back worked with multiple therapists to address his mental health issues, including autism. Hammerle met with Back on occasion; he more often met with Back's family, who insisted Back was too mentally fragile to participate in some discussions, especially those that suggested that he intended to hurt Henderson. On July 31, 2018, the State emailed Hammerle offering Back a plea to Level 3 felony attempted aggravated battery,⁵ which would have required him to admit he intended to use the explosive to injure Henderson. The plea exposed Back to a maximum sentence of sixteen years. In previous meetings with Hammerle, Back had repeatedly expressed he was unwilling to admit that he intended to injure Henderson and that he would not plead guilty to attempted aggravated battery.

¹ Ind. Code § 35-47-5-5-2.

² Ind. Code § 35-47-5-5.2 (manufacturing a destructive device); Ind. Code § 35-41-5-1 (attempt).

³ Ind. Code § 35-42-2-2(b)(1).

⁴ Ind. Code § 35-47.5-5-8.

⁵ Ind. Code § 35-42-2-1.5 (aggravated battery); Ind. Code § 35-41-5-1 (attempt). The State did not formally charge Back with this crime.

[5] On August 1, 2018, Hammerle sent the State an email presenting a counter plea: that Back would plead guilty to Level 5 felony manufacturing or possessing a destructive device, Level 5 felony attempting to manufacture a destructive device, and Level 6 felony criminal recklessness. Hammerle stated in his email that the plea would mean that Back “would expose him to a maximum sentence of close to 15 years, which would mirror” the State’s earlier plea offer, however, he added a condition that the State recommend Purposeful Incarceration for any executed portion of the sentence. (Ex. Vol. I at 243.) The State rejected Hammerle’s counter plea and indicated the earlier offer would remain open until August 6, 2018.

[6] On August 2, 2018, Hammerle again sent the State a counter plea, which stated:

What if Back plead [sic] to Count 1, a Level 2 offense, possessing an explosive with the knowledge it could destroy property (his own house proves that fact) with the following recommendations from the State:

- 1) A [sentencing] cap of 15 years with the State making no recommendation at Sentencing;
- 2) Purposeful Incarceration would be part of the agreement;
- 3) Sentencing left to the Court’s discretion.

(Ex. Vol. II at 59.) The State rejected any plea that would require that it recommend Purposeful Incarceration. On August 5, 2018, Hammerle emailed the State, noting he had met with Back’s family, who had agreed to the counter

plea from August 2, with two additions: that the sentencing range from probation to fifteen years, and that Back would not appeal his sentence. The State again rejected the counter plea, refusing to recommend Purposeful Incarceration. After a series of emails between Hammerle and the State, the parties came to a plea agreement.

[7] On August 10, 2018, Hammerle met with Back and his family to go over the written plea agreement. Back signed the plea agreement, which stated, in relevant part:

Defendant waives his right to trial upon the following terms and conditions:

1. (x) That the Defendant agrees to withdraw his former plea of Not Guilty previously entered as to Count I of the amended charging [sic] – Possessing a Destructive Device, I.C. 35-4.5-5-8(1), a Level 2 Felony, and enters a plea of Guilty to Count I of the amended charging Information – Possessing a Destructive Device, I.C. 35-47.5-5-8(1), a Level 2 Felony.
2. (x) That the State of Indiana agrees to dismiss the remaining counts of the amended charging Information against the Defendant in this cause.
3. (x) That the State of Indiana and the Defendant agree that pursuant to the Defendant's plea of guilty, the Defendant shall be sentenced by the Court, at the sole discretion of the Court, pursuant to Indiana sentencing laws.

4. (x) That the State of Indiana and the Defendant agree that any executed portion of the sentence shall not exceed 15 years.

5. (x) That the Defendant may argue for the Purposeful Incarceration Program. The State is agreeing to remain silent on the issue and asserts it will be at the discretion of the Court.

6. (x) Defendant hereby waives the right to appeal any sentence imposed by the Court, including the right to seek appellate review of the sentence, pursuant to Indiana Appellate Rule 7(B).

(Appellant's App. Vol. II at 15-16.)

[8] On August 23, 2018, the trial court held a change of plea hearing. During the hearing, the court reiterated that Back had agreed to:

plead guilty to count 1 possession of [a] destructive device, a Level 2 felony. The remaining counts would be dismissed by the State. The State of Indiana and [Back] agree that [Back] be sentenced at the sole discretion of the Court pursuant to Indiana sentencing laws. The State of Indiana and [Back] agree that the executed portion of the sentence shall not exceed 15 years. The parties agree that [Back] may argue for the Purposeful Incarceration Program. The State is agreeing to remain silent on this issue and asserts that it will be at the discretion of the court, and that you waive the right to appeal the sentence imposed by the Court, including the right to seek appellate review of the sentence pursuant to Appellate Rule 7(B).

(Ex. Vol. I at 7.) The trial court affirmed Back understood the terms of the plea agreement; affirmed Back understood those rights he relinquished thereunder

such as his right to jury trial, confrontation of witnesses, and appeal; accepted a factual basis for the plea; affirmed Back was satisfied with Hammerle's service as his attorney; accepted the plea agreement; and scheduled a sentencing hearing. The trial court held a sentencing hearing on November 20, 2018, and sentenced Back to twenty-five years with ten years suspended. The trial court rejected Back's request for Purposeful Incarceration, because the "court has not been presented enough evidence to support purposeful incarceration." (*Id.* at 227.)

[9] On October 18, 2019, Back filed a pro se petition for post-conviction relief wherein he alleged Hammerle provided ineffective assistance of counsel because he:

- (a) Failed to call witnesses, experts, or present mitigation evidence at sentencing, all of which was helpful and known to counsel at the time.
- (b) Failed to communicate a plea offer to a lesser included Level 3 felony offense.
- (c) Failed to review discovery.
- (d) Failed to meet with client in private at any time.
- (e) Failed to request competency evaluation.
- (f) Failed to cross-examine state witnesses at sentencing.
- (g) Failed to submit sentencing letters timely.
- (h) Failed to present evidence of mental illness of Defendant.
- (i) Failed to investigate statements of alleged victim.

(Appellant's App. Vol. II at 23.) On December 10, 2019, Back, with the assistance of counsel, amended his petition for post-conviction relief, incorporating the allegations from his pro se petition and expanding on his

argument regarding Hammerle's alleged failure to communicate the plea offer involving the Level 3 felony.

[10] The post-conviction court held an evidentiary hearing on February 5, 2020. Back's post-conviction counsel asked Back, during redirect examination and over the State's objection, about the language of the factual basis to which he agreed at the guilty plea hearing. Specifically, Back's counsel directed the post-conviction court to a portion of the transcript wherein the State indicated, "[i]f this matter proceeded to trial, the State would prove beyond a reasonable doubt that on or about April 16, 2017 in Dearborn County, State of Indiana, Bradley C. Beck [sic] did not possess a destructive device or explosive." (Ex. Vol. I at 12.) Back's post-conviction counsel noted the transcript indicated Back, at the guilty plea hearing, agreed that he did *not* possess a destructive or explosive device, and counsel argued that error rendered Back's guilty plea invalid. The post-conviction court took all matters presented at the hearing under advisement and asked the parties to submit proposed findings and fact and conclusions of law.

[11] In his proposed findings of fact and conclusions of law, Back stated that "the factual basis [for his guilty plea] was insufficient because the Prosecutor stated he 'did not' possess a destructive device." (Appellant's App. Vol. II at 35.)⁶

⁶ Back's proposed findings of fact and conclusions of law are not included in the materials provided on appeal, so we quote the relevant language from the trial court's order setting a hearing for all parties to listen to the guilty plea hearing in open court.

The State responded to this proposed finding, arguing that “it is simply a Prosecutor misspeaking and that the matter is waived because it was not sufficiently pled in the Petition or Amended Petition for Post-Conviction Relief.” (*Id.*) Because of this discrepancy, the post-conviction court sua sponte listened to Back’s guilty plea hearing and “the Court determined that there is a conflict between the typed transcript which was prepared by a commercial transcription service, Phoenix Transcription, and what the Prosecutor actually said. The transcript clearly states ‘did not’ but in the actual audio recording, the Prosecutor clearly says ‘did[.]’” (*Id.*) In an order on March 27, 2020, the post-conviction court explained this situation and set a hearing for April 17, 2020, so that all parties could “listen to the recording themselves due to the inconsistency in the record.” (*Id.*) Counsel for both parties attended the hearing.

- [12] On May 13, 2020, Back filed an objection to “the Court sua sponte reopening the evidence to augment an already complete record[.]” (*id.* at 37), because both parties had stipulated to the admission of the transcript, the transcript was certified, and neither party had requested a review of the contents of the transcript pursuant to Indiana Appellate Rule 32, which provides: “If a disagreement arises as to whether the Clerk’s record or Transcript accurately discloses what occurred in the trial court . . . any party may move the trial court . . . to resolve the disagreement.” Back alleged the “court by taking this unilateral action has abandoned its obligation to be a neutral and unbiased factfinder and arbiter under the law and assumed the role of an advocate.”

(Appellant’s App. Vol. II at 38.) On May 18, 2020, the State filed a motion to correct the trial transcript under Indiana Appellate Rule 32.

[13] On May 19, 2020, the post-conviction court issued its order denying Back’s petition for post-conviction relief. In addition to concluding that Hammerle did not render ineffective assistance of counsel, the post-conviction court found and concluded:

8. . . . Back also asserts in his Proposed Findings of Fact and Conclusion [sic] of [L]aw an insufficient factual basis. This argument and all other arguments that were not raised in the First Petition or Amended Petition are now denied because they were waived.

* * * * *

11. . . . The Court has carefully reviewed the Transcript of the factual basis that was prepared by a commercial transcription service, Phoenix Transcription. The Transcript reads, “Bradley C. Beck (sic) did not (sic) possess a destructive device . . .” The Court has also carefully listened to the actual audio recording of the factual basis. The audio recording clearly states, “Bradley C. Back did possess a destructive device . . .”

12. Indiana Rule of Criminal Procedure 21 provides, “The Indiana rules of trial and appellate procedure shall apply to all criminal proceedings so far as they are not in conflict with any specific rule adopted by the court for the conduct of criminal proceedings.”

13. Indiana Appellate Procedure Rule 32 provides, “If a disagreement arises as to whether the Clerk’s record or Transcript

accurately discloses what occurred in the trial court or the Administrative Agency, any party may move the trial court or the Administrative Agency to resolve the disagreement.”

14. The Court now resolves the disagreement in the record. The record and transcript shall forever and accurately reflect the actual factual basis stated by Prosecutor Deddens at the Guilty Plea Hearing, which was identical to the charging Information and Probable Cause Affidavit, that “Bradley C. Back did possess a destructive device . . .”

15. The actual recording resolves the disagreement in the record as it is the best evidence. The actual recording is corroborated by the defendant agreeing to the factual basis at the guilty plea hearing. The trial defense counsel further corroborated the actual factual basis by proceeding to a lengthy sentencing hearing and never objecting to the factual basis. The post-conviction relief counsel further corroborated the actual factual basis by not presenting the factual basis in the original or amended Petitions for Post-Conviction Relief.

16. The Court held a hearing on April 17, 2020, to allow everyone to listen to the actual recording and allowed the parties to amend their Proposed Findings of Fact and Conclusion [sic] of Law and to move the court to resolve the disagreement in the record. The Court finds the record clearly establishes a factual basis and the factual basis argument was waived regardless, as detailed above. On May 13, 2020, Back filed an objection to the March 27, 2020 Order Setting Hearing and the April 17, 2020 hearing. The Court overrules the objection.

(*Id.* at 49-50.)

Discussion and Decision

[14] Post-conviction proceedings are not “super appeals” through which a convicted person can raise issues that he failed to raise at trial or on direct appeal. *McCary v. State*, 761 N.E.2d 389, 391 (Ind. 2002), *reh’g denied*. Instead, they afford petitioners a limited opportunity to raise issues unavailable or unknown at trial and on direct appeal. *Davidson v. State*, 763 N.E.2d 441, 443 (Ind. 2002). As post-conviction proceedings are civil in nature, the petitioner must prove his grounds for relief by a preponderance of the evidence. *Id.* A party appealing a negative post-conviction judgment must establish that the evidence is without conflict and, as a whole, unmistakably and unerringly points to a conclusion contrary to that reached by the post-conviction court. *Id.* Where, as here, the post-conviction court makes findings of fact and conclusions of law in accordance with Indiana Post-Conviction Rule 1(6), we do not defer to the court’s legal conclusions, but “the 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) (citation omitted), *cert. denied*, 530 U.S. 830 (2001). We neither reweigh the evidence nor judge credibility of witnesses when reviewing the denial of a petition for post-conviction relief. *Mahone v. State*, 742 N.E.2d 982, 984 (Ind. Ct. App. 2001), *trans. denied*.

1. Ineffective Assistance of Counsel

[15] We review claims of ineffective assistance of trial counsel under the two-part test announced in *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To prevail, a claimant must show that trial counsel’s performance fell below an

objective level of reasonableness based on prevailing professional norms, *Taylor v. State*, 882 N.E.2d 777, 781 (Ind. Ct. App. 2008), and that the deficient performance resulted in prejudice. *Id.*

[16] Back argues Hammerle provided ineffective assistance of counsel because he did not communicate the State's plea offer by which Back would plead guilty to Level 3 felony attempted aggravated battery, which carried a maximum sentence of sixteen years. Regarding this issue, the post-conviction court found:

iii. Hammerle was repeatedly advised by Back and the Back family that no guilty plea or admission was acceptable that would include battery or harming anyone, especially his ex-girlfriend.

iv. On the week of August 6, 2019, Hammerle met with the Back family who advised they did not want Back present because he was depressed partly because Back did not want to plea [sic] guilty to anything involving battery of his ex-girlfriend.

v. Hammerle met with Back and fully explained the plea offer before Back signed the plea agreement.

vi. Hammerle said there was a Level 3 felony plea offer, but that required Back to admit to battery.

vii. Hammerle advised a Level 3 felony carried a maximum sentence of 16 years executed. The alternate plea agreement offer of a Level 2 felony, carried a capped maximum executed sentence of 15 years and did not require an admission to harm the ex-girlfriend. Hence there was 1 year less incarceration exposure and no admission to harming the ex-girlfriend in the Level 2 felony offer that Back ultimately agreed to.

viii. The defense all along was that Back did not intend to harm his ex-girlfriend at all and therefore refused to admit that he did.

* * * * *

xi. Hammerle conveyed the Level 3 felony plea offer to Back and the Back family orally.

* * * * *

xiv. Hammerle advised the F2 felony was a better option than the F3 because the Court would have never accepted a factual basis for the F3 because Back would have never admitted to the factual basis from the prosecutor.

(Appellant's App. Vol. II at 46-7.) Based thereon, the post-conviction court concluded:

- a. The testimony from Hammerle reflects that the [sic] did convey both the F2 and F3 plea offers to Back.
- b. The testimony of Hammerle reflects that Back would have never admitted to the F3 factual basis that involved battery on his ex-girlfriend. Therefore, this Court would not have accepted this [sic] F3 plea agreement.
- c. Hammerle's representation did not fall below an objective standard of reasonableness. This Court has witnessed matters where it was clear the attorney's representation did not satisfy our Constitutional requirements. To the contrary, everything this Court witnessed of Hammerle's representation, through hundreds of hours of legal advocacy, hiring multiple experts, attending a hearing in the State of Ohio, many meetings,

represented the exact opposite of falling below an objective standard of reasonableness.

(*Id.* at 51-2.)

[17] Back argues:

While the post-conviction court found that Hammerle did communicate the Level 3 Plea Offer to Back, the evidence overwhelmingly points to the contrary. Hammerle admittedly did not provide such advice to Back in writing, and therefore, the only evidence offered was his own testimony[.] . . . The thought that Hammerle testified in a disinterested manner, while all others were biased and self-interested, is clearly erroneous.

(Br. of Appellant at 16.) We cannot assess Hammerle’s credibility or reweigh the evidence. *See Mahone*, 742 N.E.2d at 984 (appellate court cannot reweigh evidence or judge the credibility of witnesses). Hammerle testified he communicated the Level 3 felony attempted aggravated battery plea offer to Back and Back’s family prior to Back signing the final plea but Back had previously and consistently indicated he would not admit he intended to harm his ex-girlfriend. Because we cannot reweigh the evidence or judge the credibility of witnesses, we find no error in the post-conviction court’s determination that Hammerle did not render ineffective assistance of counsel

because he communicated the Level 3 felony plea offer to Back and Back's family.⁷

2. Factual Basis for Back's Guilty Plea

[18] As noted in the facts, the transcript from Back's Guilty Plea Hearing indicated the prosecutor stated, as the factual basis for Back's plea, "If this matter proceeded to trial, the State would prove beyond a reasonable doubt that on or about April 16, 2017 in Dearborn County, State of Indiana, Bradley C. Beck did not [sic] possess a destructive device or explosive." (Ex. Vol. I at 12.) The post-conviction court, sua sponte, listened to the recording of Back's Guilty Plea Hearing to determine if the "not" in the transcript was an error. The post-conviction court stated it did so because it "would never intentionally accept a factual basis when the prosecutor said someone did not commit a crime." (Appellant's App. Vol. II at 35.) After listening to the recording, the post-conviction court "determined that there is a conflict between the typed transcript . . . and what the Prosecutor actually said. The transcript clearly states 'did not' but in the actual audio recording, the Prosecutor clearly says 'did.'" (*Id.*) The post-conviction court held a hearing to allow all parties and interested people to listen to the audio recording.

⁷ As we have concluded Hammerle communicated the plea to Back and Back's family and thus did not provide deficient performance, we need not consider the prejudice prong of the *Strickland* analysis. See *Brown v. State*, 698 N.E.2d 1132, 1142 (Ind. 1998) (inability to establish either prong of *Strickland* analysis causes claim of ineffective assistance of counsel to fail).

[19] Back subsequently objected to the post-conviction court “reopening the evidence to an already complete record.” (*Id.* at 37.) The trial court overruled that objection and found that Back waived the issue of whether there was an adequate factual basis. It also ordered, “[t]he record and transcript shall forever and accurately reflect the actual factual basis stated by Prosecutor Deddens at the Guilty Plea Hearing, which was identical to the charging Information and Probable Cause Affidavit, that “Bradley C. Back did possess a destructive device . . .” (*Id.* at 50.) On appeal, Back argues the post-conviction court did not have the authority to correct the transcript from Back’s Guilty Plea Hearing. Specifically, Back contends the post-conviction court’s “alteration of the record, after evidence was concluded, was unsupported by adequate authority[.]” (Br. of Appellant at 24.)

[20] Indiana Evidence Rule 201 states, in relevant part:

(a) Kinds of Facts That May Be Judicially Noticed. The court may judicially notice:

(1) a fact that:

* * * * *

(B) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

(2) the existence of:

* * * * *

(C) records of a court of this state.

* * * * *

(c) Taking Notice. The court:

(1) may take judicial notice on its own;

* * * * *

(d) Timing. The court may take judicial notice at any stage of the proceeding.

(some internal formatting omitted). Here, the post-conviction court took judicial notice of a record of a court of this state, that is, the audio recording of Back’s Guilty Plea Hearing. In taking judicial notice, the post-conviction court recognized an error in the written transcript of the same hearing. Indiana Trial Rule 60(A) permits:

Of its own initiative or on the motion of any party and after such notice, if any, as the court orders, clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the trial court at any time before the Notice of Completion of Clerk’s Record is filed under Appellate Rule 8.

The post-conviction court corrected the clerical mistake of inserting the word “not” into the transcript of Back’s Guilty Plea Hearing by removing the word “not” from the transcript, which created an accurate record that future courts may reference. To suggest that the post-conviction court could not, or should

not, have corrected this error leads this court to believe that Back seeks to take advantage of a clerical error that he did not even detect until late in the post-conviction proceedings as an avenue by which to relieve him of any penalty for constructing, possessing, and detonating a homemade bomb, which resulted in substantial property damage. The post-conviction court had the authority to correct the transcript of Back's Guilty Plea Hearing and ensured the preservation of an accurate record in doing so.⁸ See, e.g., *Anderson v. Horizon Homes, Inc.*, 644 N.E.2d 1281, 1286 (Ind. Ct. App. 1995) (clerical errors "arising from oversight or omission" may be corrected by the trial court at any time prior to the filing of a record on appeal), *reh'g denied*.

Conclusion

[21] Back has not demonstrated the post-conviction court committed error when it determined trial counsel was not ineffective because he adequately conveyed all of the State's plea offers to his client. Further, the post-conviction court did not err when it corrected the transcript from Back's Guilty Plea Hearing once it was notified there existed a possible error. Accordingly, we affirm the denial of Back's petition for post-conviction relief.

⁸ Back also argues that the trial court's acceptance of his guilty plea was fundamental error. This argument is based on the original transcript of Back's Guilty Plea Hearing, which contains a clerical error. As we conclude the post-conviction court had authority to correct the error, Back's argument regarding an alleged error in his guilty plea is moot.

[22] Affirmed.

Riley, J., and Altice, J., concur.