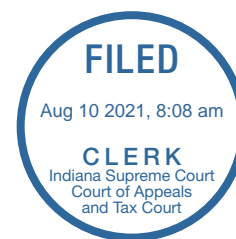


MEMORANDUM DECISION

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.



APPELLANT *PRO SE*

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IN THE COURT OF APPEALS OF INDIANA

Eddy Gonzalez,
Appellant-Petitioner,

v.

State of Indiana,
Appellee-Respondent.

August 10, 2021

Court of Appeals Case No.
19A-PC-2711

Appeal from the St. Joseph
Superior Court

The Honorable John M.
Marnocha, Judge

Trial Court Cause No.
71D02-1803-PC-6

Bradford, Chief Judge.

Case Summary

- [1] In 2015, Eddy Gonzalez pled guilty to one count of Level 3 felony rape. He subsequently filed a *pro se* petition for post-conviction relief (“PCR”), alleging both that (1) the post-conviction court erred in determining that his guilty plea was knowingly, intelligently, and voluntarily made and (2) he suffered ineffective assistance of trial counsel. The post-conviction court denied Gonzalez’s petition. We affirm.

Facts and Procedural History

- [2] On December 6, 2014, Gonzalez compelled S.G., by force, to engage in sexual intercourse with him. On December 11, 2014, the State charged Gonzalez with two counts of Level 3 felony rape. Gonzalez subsequently filed a motion for the appointment of a Spanish interpreter, stating as follows:

The Defendant, by counsel, requests that the Court employ an interpreter for and on his behalf in this case *if the case proceeds to trial*, for the reason that English is not the Defendant’s primary language and, although he speaks English, he is not fluent in the English language and, although he does understand English enough “to get along”, considering the serious nature of the charges, he wants to make sure that he fully understands and comprehends all that is spoken in the courtroom in event of a trial.

Appellant's App. Vol. II p. 9 (emphasis added).¹

[3] On September 3, 2015, Gonzalez pled guilty to one count of Level 3 felony rape, admitting that he “compelled [S.G.] by force” to have sex with him. Tr. p. 13. In exchange, the State agreed to dismiss the remaining count. In his plea agreement, Gonzalez affirmed that he had “the ability to read, write and speak the English language” and that he “underst[oo]d every accusation made against [him] in this case.” Appellant's App. Vol. II p. 3. Gonzalez also affirmed

I understand also that if I plead GUILTY I waive the right to a speedy public trial by jury and all of the attendant Constitutional Rights. I further understand that by entering a plea of GUILTY I will be admitting the truth of all of the facts alleged in the Information or to an offense included thereunder[.]

Appellant's App. Vol. II p. 4. Gonzalez also indicated “I believe and feel that my lawyer has done all that anyone could do to counsel and assist me and that I now understand the proceeding in this case against me.” Appellant's App. Vol. II p. 5. He further indicated that he was offering his guilty plea “freely and voluntarily of [his] own accord.” Appellant's App. Vol. II p. 5. The trial court conducted a guilty plea hearing, during which Gonzalez reaffirmed his desire to plead guilty. No interpreter was present during the guilty plea hearing and nothing in the record indicates that Gonzalez amended his earlier request to include the hearing. After reviewing Gonzalez's guilty plea, the trial court

¹ The PDF pagination and the numbering placed on the bottom of the pages by Gonzalez do not match. For purposes of this decision, we refer to the numbers represented in the PDF pagination.

accepted it and, following a sentencing hearing, sentenced Gonzalez to an eleven-year term of incarceration.

- [4] On March 18, 2018, Gonzalez filed a *pro se* PCR petition. Gonzalez filed an amended petition on November 7, 2018. Upon Gonzalez’s request, the post-conviction court heard the case by affidavit. On October 10, 2019, the post-conviction court issued an order denying Gonzalez’s PCR petition. In its order, the post-conviction court found that “Gonzalez did adequately understand the English language [and] that he was not prejudiced by an interpreter not being present”, “Gonzalez has failed to prove that a lack of understanding of the English language hampered him in communicating with his attorney”, “Gonzalez was not incompetent”, and “that his attorney was not ineffective.” Appellant’s App. Vol. I pp. 88–89.

Discussion and Decision

- [5] Gonzalez contends that the post-conviction court erred in denying his PCR petition. “Post-conviction procedures do not afford the petitioner with a super-appeal.” *Williams v. State*, 706 N.E.2d 149, 153 (Ind. 1999). “Instead, they create a narrow remedy for subsequent collateral challenges to convictions, challenges which must be based on grounds enumerated in the post-conviction rules.” *Id.* A petitioner who has been denied post-conviction relief appeals from a negative judgment and as a result, faces a rigorous standard of review on appeal. *Dewitt v. State*, 755 N.E.2d 167, 169 (Ind. 2001); *Collier v. State*, 715 N.E.2d 940, 942 (Ind. Ct. App. 1999), *trans. denied*.

[6] Post-conviction proceedings are civil in nature. *Stevens v. State*, 770 N.E.2d 739, 745 (Ind. 2002). Therefore, in order to prevail, a petitioner must establish his claims by a preponderance of the evidence. Ind. Post-Conviction Rule 1(5); *Stevens*, 770 N.E.2d at 745. When appealing from the denial of a PCR petition, a petitioner must convince this court that the evidence, taken as a whole, “leads unerringly and unmistakably to a decision opposite that reached by the post-conviction court.” *Stevens*, 770 N.E.2d at 745. “In other words, the defendant must convince this Court that there is *no* way within the law that the court below could have reached the decision it did.” *Id.* (emphasis in original). “It is only where the evidence is without conflict and leads to but one conclusion, and the post-conviction court has reached the opposite conclusion, that its decision will be disturbed as contrary to law.” *Godby v. State*, 809 N.E.2d 480, 482 (Ind. Ct. App. 2004), *trans. denied*. “The post-conviction court is the sole judge of the weight of the evidence and the credibility of the witnesses.” *Fisher v. State*, 810 N.E.2d 674, 679 (Ind. 2004).

[7] In challenging the denial of his PCR petition, Gonzalez alleges that the post-conviction court erred in finding that his guilty plea was made knowingly, intelligently, and voluntarily. He also alleges that he suffered ineffective assistance of trial counsel. For its part, the State asserts that the post-conviction court did not err in finding that Gonzalez’s guilty plea was made knowingly, intelligently, and voluntarily and that Gonzalez has failed to prove that he suffered ineffective assistance of trial counsel.

I. Knowing, Intelligent, and Voluntary Nature of Guilty Plea

[8] When a defendant pleads guilty he or she, of course, forgoes not only a fair trial, but also other accompanying constitutional guarantees. [*Boykin v. Alabama*, 395 U.S. 238, 243 (1969)] (pleading guilty implicates the Fifth Amendment privilege against self-incrimination, the Sixth Amendment right to confront one’s accusers, and the Sixth Amendment right to trial by jury). Given the seriousness of the matter, the Constitution insists, among other things, that the defendant enter a guilty plea that is “voluntary” and that the defendant must make related waivers “knowing[ly], intelligent[ly], [and] with sufficient awareness of the relevant circumstances and likely consequences.” [*Brady v. U.S.*, 397 U.S. 742, 748 (1970); *see also Boykin*, 395 U.S. at 242].

U.S. v. Ruiz, 536 U.S. 622, 628–29 (2002). “[T]he law ordinarily considers a waiver knowing, intelligent, and sufficiently aware if the defendant fully understands the nature of the right and how it would likely apply *in general* in the circumstances—even though the defendant may not know the *specific detailed* consequences of invoking it.” *Id.* (emphases in original).

[9] “A valid guilty plea depends on ‘whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.’” *Gibson v. State*, 133 N.E.3d 673, 697 (Ind. 2019) (quoting *Hill v. Lockhart*, 474 U.S. 52, 56 (1985)). In this case, the trial court informed Gonzalez of all of the rights he had as a criminal defendant and that he was waiving said rights by pleading guilty. The trial court also ensured that Gonzalez understood the crime to which he was pleading guilty and that he

was waiving all of the aforementioned rights by pleading guilty. The trial court further ensured that Gonzalez understood the sentencing possibilities following conviction and that pleading guilty could impact his immigration status. After affirming that he understood all of the above, Gonzalez reaffirmed his desire to plead guilty and indicated that he believed that doing so was in his best interests. Based on the record, we agree with the post-conviction court that Gonzalez's guilty plea was knowingly, intelligently, and voluntarily made.

[10] In arguing on appeal that his guilty plea was involuntary, Gonzalez points to the fact that there was no interpreter present at the guilty plea hearing. However, Gonzalez did not, at any point during the hearing, indicate that he was having difficulty understanding the trial court or communicating with either the trial court or his counsel. He never expressed confusion or asked for anything to be clarified. Rather, he clearly and succinctly indicated that he understood the nature of the proceedings, the rights that he was waiving by pleading guilty, and the potential penalties for the resulting conviction. Moreover, in previously requesting the assistance of an interpreter, Gonzalez only requested that an interpreter be present if the matter proceeded to a jury trial. Given that the matter did not proceed to trial, Gonzalez did not make a separate request for an interpreter to be present at the guilty plea hearing, and Gonzalez did not exhibit or express any difficulty understanding the proceedings or communicating with either the trial court or his counsel, we conclude that the post-conviction court did not err in finding that the lack of an

interpreter at the guilty plea hearing did not render Gonzalez's guilty plea involuntary.

II. Ineffective Assistance of Counsel

[11] “The right to effective counsel is rooted in the Sixth Amendment of the United States Constitution.” *Taylor v. State*, 840 N.E.2d 324, 331 (Ind. 2006). “The Sixth Amendment recognizes the right to the assistance of counsel because it envisions counsel’s playing a role that is critical to the ability of the adversarial system to produce just results.” *Id.* (quoting *Strickland v. Washington*, 466 U.S. 668, 685 (1984)). “The benchmark for judging any claim of ineffectiveness must be whether counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” *Id.* (quoting *Strickland*, 466 U.S. at 686).

[12] A successful claim for ineffective assistance of counsel must satisfy two components. *Reed v. State*, 866 N.E.2d 767, 769 (Ind. 2007). Under the first prong, the petitioner must establish that counsel’s performance was deficient by demonstrating that counsel’s representation “fell below an objective standard of reasonableness, committing errors so serious that the defendant did not have the ‘counsel’ guaranteed by the Sixth Amendment.” *Id.* We recognize that even the finest, most experienced criminal defense attorneys may not agree on the ideal strategy or most effective way to represent a client, and therefore, under this prong, we will assume that counsel performed adequately and defer to counsel’s strategic and tactical decisions. *Smith v. State*, 765 N.E.2d 578, 585

(Ind. 2002). “Isolated mistakes, poor strategy, inexperience, and instances of bad judgment do not necessarily render representation ineffective.” *Id.*

[13] Under the second prong, the petitioner must show that the deficient performance resulted in prejudice. *Reed*, 866 N.E.2d at 769. A petitioner may show prejudice by demonstrating that there is “a reasonable probability (i.e., a probability sufficient to undermine confidence in the outcome) that, but for counsel’s errors, the result of the proceeding would have been different.” *Id.* A petitioner’s failure to satisfy either prong will cause the ineffective assistance of counsel claim to fail. *See Williams*, 706 N.E.2d at 154. Stated differently, “[a]lthough the two parts of the *Strickland* test are separate inquires, a claim may be disposed of on either prong.” *Grinstead v. State*, 845 N.E.2d 1027, 1031 (Ind. 2006) (citing *Williams*, 706 N.E.2d at 154).

[14] In the context of a guilty plea, a petitioner “must show the outcome of the plea process would have been different with competent advice.” *Lafler v. Cooper*, 566 U.S. 156, 163 (2012). Thus, in order to show prejudice, Gonzalez was required to prove “that there is a reasonable probability that, but for counsel’s errors, [he] would not have pleaded guilty and would have insisted on going to trial.” *Id.* (quoting *Hill*, 474 U.S. at 59).

[15] Gonzalez claims that his trial counsel provided ineffective assistance in three ways: (A) counsel failed to object to the lack of an interpreter at the guilty plea and sentencing hearings, (B) counsel failed to adequately investigate the victim, and (C) counsel allowed him to plead guilty to a crime not supported by the

evidence. Notably, Gonzalez did not provide either the post-conviction court or this court with any evidence from his trial counsel, be it testimony or an affidavit. The record is also completely devoid of any information detailing the interactions between trial counsel and Gonzalez, *i.e.*, how well they understood each other without an interpreter or how accurately trial counsel gauged Gonzalez's ability to understand English. "Where trial counsel is not presented in support, the post-conviction court may infer that trial counsel would not have corroborated appellant's allegations." *Dickson v. State*, 533 N.E.2d 586, 589 (Ind. 1989).

A. Failure to Object to Lack of Interpreter at Guilty Plea and Sentencing Hearings

[16] Gonzalez claims that his trial counsel provided ineffective assistance by failing to object to the lack of an interpreter at both the guilty plea and sentencing hearings. However, as is discussed above, Gonzalez did not, at any point during either of the hearings, indicate that he was having difficulty understanding the trial court or communicating with either the trial court or his counsel. He never expressed confusion or asked for anything to be clarified. Rather, he clearly and succinctly indicated that he understood the nature of the proceedings, the rights that he was waiving by pleading guilty, and the potential penalties for the resulting conviction. Furthermore, he only requested that an interpreter be present if the matter proceeded to a jury trial. Gonzalez has failed to allege, much less prove, that he was prejudiced by trial counsel's

failure to object to continuing with these hearings in the absence of an interpreter.

B. Failure to Adequately Investigate the Victim

[17] Gonzalez next claims that his trial counsel provided ineffective assistance by failing to adequately investigate the victim after she allegedly recanted the rape claim and indicated that the sex act was consensual. Although Gonzalez briefly asserts in his appellate brief that the victim recanted the rape claim and admitted that the sex act was consensual, the record is completely devoid of any evidence supporting this assertion. Absolutely no evidence was presented before the post-conviction court indicating that the victim ever recanted the rape claim. In fact, the only evidence in the record regarding Gonzalez's actions is his admission that he used force to compel the victim to have sex with him. Gonzalez's self-serving claim that the victim recanted, without more, is insufficient to prove deficient performance by his trial counsel. As such, Gonzalez has failed to prove that he was prejudiced by trial counsel's alleged failure to adequately investigate the victim.

C. Allowing Gonzalez to Plead Guilty to the Wrong Crime

[18] Gonzalez also claims that his trial counsel provided ineffective assistance by allowing him to plead guilty to a crime not supported by the evidence. In support, Gonzalez relies on his self-serving claim that the victim recanted and subsequently admitted that the sex act was consensual, claiming that the evidence at most supported a charge of sexual misconduct with a minor.

However, given that the record is completely devoid of any indication that the victim recanted her rape claim, the charge supported by the evidence is in fact the Level 3 felony rape charge to which Gonzalez pled guilty. At the plea hearing, Gonzalez was fully informed of the substance of the crime to which he was pleading guilty and affirmed under oath that he committed said crime. Again, Gonzalez's self-serving claim that the victim recanted, without more, is insufficient to prove deficient performance by his trial counsel. As such, Gonzalez has failed to prove that he was prejudiced by trial counsel's actions.

[19] The judgment of the post-conviction court is affirmed.

Robb, J., and Altice, J., concur.