MEMORANDUM DECISION

APPELLANT PRO SE

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ATTORNEYS FOR APPELLEE

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IN THE COURT OF APPEALS OF INDIANA

Alan Kreilein,
Appellant-Plaintiff,

v.

Tracy Berry, et al.,
Appellee-Defendant

April 28, 2022

Court of Appeals Case No. 21A-PL-862

Appeal from the Madison Circuit Court

The Honorable Andrew Hopper, Judge

Trial Court Cause No. 48C03-2012-PL-177

May, Judge.

[1] Alan Kreilein appeals following the trial court's order dismissing his complaint. Because Kreilein failed to timely file his notice of appeal, we dismiss.

Facts and Procedural History

[2] In 2002, Kreilein committed Class B felony criminal deviate conduct.[1] Following conviction, the court sentenced him to a term of thirty years in the Indiana Department of Correction ("DOC"). While Kreilein was incarcerated, the DOC informed him of his classifications as both a sexually violent predator ("SVP")[2] and an offender against children.[3] Kreilein was released from prison and placed on parole in 2015. He was required to abide by additional special conditions while on parole because of his SVP and offender-against-children classifications. Kreilein violated those conditions and was reincarcerated in 2016. Thereafter, he filed a petition for postconviction relief challenging the revocation of his parole and his SVP and offender-against-children classifications. The postconviction court denied Kreilein's petition and granted summary disposition in favor of the State "because [Kreilein] pleaded guilty to parole [v]iolation, thereby waiving the opportunity to challenge it." (Appellee's App. Vol. II at 28.) Kreilein subsequently made repeated requests for permission to file a successive petition for postconviction relief, but this Court has denied each of his requests.

[3] On December 7, 2020, Kreilein filed suit against various employees of the DOC and the Indiana Parole Board (collectively, "State"). Kreilein titled his action a

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[1] Ind. Code § 35-42-4-2(a)(1) (1998).

[2] Ind. Code § 35-38-1-7.5 (2006).

[3] Ind. Code § 35-42-4-11 (2014).

"Petition for Declaratory Judgment and Injunctive Relief," (Appellant's App. Vol. II at 10), and alleged he was neither a SVP nor an offender against children. The State moved to dismiss Kreilein's complaint on the basis it constituted an unauthorized successive petition for postconviction relief.[4] The trial court granted the State's motion to dismiss on March 19, 2021. On April 9, 2021, Kreilein filed a "Motion to Reconsider Dismissal of Action" in which he asserted: "Comes now Plaintiff, Alan Kreilein, pro se, asks this court under trial rule 60 to reconsider its dismissal ruling in this action." (*Id*. at 87.) The trial court denied Kreilein's motion to reconsider on April 12, 2021.

[4] On April 21, 2021, Kreilein delivered his notice of appeal to appropriate staff at the New Castle Correctional Facility for them to mail. Kreilein specified in his notice of appeal that the order being appealed was the trial court's March 19, 2021, order denying his motion to dismiss.

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[4] The State explained in its motion to dismiss:

> Mr. Kreilein has challenged his parole revocation in more than a dozen other matters over the past decade. *See* Cause Nos. 62C01-0308-PC-000565; 59A01-0311-PC-00455; 19D01-1103-PC-000040; 19D01-1103-PC-000041; 19D01-1103-PC-000042; 82D03-1105-PC-00003; 82A01-1107-PC-00311; 82C01-1706-PC-003168; 48C03-1708-PC-000036; 48C03-1709-PC-000043; 48C03-1710-PC-000047; 48A02-1712-PC-02987; 19D01-1712-PC-000753; 18A-PC-00997; 18A-PC-03008; 19A-SP-00931; 20A-SP-00193, No. 48C03-2003-PC-000014; and 33C02-2011-PC-000010.
>
> Mr. Kreilein has not obtained leave from the Court of Appeals to file a successive PCR petition.

(Appellant's App. Vol. II at 19.)

Discussion and Decision

[5] Initially, we note that, like he did before the trial court, Kreilein proceeds pro se on appeal. We hold pro se litigants to the same standard as trained attorneys and afford them no inherent leniency because of their self-represented status. *Zavodinik v. Harper*, 17 N.E.3d 259, 266 (Ind. 2014). Pro se litigants "are bound to follow the established rules of procedure and must be prepared to accept the consequences of their failure to do so." *Basic v. Amouri*, 58 N.E.3d 980, 983-84 (Ind. Ct. App. 2016), *reh'g denied*. "One of the risks that a [litigant] takes when he decides to proceed pro se is that he will not know how to accomplish all of the things that an attorney would know how to accomplish." *Smith v. Donahue*, 907 N.E.2d 553, 555 (Ind. Ct. App. 2009), *trans. denied*, *cert. denied*, 558 U.S. 1074 (2009).

[6] The State asks us to dismiss Kreilein's appeal because he did not timely file his notice of appeal. Indiana Rule of Appellate Procedure 9(A)(1) states:

> A party initiates an appeal by filing a Notice of Appeal with the Clerk (as defined in Rule 2(D)) within thirty (30) days after the entry of a Final Judgment is noted in the Chronological Case Summary. However, if any party files a timely motion to correct error, a Notice of Appeal must be filed within thirty (30) days after the court's ruling on such motion is noted in the Chronological Case Summary or thirty (30) days after the motion is deemed denied under Trial Rule 53.3, whichever occurs first.

The chronological case summary notes the trial court granted the State's motion to dismiss Kreilein's complaint on March 19, 2021, and therefore,

Kreilein had until April 19, 2021, to timely file his notice of appeal. Because Kreilein is incarcerated, we credit him with filing his notice of appeal on the date he gave it to correctional staff to mail to the court and opposing parties. *See Dowell v. State*, 922 N.E.2d 605, 607 (Ind. 2010) (explicitly adopting "prison mailbox rule"). Kreilein certified on his notice of appeal that he delivered the notice to correctional staff on April 21, 2021, which is two days after his deadline for filing a notice of appeal expired.

[7] A motion to correct error under Trial Rule 59 tolls the deadline for filing a notice of appeal. *See* Ind. Appellate Rule 9. However, Kreilein chose not to file a motion under Trial Rule 59. Instead, he filed a motion to reconsider invoking Trial Rule 60. It is well-settled that a motion to reconsider does not toll the deadline for filing a notice of appeal. *See Huber v. Montgomery Cnty. Sheriff*, 940 N.E.2d 1182, 1185 n. 1 (Ind. Ct. App. 2010) ("[P]ursuant to Indiana Trial Rule 53.4(A), a motion to reconsider 'does not toll the time period within which an appellant must file a notice of appeal.'" (quoting *Johnson v. Est. of Brazill*, 917 N.E.2d 1235, 1239 (Ind. Ct. App. 2009))). Likewise, a Trial Rule 60 motion does not toll the deadline for initiating an appeal of the underlying judgment. *See In re Paternity of P.S.S.*, 934 N.E.2d 737, 740 (Ind. 2010) ("But a motion for relief from judgment under Indiana Trial Rule 60(B) is not a substitute for a direct appeal."). As Kreilein appeals the order dismissing his complaint and filed his notice of appeal after the deadline for initiating an appeal of that order

expired, we dismiss his appeal.[5] *See Cooper's Hawk Indianapolis, LLC v. Ray*, 162 N.E.3d 1097, 1098 (Ind. 2021) (dismissing the appellant's untimely initiated appeal after stating "it is never error for an appellate court to dismiss an untimely appeal").

Conclusion

[8] Kreilein's motion to reconsider did not toll his deadline for initiating an appeal from the trial court's order dismissing his complaint, and Kreilein filed his notice of appeal after the deadline to appeal said order passed. Therefore, we dismiss his appeal.

[9] Dismissed.

Brown, J., and Pyle, J., concur.

[5] An untimely filed notice of appeal does not deprive us of jurisdiction, and we may still consider an untimely initiated appeal if there are extraordinary compelling reasons to do so. *Blinn v. Dyer*, 19 N.E.3d 821, 822 (Ind. Ct. App. 2014). However, no such extraordinary compelling reason is present here.