

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Derek Aguilar,
Appellant-Petitioner,

v.

State of Indiana,
Appellee-Respondent.

July 17, 2023

Court of Appeals Case No.
22A-CR-1977

Appeal from the Wells Circuit
Court.

The Honorable Andrew K. Antrim

Trial Court Cause No.
No. 90C01-0512-FB-10

Memorandum Decision by Senior Judge Robb
Judges Crone and Kenworthy concur.

Robb, Senior Judge.

Case Summary and Issues

- [1] Derek R. Aguilar appeals from the trial court’s summary disposition order, alleging that by doing so, the court committed fundamental error. Finding no error, let alone fundamental error, we affirm.

Facts and Procedural History

- [2] Aguilar entered into a plea agreement in 2006, resolving two criminal causes in Adams County, 01C01-0511-FB-10 (FB-10) and 01C01-0512-FB-12 (FB-12). As we explained in a previous appeal,

the plea agreement specified that Aguilar would plead guilty to one count of Burglary in FB-10. As a sentence for that count, Aguilar would serve twenty years in the Indiana Department of Correction (the “DOC”). As for FB-12, Aguilar would plead guilty to several offenses and serve an aggregate term of ten years in the DOC with all the time suspended to probation. The aggregate term in FB-12 would run consecutive to the sentence in FB-10. Summarizing the sentencing arrangement, the plea agreement specified that the “combined sentence” across causes was “30 years to the [DOC], 20 served, 10 suspended.” App. Vol. 2 at 46. The agreement also stated that the ten years of probation in FB-12 would begin “following release from incarceration” in FB-10. *Id.*

Aguilar v. State, 162 N.E.3d 537, 539 (Ind. Ct. App. 2020), *trans. denied*.

- [3] On February 24, 2006, Aguilar entered into a plea agreement in Wells County resolving several criminal charges there under cause number 90C01-0512-FB-10 (Wells County FB-10). The trial court accepted the plea agreement on January

9, 2007 and sentenced Aguilar to serve an aggregate twenty-year sentence. The court ordered Aguilar to serve that sentence concurrently with his Adams County sentences in FB-12 and FB-10.

[4] Aguilar was released to parole in Adams County FB-10 and to probation in Adams County FB-12 on April 10, 2016. On July 19, 2016, the Adams County Probation Department filed a notice of violation of probation in FB-12. Aguilar admitted the violation, his probation was revoked, and he was ordered to serve 2,370 days in the Department of Correction. The court ordered the sanction to be served in the DOC consecutively to his sentence in FB-10.

[5] On November 3, 2016, the Indiana Parole Board found that Aguilar had violated the conditions of his parole in FB-10, revoked it, and ordered him to be reincarcerated. “The executed time was arranged so that Aguilar would serve the balance of his sentence in FB-10 before the balance of his sentence in FB-12.” *Aguilar*, 162 N.E.3d at 539-40.

[6] “In September 2019, Aguilar filed a petition for post-conviction relief,” focusing on “whether Aguilar was improperly placed on parole in FB-10.” *Id.* at 540. That petition was denied after a hearing and the submission of cross-motions for summary disposition.

[7] On March 31, 2022, Aguilar submitted a petition for post-conviction relief in the Wells Circuit Court, alleging that the terms of his plea agreement were not being followed. He claimed that the DOC had misinterpreted his plea agreement and was erroneously requiring him to serve his sentence in his Wells

County case consecutively to, instead of concurrently with, his Adams County cases.

- [8] Aguilar’s petition, which was received but not filed by the Wells Circuit Court Clerk (Clerk), was referred to on the CCS as “Correspondence to/from Court filed.” Appellant’s App. Vol. 2, p. 17. The Clerk separately filed Aguilar’s “Amended Verified Petition to Enforce Provisions of Plea Agreement,” which he tendered at the same time. *Id.* at 39. Aguilar’s tendered, but unfiled, petition for post-conviction relief, however, referred to the filed “Amended Verified Petition to Enforce Provisions of Plea Agreement” in a written notation, stating “See Attachment papers Motion to Enforce Provisions of Plea Agreement/Motion to Expedite Hearing. Gives All factual Basis for Claims.” *Id.* at 33.
- [9] On June 3, 2022, the State filed a motion for summary disposition requesting that the court summarily deny Aguilar’s petition to enforce provisions of his plea agreement. The State argued that Aguilar was attempting to relitigate previous petitions for post-conviction relief he had filed in Adams County, as well as ongoing petitions which were pending in Adams County and in the Court of Appeals. The State additionally argued that (1) Aguilar was mistaken in his belief that the sentence imposed was being served consecutively to his Adams County cases, and (2) his challenge should be made in his ongoing Adams County case instead of in Wells County.

[10] On June 7, 2022, the Wells Circuit Court granted the State’s motion for summary disposition, and this appeal ensued.

Discussion and Decision

Standard of Review

[11] Setting aside our observation that the petition for post-conviction relief was not filed, we address the procedural grounds upon which the court granted the State’s request and “dismissed with prejudice” Aguilar’s “cause.” Appellant’s App. Vol. 2, p. 53. The State’s motion was designated as a motion for summary disposition, typically available under our Rules of Post-Conviction Remedies (Ind. Post-Conviction Rule 1(4)(g)), where we review issues of law de novo; but the State’s motion was in effect a motion to dismiss, which we review for an abuse of discretion. *See Komyatti v. State*, 931 N.E.2d 411, 415-16 (Ind. Ct. App. 2010) (standard of review summary disposition); *State v. Weyer*, 831 N.E.2d 175, 177 (Ind. Ct. App. 2005) (reviewing trial court’s grant of a motion to dismiss for an abuse of discretion). The State argued that Aguilar raised his claims in the wrong county and the trial court seemingly agreed, dismissing the cause with prejudice. Under either standard, we find no error here.

Analysis

[12] Indiana Trial Rule 12(B)(8) implements the rule that “[w]hen an action is pending before an Indiana court, other Indiana courts must defer to that court’s authority over that case.” *\$47,940.00 U.S. Currency v. State*, 77 N.E.3d 839, 845 (Ind. Ct. App. 2017). This rule allows the “dismissal of one action on the

grounds that the same action is pending in another Indiana court.” *Id.* “Two actions are the ‘same’ for purposes of the Rule if the parties, subject matter, and remedies sought are the same or substantially the same.” *Id.* “‘As a matter of policy and practicality in the operation of our judicial system, only one court should be able to exercise jurisdiction over a cause of action at any particular time.’” *Id.* (quoting *State ex rel. Coleman v. Hendricks Superior Court II*, 272 Ind. 40, 396 N.E.2d 111, 112 (1979)).

[13] The State noted in its motion for summary disposition that Aguilar’s challenges were “related to his Adams County cases” and that “[a]ny challenge to those cases are[sic] barred by res judicata, and as an unauthorized successive PCR.” Appellant’s App. Vol. 2, p. 103. And the State’s footnote lists the following cases which were pending at the time or established res judicata: “*Aguilar v. State*, No. 01C01-2205-PC-3 (Recently filed PCR); *Aguilar v. Vanihel*, No. 21A-MI-02513 and No. 77C01-2108-MI-471 (Habeas); *Aguilar v. State*, No. 20A-PC-949[, *trans. denied*] and NO. 01C01-1910-PC-3 (PCR).” *Id.*

[14] Here, the trial court did not address the substantive arguments made in Aguilar’s petition for post-conviction relief or his Amended Verified Petition to Enforce Provisions of Plea Agreement. Instead, the court granted the State’s Motion for Summary Disposition, in which the State argued that “Aguilar appears to make many challenges related to his Adams County cases,” “it appears that this case is an attempt to relitigate his previous petitions, and ongoing petition, in the Adams Circuit Court and the Indiana Court of Appeals,” and concluded that “any challenge to his consecutive sentence

should be made in his on-going Adams Circuit Court PCR case.” Appellant’s App. Vol. 2, pp. 51-52. Thus, the court’s order is not based on a substantive determination, but a procedural one, concluding that Aguilar was pursuing the instant petition in the wrong county.

[15] We find no error here, let alone fundamental error, in the trial court’s decision to grant the State’s request for summary disposition. And we need not address Aguilar’s other claims because they either presume that the petition for post-conviction relief was filed (failure to forward petition to State Public Defender’s Office) or relate to the underlying substantive arguments in his petition (violation of plea agreement), which the court did not reach.

Conclusion

[16] We conclude that the trial court correctly granted the State’s motion for summary disposition, directing Aguilar to continue the pursuit of his challenge in the proper venue in which he could seek help from the State Public Defender’s Office.

[17] Affirmed.

Crone, J., and Kenworthy, J., concur.