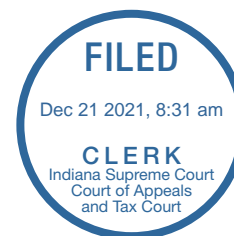


MEMORANDUM DECISION

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

Vincent O. Dates,
Appellant-Petitioner,

v.

State of Indiana,
Appellee-Respondent.

December 21, 2021

Court of Appeals Case No.
21A-PC-679

Appeal from the Vigo Superior
Court

The Honorable Sarah K. Mullican,
Judge

Trial Court Cause No.
84D03-1303-PC-818

Pyle, Judge.

Case Summary

[1] Vincent Dates (“Dates”), pro se, appeals the denial of his petition for post-conviction relief. He argues that the post-conviction court erred in denying his petition because he received ineffective assistance of trial counsel when counsel failed to object to evidence admitted at trial. Concluding that the post-conviction court did not err in denying Dates’ petition, we affirm the post-conviction court’s judgment.

[2] We affirm.

Issue

Whether the post-conviction court erred in denying Dates’ petition.

Facts

[3] We set forth the facts as follows in Dates’ direct appeal:

Around July 4, 2011, Dates and his sometime-girlfriend, Marissa Vinson (“Vinson”), had checked into a room at a Days Inn motel in Terre Haute. On multiple instances during their stay, Vinson used crack cocaine that Dates provided to her and witnessed Dates sell cocaine to individuals who came to the motel room.

On the morning of July 5, 2011, Vinson had left the motel with two individuals, Katie Davis (“Davis”) and another woman known only as Andrea, to purchase cigarettes and liquor. Around 12:30 p.m., Dates engaged in an altercation with John Bailey (“Bailey”), whom Dates perceived as having disrespected one of Dates’s friends, Brooklyn Hudson (“Hudson”). The altercation eventually resulted in the shooting death of Bailey.

Vinson, Davis, and Andrea, who had left the motel before the altercation occurred, received a phone call asking Vinson to return to the motel room to retrieve certain items. By the time the three arrived at the motel, however, officers from the Terre Haute Police Department had responded to the scene and Bailey lay unconscious on the pavement of the motel parking lot. Upon seeing Bailey lying on the ground and police officers in the area, the three women left the scene without stopping.

In the course of investigating Bailey's shooting, Dates became a subject of police interest. Dates, however, had left the motel by this time and police were unable to locate him during a search of properties near the motel. Police obtained a search warrant for the motel room Dates and Vinson had occupied and recovered numerous baggies of crack cocaine weighing more than 30 grams, two scales that showed indications of having been used to weigh and measure cocaine, a small metal pipe Vinson used to ingest cocaine by smoking the drug, and a box of plastic sandwich bags.

By the end of the day on July 5, 2011, Dates and Vinson were together again at Vinson's mother's home. On the following day, Vinson arranged for Dates's brother to transport her and Dates out of Terre Haute. The car carrying Dates, Vinson, Dates's brother, and another individual travelled east from Terre Haute late on July 6, 2011; by this time, a warrant had been issued for Dates's arrest. Sometime between midnight and 1 a.m. on July 7, 2011, Terre Haute police officers performing drug interdiction tasks stopped the car in which Dates and Vinson were travelling for a traffic violation; one of the officers immediately recognized Dates, and all of the car's occupants were arrested.

On July 6, 2011, the State charged Dates with Murder, a Felony²; Dealing in Cocaine; and two charges of Carrying a Handgun Without a License, one as a Class C felony³ based upon a prior felony conviction, and one as a Class A misdemeanor.⁴ On January 6, 2012, the State amended the charging information, which left in place only the charges for Dealing in Cocaine and Carrying a Handgun Without a License, as a Class A misdemeanor.

- [4] *Dates v. State*, No. 84A05-1203-CR-134, at * 1-2 (Ind. Ct. App. Nov. 7, 2012) (footnotes omitted).
- [5] After the State had amended the charging information and dismissed the murder charge, Trial Counsel Vernon Lorenz (“Trial Counsel Lorenz”) and the deputy prosecutor (“the deputy prosecutor”) discussed the case and the evidence that would be admitted during Dates’ upcoming trial on the dealing and handgun charges. Trial Counsel Lorenz knew that Indiana State Police Laboratory Forensic Scientist Hailey Newton (“Forensic Scientist Newton”) had analyzed the substance found in the motel room and had determined that it was 27.92 grams of cocaine. Trial Counsel Lorenz told the deputy prosecutor that, in his opinion, the issue in the case was not whether the substance found in the motel room was cocaine but whether Dates had possessed the cocaine with intent to deliver it. Trial Counsel Lorenz, therefore, agreed to stipulate to Forensic Scientist Newton’s Certificate of Analysis (“the Certificate of Analysis”), which stated that, after laboratory testing, Forensic Scientist Newton had determined that the substance found in the motel room was 27.92 grams of cocaine.
- [6] Trial Counsel did not object when the Certificate of Analysis was admitted into evidence at trial during the testimony of the police officer who had found the cocaine in the motel room. Also at trial, Vinson testified that she had seen Dates sell cocaine to individuals who had come to the motel room specifically to purchase cocaine. The jury convicted Dates of dealing in cocaine, and the

trial court sentenced him to thirty-five (35) years in the Department of Correction.

- [7] On direct appeal, Dates argued that there was insufficient evidence to support his conviction. Specifically, Dates argued that Vinson's testimony was incredibly dubious. Dates also argued that there was insufficient evidence that he had intended to deal in cocaine. This Court affirmed Dates' conviction in 2012. *See Dates*, No. 84A05-1203-CR-134 at * 1. Dates did not seek transfer.
- [8] In March 2019, Dates, pro se, filed an amended petition for post-conviction relief wherein he argued that he had received ineffective assistance of trial counsel because Trial Counsel Lorenz had failed to object to the Certificate of Analysis when it was admitted into evidence at trial. In March 2020, the State filed a motion for summary disposition, wherein the State argued that Dates could not succeed on his petition because the undisputed material facts established that Trial Counsel Lorenz had stipulated to the admission of the Certificate of Analysis as part of his trial strategy. In support of its motion, the State designated an affidavit from Trial Counsel Lorenz. In this affidavit, Trial Counsel Lorenz explained as follows regarding his trial strategy:

The defense I advanced during voir dire, opening statements, testimony, and closing arguments was that the cocaine that was in the room did not belong to Mr. Dates, but instead belonged to Marissa Vinson. In an interview, Ms. Vinson indicated that the gun that was used in the shooting was her gun and that the cocaine that was found in the room was hers for personal use. Strategically, I felt that this was the best defense based on the totality of the evidence on the charge of Dealing in Cocaine,

because the charge was possession with intent to deliver and the State had to rely on a constructive possession theory because there was no evidence of actual possession by Mr. Dates.

(State's App. Vol. 2 at 34).

[9] In December 2020, the post-conviction court issued an order granting the State's motion for summary disposition and denying Dates' post-conviction petition. The trial court's order specifically concluded as follows:

20. In this case, [Trial Counsel Lorenz] stipulated or decided not to object to the admission of the certificate of analysis.

21. The reason for this stipulation, or decision not to object, was so that the jury would focus on the issues pertaining to who possessed the cocaine and not be distracted by the testimony of a witness from the State Police Laboratory explaining that the cocaine found in Dates's room was cocaine.

22. Even in hindsight this strategy remains sound in that another person, Marissa Vinson, had claimed possession of the cocaine.

23. Accordingly, the Court finds that there is no genuine issue of material fact and that [Trial Counsel Lorenz] was not ineffective in failing to object to the certificate of analysis and therefore the State is entitled to judgment as a matter of law.

(Dates' App. Vol. 2 at 35-36).

[10] Dates now appeals the denial of his petition.

Decision

[11] At the outset, we note that Dates proceeds pro se. A litigant who proceeds pro se is held to the same rules of procedure that trained counsel is bound to follow.

Smith v. Donahue, 907 N.E.2d 553, 555 (Ind. Ct. App. 2009), *trans. denied, cert. dismissed*. One risk a litigant takes when he proceeds pro se is that he will not know how to accomplish all the things an attorney would know how to accomplish. *Id.* When a party elects to represent himself, there is no reason for us to indulge in any benevolent presumption on his behalf or to waive any rule for the orderly and proper conduct of his appeal. *Foley v. Mannor*, 844 N.E.2d 494, 496 n.1 (Ind. Ct. App. 2006).

[12] We now turn to the merits of Dates' argument that the post-conviction court erred in denying his petition. A defendant who has exhausted the direct appeal process may challenge the correctness of his conviction and sentence by filing a post-conviction petition. *Parish v. State*, 838 N.E.2d 495, 499 (Ind. Ct. App. 2005), *trans. denied*. Post-conviction procedures do not provide an opportunity for a super appeal. *Id.* Rather, they create a narrow remedy for subsequent collateral challenges to convictions that must be based on grounds enumerated in the post-conviction rules. *Id.* Post-conviction proceedings are civil proceedings, and a defendant must establish his claims by a preponderance of the evidence. *Id.*

[13] Here, the post-conviction court granted summary disposition pursuant to Indiana Post-Conviction Rule 1(4)(g), which provides as follows:

The court may grant a motion by either party for summary disposition of the petition when it appears from the pleadings, depositions, answers to interrogatories, admissions, stipulations of fact, and any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to

judgment as a matter of law. The court may ask for oral argument on the legal issue raised. If an issue of material fact is raised, then the court shall hold an evidentiary hearing as soon as reasonably possible.

Under this subsection, we review the trial court's grant of a motion for summary disposition in a post-conviction proceeding in the same way as a motion for summary judgment. *Brown v. State*, 131 N.E.3d 740, 742 (Ind. Ct. App. 2019), *trans. denied, cert. denied*. Thus, summary disposition is a matter for appellate de novo review. *Id.*

[14] Dates specifically argues that the post-conviction court erred in denying his petition because he received ineffective assistance of trial counsel when Trial Counsel Lorenz failed to object to the Certificate of Analysis that identified the substance found in the motel room as 27.92 grams of cocaine. We disagree.

[15] We review claims of ineffective assistance of trial counsel under the two-prong test established in *Strickland v. Washington*, 466 U.S. 668 (1984). The defendant must show that trial counsel's performance fell below an objective standard of reasonableness based on prevailing professional norms and that there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. *Moody v. State*, 749 N.E.2d 65, 67 (Ind. Ct. App. 2001), *trans. denied*.

[16] Counsel is afforded considerable discretion in choosing strategy and tactics, and we will accord those decisions deference on appeal. *Wrinkles v. State*, 749 N.E.2d 1179, 1195 (Ind. 2001), *cert. denied*. Counsel's performance is presumed

effective, and a defendant must offer strong and convincing evidence to overcome this presumption. *Smith v. State*, 822 N.E.2d 193, 202 (Ind. Ct. App. 2005), *trans. denied*. We will not speculate as to what may or may not have been an advantageous trial strategy as counsel should be given deference in choosing a trial strategy which, at the time and under the circumstances, seems best. *Whitener v. State*, 696 N.E.2d 40, 42 (Ind. 1998).

[17] Here, Trial Counsel Lorenz did not object to the Certificate of Analysis as a matter of trial strategy. “Few points of law are as clearly established as the principle that ‘[t]actical or strategic decisions will not support a claim of ineffective assistance.’” *McCary v. State*, 761 N.E.2d 389, 392 (Ind. 2002) (quoting *Sparks v. State*, 499 N.E.2d 738, 739 (Ind. 1986)). Dates has failed to show that Trial Counsel Lorenz’s decision to not object to the Certificate of Analysis was not part of an objectively reasonable trial strategy or that it equated to deficient performance. *See Roche v. State*, 690 N.E.2d 1115, 1126 (Ind. 1997) (explaining that a matter of trial strategy “cannot form the basis for establishing ineffective assistance of trial counsel unless there was no sound basis for not pursuing the strategy.”). The trial court did not err in denying Dates’ petition for post-conviction relief.¹

¹ Dates also argues that appellate counsel was ineffective because he failed to argue on appeal that trial counsel was ineffective for failing to object to the admission into evidence of the Certificate of Analysis. However, because we have determined that Dates’ trial counsel was not ineffective for failing to object to the admission of this evidence, appellate counsel was not ineffective for failing to raise this issue on appeal. *See Smith v. State*, 792 N.E.2d 940, 946 (Ind. Ct. App. 2003) (“As we find Smith’s [trial] counsel was not ineffective, appellate counsel did not err in failing to raise this issue on direct appeal.”), *trans. denied*.

[18] Affirmed.

May, J., and Brown, J., concur.
