

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Charles Edward Sweeney, Jr.,
Appellant-Petitioner,

v.

State of Indiana,
Appellee-Respondent.

September 20, 2022

Court of Appeals Case No.
22A-PC-369

Appeal from the Clark Circuit
Court

The Honorable Daniel E. Moore,
Judge

The Honorable Kyle P. Williams,
Special Judge

Trial Court Cause No.
10C01-2104-PC-2

Altice, Judge.

Case Summary

[1] After being granted permission to pursue successive post-conviction relief, Charles E. Sweeney, Jr., filed a petition for post-conviction relief, which the post-conviction court granted in part and denied in part. Sweeney now appeals, presenting two issues for our review:

1. Did the post-conviction court err in its calculation of pre-trial time to be credited toward Sweeney's Indiana sentence after his consecutive federal sentence was vacated?

2. Did the post-conviction court err in denying his claim that his statements to federal authorities could not be used in the State's prosecution of Sweeney for murder?

[2] We affirm in part and vacate in part.

Facts & Procedural History

[3] In deciding his direct appeal, our Supreme Court set out the facts underlying Sweeney's Indiana conviction:

On May 28, 1991, the victim, Danny Guthrie, left his family to go fishing with defendant. Guthrie did not return home that evening and his wife assumed that he decided to camp over with defendant. The next morning defendant called to see if Guthrie wanted to check the trout lines. Guthrie's wife informed the defendant that Guthrie never returned home and the defendant told Guthrie's wife that he brought Guthrie home between 4:00 and 6:00 p.m. the previous day. After several unsuccessful attempts to obtain more information from defendant, Guthrie's wife called the police. On May 29, 1991, Detective Kramer, the lead investigator, and other police officers questioned the

defendant at his home. However, no arrest was made and Guthrie remained missing.

In February, 1992, defendant was investigated by the Bureau of Alcohol, Tobacco and Firearms for placing a pipe bomb under Detective Kramer's police car. After being charged for these offenses, defendant entered into a plea agreement with the U.S. Attorney's Office on June 26, 1992. Pursuant to the plea agreement, defendant pled guilty to placing the bomb under Kramer's car, agreed to implicate all others involved in the bombing and also to disclose the whereabouts of Guthrie's body and any information relating to the cause of Guthrie's death.

Sweeney v. State, 704 N.E.2d 86, 91-92 (Ind. 1998) (footnotes omitted).

[4] Following his guilty plea in the federal case, Sweeney was sentenced to 210 months in the U.S. Bureau of Prisons. Shortly thereafter, on August 10, 1992, the State filed a murder charge and issued an arrest warrant for Sweeney for the murder of Guthrie under Cause No. 10C01-9208-CF-91 (CF-91) in Clark County, Indiana. Sweeney was incarcerated in a federal prison in Kentucky at the time. The trial court issued a writ of habeas corpus ad prosequendum, and Sweeney was transported to Clark County for an initial hearing on November 9, 1992. Due to concerns about transporting Sweeney between jurisdictions, the State dismissed the murder charge on April 22, 1993, and Sweeney was returned to federal custody in Kentucky. Sweeney served a total of 164 days in jail while in custody in Indiana on the murder charge.

- [5] On March 30, 1994, the State refiled the murder charge under Cause No. 10C01-9403-CF-51 (CF-51). On August 17, 1994, Sweeney was again transported to Indiana where he remained through his jury trial, which commenced on November 14, 1995. The jury found Sweeney guilty of murder, and on December 20, 1995, the trial court sentenced him to sixty years imprisonment “to run consecutive to any federal sentences.” *Appendix Vol. 2* at 87. The trial court found that because Sweeney “was incarcerated on federal charges at the time of his arrest . . . [he was] not entitled to credit for time served prior to sentencing.” *Id.* From the date he was returned to Indiana until his sentencing on the murder charge, Sweeney was confined for 490 days.
- [6] Sweeney pursued a direct appeal, and the Indiana Supreme Court affirmed his conviction and sentence. *Sweeney*, 704 N.E.2d 86. Sweeney sought a writ of habeas corpus in federal court, which was denied by the district court. The Seventh Circuit Court of Appeals affirmed the denial of habeas relief. On October 25, 2005, Sweeney sought post-conviction relief, which the post-conviction court denied. On appeal, this court affirmed the denial of post-conviction relief. *See Sweeney v. State*, 886 N.E.2d 1 (Ind. Ct. App. 2008), *trans. denied*.
- [7] Sweeney asserts that he “completed his executed federal sentence . . . on May 10, 2007.” *Appendix Vol. 2* at 11. Since that time, Sweeney has been in the custody of the State serving his sentence for murder. On September 11, 2019, the federal district court vacated Sweeney’s federal conviction and sentence and withdrew his guilty plea on the ground that the statute criminalizing the

conduct to which Sweeney pled guilty had subsequently been found to be void for vagueness.

[8] On March 22, 2021, Sweeney, pro se, filed a second Petition for Post-Conviction Relief (PCR Petition) in which he set out two grounds for relief: (1) “Sweeney is entitled to credit time pursuant to Indiana Code § 35-50-6-3(a) as a matter of law from February 11, 1992, to date in lieu of May 10, 2007, to date;” and (2) “Statements made by Sweeney on June 30, 1992, to federal authorities in connection with a federal plea agreement that was later withdrawn on September 11, 2019, . . . cannot be used against him in any civil or criminal proceeding.” *Id.* at 8. As Sweeney had already and unsuccessfully sought post-conviction review, he requested permission to file a successive PCR Petition pursuant to Ind. Post-Conviction Rule 1(12).

[9] In an order dated April 16, 2021, this court granted Sweeney leave to file a successive PCR Petition but authorized the filing “for the limited question of whether [Sweeney]’s federal sentence has been vacated¹ and whether the time he has been in custody in federal court should count against his sentence under [CF-51].” *Order*, 21A-SP-554, April 16, 2021. Sweeney’s successive PCR Petition was filed with the Clark Circuit Court under Cause No. 10C01-2104-PC-2.

¹ There is no dispute that Sweeney’s federal conviction and sentence were vacated.

[10] On July 14, 2021, Sweeney filed an Unopposed Motion for Issuance of Amended Abstract of Judgment, noting that the State “acknowledges” that Sweeney “is entitled as a matter of statutory right to credit for the time confined in the Clark County Jail as the result of his criminal charge for which he is now serving a sentence” and, the number of days for credit time not in dispute is for “the time periods of November 9, 1992 to April 22, 1993 and August 17, 1994 to December 20, 1995, a period of 654 actual days.” *Appendix Vol. 2* at 104. On November 23, 2021, the trial court issued an amended abstract of judgment to the Department of Correction (DOC) that credited Sweeney with 654 days and 654 days of good time credit.² This is only a portion of the time to which Sweeney claims he is entitled. Thus, on December 16, 2021, the post-conviction court held a hearing on Sweeney’s PCR Petition to consider whether he is entitled to additional pre-trial credit.

[11] On January 20, 2022, the post-conviction court entered its order, concluding that Sweeney is entitled only to the 654 days he spent confined in Indiana on his murder charge and not to additional time spent in federal custody on the federal charge that has since been vacated. The post-conviction court also addressed, and decided against Sweeney, his argument concerning the issue of admissibility of his statements to federal authorities. Sweeney now appeals. Additional facts will be provided as necessary.

² The State did not object to the issuance of the amended abstract of judgment.

Discussion & Decision

Standard of Review

[12] In a post-conviction proceeding, the petitioner bears the burden of establishing grounds for relief by a preponderance of the evidence. *Bethea v. State*, 983 N.E.2d 1134, 1138 (Ind. 2013). “When appealing the denial of post-conviction relief, the petitioner stands in the position of one appealing from a negative judgment.” *Id.* (quoting *Fisher v. State*, 810 N.E.2d 674, 679 (Ind. 2004)). In order to prevail, the petitioner must demonstrate that the evidence as a whole leads unerringly and unmistakably to a conclusion opposite the post-conviction court’s conclusion. *Id.* Although we do not defer to a post-conviction court’s legal conclusions, we will reverse its findings and judgment only upon a showing of clear error, i.e., “that which leaves us with a definite and firm conviction that a mistake has been made.” *Id.* (quoting *Ben-Yisrayl v. State*, 729 N.E.2d 102, 106 (Ind. 2000)).

1. Credit Time

[13] Sweeney argues that because his federal conviction and sentence were vacated, he is entitled to more credit time against his sentence in CF-51 for the time he was held in federal custody beginning February 11, 1992, which date he refers to as the “end” date of his now-vacated federal sentence.³ *Appellant’s Brief* at 22.

³ Sweeney asserts that the post-conviction court’s determination that he is not entitled to credit against his sentence in CF-51 for the time he spent in federal custody on his now-vacated federal sentence violates his rights to due course of law under Art. 1, § 12 of the Indiana Constitution and to due process of law under the Fifth and Fourteenth Amendments of the U.S. Constitution. He also claims that such subjects him to cruel

Specifically, Sweeney is seeking additional credit for time served in federal custody from February 11, 1992, to November 9, 1992 (time period from confinement on federal charges until the day he was transferred to Indiana in CF-91), and from April 22, 1993 to August 17, 1994 (time period between the dismissal of CF-91 until the day he was transferred to Indiana in CF-51).

[14] By statute, the time spent in confinement for a crime or awaiting trial or sentencing applies toward a prisoner's fixed term of imprisonment. Ind. Code §§ 35-50-6-1, 35-50-6-3. To be entitled to credit time, a defendant must have been confined for the offense for which he is being sentenced. *Maciaszek v. State*, 75 N.E.3d 1089, 1093 (Ind. Ct. App. 2017); *Sweeney v. State*, 704 N.E.2d 86, 109 (Ind. 1998). "The credit will be the number of days the defendant spent in confinement from the date of arrest for the offense to the date of sentencing for that same offense." *Maciaszek*, 704 N.E.2d at 1093 (quoting *Dolan v. State*, 420 N.E.2d 1364, 1373 (Ind. Ct. App. 1981)). Entitlement to credit time is a question of statutory interpretation and reviewed de novo. *Shepard v. State*, 84 N.E.3d 1171, 1172 (Ind. 2017).

[15] The time Sweeney was confined in the federal system *prior* to the first day he was confined in Indiana on the murder charge in DF-91 (i.e., February 11, 1992, to November 9, 1992) is clearly not time spent in confinement for the

and unusual punishment. Sweeney does not support these constitutional arguments with any citation to authority. He has therefore waived these claims for review. *See Isom v. State*, 170 N.E.3d 623, 653 (Ind. 2021) (finding waiver where defendant included no reasoning or citations to support his argument).

offense of murder. Sweeney is not entitled to credit for this time. Likewise, his period of confinement between the dismissal of CF-91 and the second filing of the murder charge in CF-51 was not time in confinement for the offense of murder. Sweeney's confinement for this period was related solely to the now-vacated federal offense and sentence and not due to the murder charge in Indiana as there was no murder charge pending in Indiana. Sweeney is not entitled to credit for this time.⁴ *Sweeney*, 704 N.E.2d at 109 (finding that Sweeney should be denied pre-trial credit time for time incarcerated as a result of his federal conviction because such confinement not due to charges filed by the State of Indiana). In short, the post-conviction court did not err in finding that Sweeney was entitled to pre-trial credit only for those time periods he was confined by the State of Indiana. Sweeney is not entitled to additional pre-trial credit for time spent in federal custody.

[16] We do note, however, that because Sweeney was sentenced to consecutive, executed time in Indiana after the sentence was imposed in the federal case and the sentence in the federal case was later vacated, “the instant sentence [i.e., the murder sentence] should commence from the date” he would have initially

⁴ Sweeney's argument that the federal and state offenses are “inextricably intertwined” with citations to right to counsel jurisprudence is confusing. *Appellant's Brief* at 25. First, we note that inextricably intertwined is the flipside of wholly unrelated and it is the latter phrase that is often used in setting out the test for determining whether a defendant is entitled to credit time. Second, as this court emphasized in *Glover*, “the test [for determining credit time] remains whether the confinement was the result of the criminal charge for which the sentence was imposed.” 177 N.E.3d at 887. The test is not whether the charges were wholly unrelated, *id.*, or as per Sweeney's argument, “inextricably intertwined.” Sweeney's confinement in the federal system was not the result of the State murder charge for which the sentence he seeks credit against was imposed.

been incarcerated “because there is no longer a sentence to which it can be consecutively served.” *Appellant’s Brief* at 24 (quoting *Jenkins v. State*, 492 N.E.2d 666 (Ind. 1986)).

2. Admissibility of Prior Statements

[17] Sweeney’s claim that his statements to federal authorities are inadmissible is not available for review. In his request for permission to file a successive PCR Petition, Sweeney presented both issues set out above. However, in this court’s order authorizing Sweeney to file his successive PCR Petition, we explicitly stated that the filing was authorized “for the limited question of . . . whether the time he has been in custody in federal court should count against his sentence under [CF-51].” *See Order*, 21A-SP-554, April 16, 2021. Despite this limitation, the post-conviction court addressed Sweeney’s argument regarding the admissibility of his statements to federal authorities. This was beyond the scope of the issue this court authorized to be presented for consideration by the post-conviction court. We therefore vacate the post-conviction court’s order to the extent it addresses the admissibility of Sweeney’s statements and express no opinion as to the arguments presented on appeal by Sweeney and the State in this regard.

[18] Judgment affirmed in part and vacated in part.

Vaidik, J. and Crone, J., concur.