MEMORANDUM DECISION

APPELLANT *PRO SE*

Christopher Rodgers
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IN THE COURT OF APPEALS OF INDIANA

Christopher Rodgers,
Appellant-Petitioner,

v.

State of Indiana
Appellee-Respondent.

September 7, 2021

Court of Appeals Case No. 21A-PC-316

Appeal from the Marion Superior Court

The Honorable Grant W. Hawkins, Judge

The Honorable Peggy Hart, Magistrate

Trial Court Cause No.
49D31-1604-PC-14456

Bradford, Chief Judge.

Case Summary

[1] In 2014, Christopher Rodgers pled guilty to murder. After the trial court accepted his plea, Rodgers filed a *pro se* petition for post-conviction relief ("PCR") alleging that his plea was void and had been involuntarily entered and that he had received ineffective assistance of counsel. The post-conviction court denied his petition. We affirm.

Facts and Procedural History

[2] On June 23 and the morning of June 24, 2013, Rodgers conspired with others to commit, and then attempted to commit, a robbery, which resulted in the death of the intended robbery target, Bassirou Mahamadou. On June 27, 2013, Rodgers, then seventeen, was charged as an adult with murder, Class A felony attempted robbery, and Class A felony conspiracy to commit robbery. Rodgers's counsel negotiated a deal pursuant to which his attempted robbery

and conspiracy to commit robbery charges would be dropped and his sentence would be capped at forty-five years, the minimum for murder. The agreement also provided that Rodgers was "waiv[ing] any future request to modify the sentence under [Ind. Code §] 35-38-1-17[.]" Appellant's App. Vol. II. p. 27. After determining that the plea was "knowingly, intelligently and voluntarily made," the trial court accepted Rodgers's plea and imposed a forty-five-year sentence. Appellant's App. Vol. II p. 14.

[3] On March 23, 2016, Rodgers filed a *pro-se* PCR petition. On August 9, 2016, Rodgers filed an amended PCR petition alleging that his plea was void and had been involuntarily entered and that he had received ineffective assistance of counsel. The post-conviction court held an evidentiary hearing on the petition and later denied it.

Discussion and Decision

[4] Rodgers 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*.

[5] 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).

[6] In challenging the denial of his PCR petition, Rodgers alleges that the post-conviction court erred in finding that his guilty plea was made knowingly, intelligently, and voluntarily; by not reviewing his claim that his guilty plea was void due to his juvenile status; and, that the trial court lacked subject matter jurisdiction. He also alleges that he received ineffective assistance of trial counsel and that the direct-file statute is unconstitutional. For its part, the State asserts that the post-conviction court did not err in finding that Rodgers's guilty plea was made knowingly, intelligently, and voluntarily; that Rodgers's guilty

plea is not void; that Rodgers has failed to prove that he suffered ineffective assistance of trial counsel; and that Rodgers has waived any claims as to the constitutionality of the direct-file statute.

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

[7] > 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).

[8] "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)). The trial court confirmed with Rodgers that he understood what he was pleading guilty to and that he had the right to go to trial:

> The Court: So now do you understand that what I read to you and what your lawyer explained to you is in fact what you are telling me you did when you plead guilty?
>
> Mr. Rodgers: Yes, sir.
>
> The Court: You are pleading guilty to the crime of robbery, I'm sorry, a crime of murder a felony. The crime has an advisory sentence[,] a starting point[,] of 55 years. If there are bad things about your background or bad things about this particular offense I could increase the sentence to 65. Do you understand that?
>
> Mr. Rodgers: Yes, sir.
>
> The Court: On the other hand, if there is nothing particularly bad about your background or the offense I could reduce the sentence down to 45. Is that clear?
>
> Mr. Rodgers: Yes, sir.
>
> The Court: As a matter of fact 45 is what you are pleading guilty to. So the State's recommendation is that you receive the least sentence available for the crime of murder. Do you understand that?
>
> Mr. Rodgers: Yes, sir.
>
> The Court: Any questions then about what the plea agreement says, what you are pleading guilty to and what the possible penalty might be?
>
> Mr. Rodgers: No, sir.

Ex. 1 pp. 15–16. In this case, the trial court informed Rodgers of his rights and ensured that he understood the crime to which he was pleading, the sentencing possibilities of conviction for that crime, and confirmed that Rodgers believed it was in his "best interest" to plead guilty. Appellant's App. Vol. II p. 102.

> The Court: Okay. If you had gone to trial and been convicted, you would have had the right to a direct appeal of both the conviction and the sentence. Do you understand that?
>
> Mr. Rodgers: Yes, sir.
>
> The Court: If you could not afford to hire a lawyer to do the appeal for you I would have one appointed one to do the appeal for you at no expense to you. Is that clear?
>
> Mr. Rodgers: Yes, sir.
>
> The Court: By pleading guilty you give up the right to a direct appeal of the conviction. Do you understand that?
>
> Mr. Rodgers: Yes, sir.
>
> The Court: The plea agreement tells me that you have negotiated away your right to a direct appeal of your sentence. Is that correct?
>
> Mr. Rodgers: Yes, sir.
>
> The Court: Do you think this plea agreement is in your best interest?
>
> Mr. Rodgers: Yes, sir.
>
> The Court: Are you satisfied with the job Ms. Thomas has done for you?
>
> Mr. Rodgers: Yes, sir.

Ex. 1 pp. 18–19. Further, Rodgers affirmed that he discussed the plea agreement with his friends, family members, and had "spent a lot of time" discussing the plea with his counsel. Appellant's App. Vol. II p. 50. Rodgers has not established that he entered into his plea unknowingly, unintelligently, and/or involuntarily.

II. Subject Matter Jurisdiction

[9] Rodgers also argues that the trial court lacked subject matter jurisdiction to hear this case.

> Whether a court has the authority to hear a class of cases is a question of the court's subject matter jurisdiction. *Dixon v. Siwy*, 661 N.E.2d 600, 606 n.10 (Ind. Ct. App. 1996). To have subject matter jurisdiction, either the Indiana Constitution or a statute must confer authority upon a court. *Santiago v. Kilmer*, 605 N.E.2d 237, 240 (Ind. Ct. App. 1992), *reh'g denied, trans. denied*. If a court does not have subject matter jurisdiction, any judgment that it renders is void. *Id*. at 239. Because void judgments may be attacked directly or collaterally at any time, the issue of subject matter jurisdiction cannot be waived and may be raised at any point by a party or by the court *sua sponte*. *Id.* at 239, 240. Because the authority granted by a statute is a question of law, we review this argument de novo. *See Clark v. Madden*, 725 N.E.2d 100, 104 (Ind. Ct. App. 2000).

Hoang v. Jamestown Homes, *Inc.,* 768 N.E.2d 1029, 1032 (Ind. Ct. App. 2002) (cleaned up). Specifically, Rodgers argues that the direct-file statute conferred jurisdiction on the criminal court, and the trial court's non-compliance with the direct-file statute negated that jurisdiction. Rodgers's interpretation is incorrect.

The direct-file statute is an exception to the juvenile court's "exclusive original jurisdiction" over "[p]roceedings in which a child […] is alleged to be a delinquent child." Ind. Code § 31-30-1-1-(1). "The age of the offender is determinative of subject matter jurisdiction in the *juvenile* court, however, it is merely a restriction on the personal jurisdiction possessed by a criminal court." *Twyman v. State*, 459 N.E.2d 705, 708 (Ind. 1984) (emphasis added). Rodgers argues that the age distinction in Indiana Code section 31-30-1-4, which allows the filing of criminal charges directly in adult court for juveniles sixteen years old and older charged with certain crimes, and the waiver statute in Indiana Code section 31-30-3-4, which allows a juvenile court to waive jurisdiction to adult court for a child at least twelve years old charged with murder, creates unconstitutionally disparate treatment. Because Rodgers did not raise these constitutional challenges to the direct-file statute, which were known and available to him at the time, in the trial court before pleading guilty, his claim is waived by his guilty plea, and they cannot be raised on collateral review, such as a PCR as in this case. "An available grounds for relief not raised at trial or on direct appeal is not available as grounds for a collateral attack." *Canaan v. State*, 683 N.E.2d 227, 235 (Ind. 1997). Furthermore, Rodgers's *pro-se* status does not excuse his failure to properly preserve these issues for appeal. *See Smith v. State*, 38 N.E.3d 218, 220 (Ind. Ct. App. 2015) (explaining that *pro-se*

litigants are held to the same standard as trained counsel and are required to follow procedural rules).

[10] Rodgers also argues that his plea was involuntary because "considering Ind. Code § 31-30-4" and the alternative sentencing scheme that it provides to minors, he received no benefit from pleading guilty as an adult for a fixed sentence of forty-five years. Appellant's Br. p. 53. We disagree. This alternative juvenile-sentencing provision did not exist at the time Rodgers was sentenced in 2013. *See* Ind. Code § 31-30-4-2 (2013). While the statute was effective in July 2013, Rodgers was sentenced before that, in May 2013. Further, even if it had existed at the time, that does not invalidate the voluntariness of his plea, as courts are not required to inform an accused of the collateral consequences of a plea, such as forgoing sentencing alternatives not included in the plea agreement. *See Williams v. State*, 641 N.E.2d 44, 48 (Ind. Ct. App. 1994) (a court's failure to advise an accused of the collateral consequences of a guilty plea does not invalidate a plea), *trans. denied*.

III. 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", *Smith v. State*, 765 N.E.2d 578, 585 (Ind. 2002), and therefore, under this prong, we will assume that counsel performed adequately and defer to counsel's strategic and tactical decisions. "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, Rodgers 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] The State argues that Rodgers's claim, that his counsel "midadvis[ed] Rodgers to waive modification rights and to plead guilty as an adult and face a mandatory sentence" and was therefore deficient is threadbare, effectively waiving the claim. "[W]ithout specific factual allegations in support of the claim of inadequacy of representation no evidentiary hearing is required." *Sherwood v. State*, 453 N.E.2d 187, 189 (Ind. 1983). Regardless of any potential waiver, we will address Rodger's claims of ineffective assistance of counsel.

[16] First, Rodgers challenges his counsel's failure to object to the inclusion of a modification-waiver provision in the plea agreement, arguing that his trial counsel's failure to do so was deficient because there is currently a prohibition on waiving future modification opportunities under Indiana Code Section 35-

38-1-17(i). However, that prohibition was added in 2014[1] while Rodgers plead guilty in 2013. *Compare* Ind. Code § 35-38-1-17 (2012), *with* Ind. Code § 35-38-1-17(i) (2014). Therefore, at the time that Rodgers entered into a plea agreement, counsel could not have been deficient for failing to object to the sentence modification waiver because there was no authority to support such an objection.

[17] Rodgers also argues that he could have been sentenced under an alternative sentencing scheme under Indiana Code section 31-30-4-2 had he gone to trial and that his counsel's failure to advise him of such a possibility was deficient. Again, this sentencing scheme did not exist at the time that Rodgers plead guilty and was sentenced, as Indiana Code section 31-30-4-2 became effective on July 1, 2014. Because Rodgers entered into the plea agreement in 2013, his counsel could not have acted deficiently by failing to advise Rodgers of a sentencing scheme which did not yet exist.

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

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

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[1] Rodgers also challenges the validity of the plea agreement because of the inclusion of this sentence-modification waiver. Again, because the prohibition against this type of waiver did not exist when Rodgers entered into the plea agreement, there is no authority to support his argument. *Compare* Ind. Code § 35-38-1-17 (2012), *with* Ind. Code § 35-38-1-17(i) (2014).