

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Larry D. Cameron,
Appellant-Petitioner,

v.

State of Indiana,
Appellee-Respondent.

October 5, 2023

Court of Appeals Case No.
22A-PC-857

Appeal from the Lake Superior
Court

The Honorable Salvador Vasquez,
Judge

The Honorable Kathleen Sullivan,
Magistrate

Trial Court Cause No.
45G01-0706-PC-000007

Memorandum Decision by Judge Felix
Judges Crone and Brown concur.

Felix, Judge.

Statement of the Case

[1] Larry D. Cameron (“Cameron”) filed a petition for post-conviction relief alleging ineffective assistance of trial counsel, ineffective assistance of appellate counsel, and prosecutorial misconduct. The post-conviction court denied relief, and Cameron appeals.¹ Cameron presents three issues for our review, which we restate as follows: Whether Cameron was denied effective assistance of counsel during his post-conviction proceedings.

[2] We affirm.

Facts and Procedural History

[3] The facts and procedural history relevant to Cameron’s current appeal were stated in part in this Court’s memorandum decision on his direct appeal:

The State charged Cameron with child molesting as a class A felony and child molesting as a class C felony. The State later amended the information by charging Cameron with two counts of child molesting as class A felonies and one count of child molesting as a class C felony. After a trial, the jury found Cameron guilty as charged.

¹ As an initial matter, we note that Cameron failed to support his arguments with cogent reasoning and citations to the Appendix or parts of the Record on Appeal on which he relies in violation of Indiana Appellate Rule 46(A)(8)(a). Cameron also failed to include in his Statement of Facts the facts relevant to the issues presented for our review in violation of Appellate Rule 46(A)(6). Nevertheless, we will address the merits of Cameron’s claims.

* * *

The trial court sentenced Cameron to thirty-five years on each of the class A convictions and five years on the class C conviction. The trial court ordered that the sentences be served consecutive to each other for a total sentence of seventy-five years in the Indiana Department of Correction.

Cameron v. State, No. 45A03-0606-CR-243, slip op. at 1–2 (Ind. Ct. App. Apr. 9, 2007) (internal citations and footnote omitted).

[4] On direct appeal, Cameron raised three issues: (1) whether his sentence violated *Blakely v. Washington*, 542 U.S. 296 (2004), *reh'g denied*; (2) whether the trial court abused its discretion in sentencing him; and (3) whether his sentence was inappropriate “in light of the nature of the offense and the character of the offender.” *Cameron*, No. 45A03-0606-CR-243, slip op. at 1. In a memorandum decision, this Court rejected Cameron’s arguments and affirmed the judgment of the trial court. *Id.* at 5.

[5] Soon after this Court issued its decision affirming Cameron’s sentence, Cameron filed a pro se petition for post-conviction relief, which he later withdrew. Twelve years later, Cameron filed another pro se petition for post-conviction relief, which the lower court treated as an amendment to the original petition.

[6] Cameron subsequently hired Mark Small (“Small”) to represent him in the post-conviction proceedings. Shortly thereafter, Cameron, by counsel, filed an amended petition. The amended petition alleged ineffective assistance of both

trial and appellate counsel as well as prosecutorial misconduct at trial, namely, the State’s failure to introduce a DNA report.

[7] At the evidentiary hearing on Cameron’s post-conviction petition, Small chose to “proceed in summary fashion” under the *Cronic* standard.² Tr. Vol. 2 at 1, 4. In particular, Small focused on trial and appellate counsels’ “failure to object to the lack of the DNA record report being introduced into the record” at trial, *id.* at 4, which allegedly resulted in a “complete failure by counsel to subject the State’s case to meaningful adversarial testing,” Appellant’s App. Vol. 3 at 60 (quoting *Harrison v. State*, 707 N.E.2d 767, 774 (Ind. 1999)). Small introduced the record of Cameron’s direct appeal as an exhibit, which the court admitted. That record was the only evidence Small submitted. Small also filed proposed findings of fact and conclusions of law.

[8] The trial court ultimately denied Cameron’s petition for post-conviction relief. This appeal ensued.

Discussion and Decision

[9] As the Indiana Supreme Court has stated many times before:

Post-conviction proceedings are civil proceedings in which a defendant may present limited collateral challenges to a conviction and sentence. *Wilkes v. State*, 984 N.E.2d 1236, 1240 (Ind. 2013). The defendant bears the burden of establishing his

² As discussed in more detail below, the *Cronic* standard is a standard of review developed by the United States Supreme Court for ineffective assistance of counsel claims. *United States v. Cronic*, 466 U.S. 648 (1984).

claims by a preponderance of the evidence. *Id.* 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.” *Stevens v. State*, 770 N.E.2d 739, 745 (Ind. 2002).

Weisheit v. State, 109 N.E.3d 978, 983 (Ind. 2018).

[10] Due in large part to the civil nature of post-conviction proceedings, Indiana courts have consistently held that neither the United States Constitution nor the Indiana Constitution guarantee a right to counsel for post-conviction relief proceedings. *Beasley v. State*, 192 N.E.3d 1026, 1030 (Ind. Ct. App.) (quoting *Baum v. State*, 533 N.E.2d 1200, 1201 (Ind. 1989)), *trans. denied*, 197 N.E.3d 829 (Ind. 2022); *Jordan v. State*, 60 N.E.3d 1062, 1069 (Ind. Ct. App. 2016) (quoting *Baum*, 533 N.E.2d at 1201); *Hill v. State*, 960 N.E.2d 141, 145 (Ind. 2012) (citing *Graves v. State*, 823 N.E.2d 1193, 1196 (Ind. 2005)); *Waters v. State*, 574 N.E.2d 911, 911 (Ind. 1991) (quoting *Baum*, 533 N.E.2d at 1201). Similarly, the United States Supreme Court has held that there is no federal constitutional right to counsel during state post-conviction proceedings. *Pennsylvania v. Finley*, 481 U.S. 551, 556–59 (1987); *see Dist. Attorney’s Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52, 69 (2009).

[11] Performance of counsel in a post-conviction proceeding typically is not judged by the rigorous Sixth Amendment violation standards set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), but by “a lesser standard responsive more to the due course of law or due process of law principles which are at the heart of the civil post-conviction remedy.” *Waters*, 574 N.E.2d at 911 (quoting *Baum*,

533 N.E.2d at 1201). Thus, to determine if post-conviction counsel was effective, we look to whether the counsel “in fact appeared and represented the petitioner in a procedurally fair setting which resulted in a judgment of the court.” *Graves*, 823 N.E.2d at 1196 (quoting *Baum*, 533 N.E.2d at 1201).

[12] Under this standard, a petitioner is not deprived of a procedurally fair post-conviction proceeding when post-conviction counsel chooses to present only those claims he believes are the most likely to prevail. *Matheney v. State*, 834 N.E.2d 658, 663 (Ind. 2005) (citing *Baird v. State*, 831 N.E.2d 109, 117 (Ind. 2005)). However, if post-conviction counsel fails to present any evidence in support of his client’s claim, which resulted in an unfair proceeding, then he has “in essence, abandoned his client” and will be deemed ineffective. *Waters*, 574 N.E.2d at 911–12.

[13] At the evidentiary hearing on Cameron’s petition for post-conviction relief, Small asked the trial court to use the *Cronic* standard instead of the *Strickland* standard to determine whether Cameron received effective assistance of counsel at his trial and during his direct appeal. This request was also reflected in the proposed findings of fact and conclusions of law that Small submitted.

[14] For a petitioner to prove that he received ineffective assistance of counsel under the *Strickland* standard, he “must show (1) that counsel’s performance was deficient based on prevailing professional norms; and (2) that the deficient performance prejudiced the defense.” *Ward v. State*, 969 N.E.2d 46, 51 (Ind. 2012) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). The *Cronic*

standard is a narrow exception to the *Strickland* standard that focuses on whether extreme circumstances existed such that ineffective assistance of counsel must be presumed. *Ward*, 969 N.E.2d at 51 (citing *United States v. Cronin*, 466 U.S. 648, 658–62 (1984); *Florida v. Nixon*, 543 U.S. 175, 190 (2004)).

[15] Under the *Cronin* standard, the petitioner has the heavy burden of showing that a presumption of ineffectiveness is justified because “no lawyer would provide [the petitioner] with the effective assistance of counsel required by the Constitution” under the circumstances. *Ward*, 969 N.E.2d at 51 (quoting *Cronin*, 466 U.S. at 665). Such circumstances include the following:

1. “the complete denial of counsel”;
2. “situations where counsel entirely fails to subject the prosecution’s case to meaningful adversarial testing”; and
3. “situations where surrounding circumstances are such that, ‘although counsel is available to assist the accused during trial, the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial.’”

Id. (quoting *Cronin*, 466 U.S. at 659–60.)

[16] Because Small proceeded under the *Cronin* standard and argued that trial and appellate counsels failed to subject the State’s case to meaningful adversarial testing, the relevant evidence appears to have been the record of the trial and ensuing appeal, which Small in fact introduced. Small also submitted proposed findings of fact and conclusions of law.

[17] Based on the record before us,³ it appears that Small made tactical choices in his representation of Cameron at the post-conviction proceedings. We cannot say that Small abandoned Cameron or that Small's representation of Cameron was so deficient that it deprived Cameron of a procedurally fair hearing on his petition. *See Graves*, 823 N.E.2d at 1196 (quoting *Baum*, 533 N.E.2d at 1201). Therefore, we hold that Cameron was not denied effective assistance of counsel at his post-conviction proceedings.

[18] Affirmed.

Judges Crone and Brown concur.

³ Cameron claims that Small was ineffective at the evidentiary hearing because Small (1) proceeded in a summary fashion, (2) narrowed the issues for the court's consideration, and (3) did not present all the evidence Cameron thinks he should have. In support of these arguments, Cameron cites material that he included in his appendix but that is not part of the Record on Appeal and was not entered into evidence at the evidentiary hearing. We will not consider such material on appeal. *See Haggarty v. Haggarty*, 176 N.E.3d 234, n.1 (Ind. Ct. App. 2021) (citing *Morey v. Morey*, 49 N.E.3d 1065, 1073 n.3 (Ind. Ct. App. 2016); Ind. Appellate Rule 27).