MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Ed R. Anderson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 25, 2023

Court of Appeals Case No. 22A-PC-1785

Appeal from the Boone Superior Court

The Honorable Matthew C. Kincaid, Judge

Trial Court Cause No. 06D01-1805-PC-591

Mathias, Judge.

[1] Ed R. Anderson appeals the Boone Superior Court's denial of his petition for post-conviction relief. Anderson raises two issues for our review, which we restate as follows:

> 1. Whether the post-conviction court's conclusion that Anderson did not receive ineffective assistance of counsel is contrary to law.
>
> 2. Whether Anderson's 100-year aggregate sentence is inappropriate.

[2] We affirm the post-conviction court's finding that Anderson did not receive ineffective assistance from his trial or appellate counsels. However, following our Supreme Court's holding in *State v. Stidham*, 157 N.E.3d 1185 (Ind. 2020), we conclude that the post-conviction court erred when denied Anderson's freestanding argument that his sentence is inappropriate under Indiana Appellate Rule 7(B). On that issue, we reverse and remand with instructions for the court to revise Anderson's sentence to eighty-five total years.

Facts and Procedural History

[3] This is not Anderson's first time before Indiana's appellate courts. We have set out the factual and procedural history of Anderson's convictions and sentencing previously:

> The facts surrounding the events that led to Anderson's attempted murder conviction were summarized by our supreme court in his direct appeal as follows:

The evidence at trial established that at approximately 7:00 p.m. on December 19, 1977, Jeffrey Parker, George Anderson [(George)], and defendant [Anderson] robbed Sherrill Marshall of both his money and his car. One of the three also shot Marshall in his face at close range. Marshall was not mortally wounded and later identified [Anderson] as the one who shot him. [Anderson] admitted at trial that he took part in the robbery and was the one who shot Marshall. While driving around in Marshall's car, the three approached Mashriki Verissimo who was walking along East 36th Street on her way home from a friend's house. The evidence showed that [Anderson] and Parker walked up behind Verissimo and put a gun to her head thereby forcing her to give up her purse and package. At trial, defendant also admitted this to be true.

Still riding around in Marshall's car, the three spotted Michael Krumlauf driving on the north side of Indianapolis. They followed Krumlauf until he pulled into a driveway. When Krumlauf started to step away from his Malibu automobile, the three accosted him and forced him into the backseat of his car. One of the three sat in the backseat with Krumlauf as they began driving around again. Krumlauf was forced to take off most of his clothing and there was evidence suggesting that Krumlauf was forced to commit some sexual acts. While driving around, the person sitting next to Krumlauf shot him three times in the head, killing him. Although Parker and George . . . testified that [Anderson] was the one who shot Krumlauf, [Anderson] denied their claims stating that he was in the front seat of the car when the killing occurred. The jury acquitted [Anderson] of Krumlauf's killing.

With Krumlauf's body still in the backseat, the three proceeded to the Ayr-Way Shopping Center on Lafayette Road in Indianapolis. There, one of the three left the car

> and accosted Izora West by attempting to grab her purse. When she resisted, she was shot in the head and killed. Again, George . . . and Parker testified that [Anderson] killed West; [Anderson] testified that Parker killed her. Two witnesses who were shopping at the Ayr-Way Center when West was killed noticed Krumlauf's Malibu automobile. They were able to see into the front seat of the car and identified [Anderson] as the person seated on the passenger's side of the front seat. Further, they noticed that West's killer got into the backseat of the automobile. The jury acquitted [Anderson] of West's killing.
>
> The three subsequently dumped Krumlauf's body into the White River.

Anderson v. State, 448 N.E.2d 1180, 1181-82 (Ind. 1983) [(*Anderson I*)].

The jury convicted Anderson of attempted murder, three counts of armed robbery, and criminal confinement. *Id.* at 1181. As indicated above, Anderson was acquitted of the armed robbery of West and of the murders of West and Krumlauf. For the attempted murder, the trial court sentenced Anderson to the presumptive thirty-year term plus a ten-year enhancement. *Id.* at 1186. For each of the armed robberies and the criminal confinement, it sentenced Anderson to the presumptive ten-year term plus a five-year enhancement. *Id.* All were ordered to be served consecutively, for an aggregate term of one hundred years. *Id.* On direct appeal, our supreme court considered Anderson's claims of sentencing error and found that the aggravating circumstances justified the enhanced and consecutive sentences.

In December of 1996, Anderson filed a petition for post-conviction relief. His amended petition asserted fundamental trial court error in that the jury was not properly instructed as to the

charged offense of attempted murder. The post-conviction court agreed, finding that "the jury should have been instructed that Anderson had to entertain the simultaneous intent to kill while the proscribed conduct occurred." *State v. Anderson*, 751 N.E.2d 714, 716 (Ind. Ct. App. 2001) [(*Anderson II*)]. Because the law "requires an instruction setting forth the elements of attempted murder to include that the defendant, acting with the specific intent to kill, engaged in conduct which was a substantial step toward the commission of murder," we affirmed the judgment of the post-conviction court. *Id.* at 717.

[Thereafter, o]n September 24, 2002, Anderson appeared before the trial court to plead guilty to attempted murder pursuant to a plea agreement that allowed the parties to argue sentencing. At the hearing, Anderson agreed that had the matter gone to trial, the State would have been able to prove

> that on December 19, 1977, Sherill Marshall was going home from work and stopped his automobile at the intersection of West 27th Street and Rader Street in Indianapolis, Marion County, Indiana, when he was approached by three (3) individuals who demanded property from him. They robbed him of his billfold, his money and other items from his vehicle. When he was approached, one (1) of the individuals put a gun to his right temple, and the robbery then took place. He later identified the individual who held the gun to his head as being the Defendant Ed Robert Anderson. He identified him in a photo array and identified him in open court in . . . a previous hearing in this matter. During the course of those events, one (1) of the individuals said to Mr. Marshall that they were going to kill him anyway and at that point in time he felt the pressure of the gun pressing against his head at the temple which caused him to turn his head, tilt his head slightly to the left and at the same time Mr. Anderson pulled the trigger of the gun and shot

> him in the head with the intent to kill him and the act of his having tilted his head as a result of the pressure of the gun caused the bullet to hit a partial plate in his mouth and exit through his opposite cheek rather than going through his brain, which kept him from being killed. Furthermore, during August of 1980, [Anderson] testified in this Court at a previous hearing that he in fact was the individual who had shot Mr. Marshall in the head.

The trial court accepted Anderson's plea and entered judgment of conviction.

On February 27, 2003, the trial court convened a sentencing hearing[on the conviction for attempted murder]. The State submitted transcripts of a portion of trial testimony for consideration in sentencing. The trial court stated that it took "judicial notice of the entire record . . . and . . . specifically, upon this motion [took] judicial notice of the transcripts" submitted. The State argued that Anderson should be ordered to serve an enhanced, consecutive sentence. Anderson argued for the presumptive term, served concurrently, arguing that the crime was the result of circumstances unlikely to recur, he had been only seventeen years of age at the time [Anderson was four months shy of eighteen at the time of the offense], and that his pleading guilty showed his remorse. At the conclusion of the hearing, the trial court indicated that it would review further case law on the matter and issue a written order reflecting its reasoning for sentencing.

On April 9, 2003, the trial court issued a four-page sentencing order. The order stated that the trial court had "reviewed the Presentence Investigation Report, the transcripts of testimony during trial, and . . . our Supreme Court's findings [in *Anderson I*]." It specifically quoted the [*Anderson I*] opinion's discussion of "several aggravating circumstances"—"the seriousness of [Anderson's] crimes . . . and [Anderson's] prior juvenile record

> including the fact that the [Anderson] was just being released from parole when the current crimes were committed" and how the trial record depicted "the type of crimes [Anderson] committed, the number of crimes, and the particular manner in which [Anderson] had committed them." The trial court then found one mitigator: Anderson's age at the time of the crime. The trial court found "aggravators including prior criminal activity in which as a juvenile, within the immediately preceding thirteen (13) months, he had received probation for an Assault and Battery and commitment to I.B.S. for a First Degree Burglary." The trial court further found as aggravating factors, the "particularized circumstances" surrounding the series of extremely violent criminal acts that took place on the night of December 19, 1977. The trial court also found Anderson to be "in need of correctional or rehabilitative treatment that can best be provided by" his commitment to a penal facility and evidence of the "future dangerousness of" Anderson. Finally, the trial court found "just the opposite" of Anderson's argument that the crime was the result of circumstances unlikely to recur. In this regard, the court considered Anderson's history of drug and alcohol abuse "prior to this crime," his substance abuse treatment during his incarceration, and evidence that he had nonetheless continued to use drugs as showing Anderson's inability to live in conformity with the law. The trial court stated that it had "carefully weighed the aggravators and all the mitigators proffered by" Anderson and had found "that the aggravators far outweigh the mitigators." The trial court then sentenced Anderson to a forty-year term [on the attempted-murder conviction] (the presumptive thirty-year sentence enhanced by ten years), to be served consecutive to his other sentences.

Anderson v. State, 798 N.E.2d 875, 876-79 (Ind. Ct. App. 2003) (some omissions and alterations in original) (footnotes and citations to the record omitted) (*Anderson III*). On appeal in *Anderson III*, Anderson argued that the trial court on remand had abused its discretion when it imposed the forty-year sentence on

his conviction for attempted murder. We affirmed, "find[ing] no abuse of discretion here." *Id.* at 881. Thus, Anderson's final convictions and sentences were for attempted murder, with a forty-year sentence; three Class B felony robberies, with a total forty-five-year sentence; and Class B felony criminal confinement, with a fifteen-year sentence. Each of Anderson's sentences were ordered to be served consecutively for an aggregate sentence of 100 years.

[4] In May 2018, Anderson filed a new petition for post-conviction relief, which he later amended. In his amended petition, he alleged in relevant part that his trial and appellate counsels were ineffective when they did not argue that Anderson's 100-year aggregate sentence was disproportionate relative to the sentences received by George and Parker. George had pleaded guilty in 1980 to four counts of Class C felony robbery, for which he received an aggregate five-year sentence. Parker also pleaded guilty in 1980 but to four counts of Class B felony robbery, for which he received an aggregate twenty-year sentence. Both George and Parker also testified against Anderson at Anderson's trial. Also in his amended petition, Anderson argued that changes in sentencing law since the commission of the offenses entitled him to review and revision of his sentence under Indiana Appellate Rule 7(B), citing our Supreme Court's opinion in *State v. Stidham*.

[5] After an evidentiary hearing, the post-conviction court found and concluded in relevant part as follows:

> [Anderson's] claims of ineffective assistance here rely on presuppositions, which upon further analysis, are simply

inaccurate. First, it is true that [Anderson's] co-defendants received less time than he did. Jeffrey Parker received a set term plea agreement and total sentence of 20 years executed on four counts of robbery, each as a class B felony. George Anderson received a set term plea agreement and total sentence of 5 years executed on four counts of robbery, each as a class C felony. The operative words in these sentences is that these were *set term plea agreements* for which the State had made a strategic determination as to the significance of the involvement of each defendant relative to the facts and as to what their sentence[s] should be. The court had no discretion in th[ose] sentence[s]. Both defendants also testified at [Anderson's] original trial . . . [,] and[] [George's] plea agreement specifically call[ed] for his testimony . . . . The State elected to give these two their sentences and the court . . . had no say in their sentence[s]. . . .

[Anderson] . . . states that the involvement of the co-defendants[] was equal or greater than [his] involvement. However, there is nothing in the record that supports that. In fact, it is quite the opposite according to the plea agreements. Further, Parker[']s and [George's] please of guilty[] saved the community, victims, and the court[] the time and costs associated with a trial. There was no disparate sentence then since the State prosecuted these cases strategically very differently. [Anderson] was guilty of multiple more counts, including attempted murder, and the court had discretion in sentencing [Anderson] both after the trial and then again after his plea agreement[on the attempted murder charge]. The defendants were not all similarly situated and were not equally culpable under the law. . . .

* * *

[Anderson also] noted recent changes in law that, according to [him], require revisiting [his] sentence. He points to recent changes in the law under *State v. Stidham*, 157 N.E.3d 1185, 1192 (Ind. 2020), which took place well after [Anderson's prior]

> appeal[s] . . . . [I]t is difficult to find the appellate counsel deficient or ineffective in this matter given those circumstances . . . .

Appellant's App. Vol. 2, pp. 72-75. In light of its findings and conclusions, the post-conviction court denied Anderson's petition for relief. This appeal ensued.

Standard of Review

[6] Anderson appeals the post-conviction court's denial of his petition for post-conviction relief. As our Supreme Court has explained:

> Because [the petitioner] failed to carry his burden of proving his claims by a preponderance of evidence in the post-conviction court, he appeals from a negative judgment. As such, [he] must show that "the evidence as a whole leads unerringly and unmistakably to a decision opposite that reached by the postconviction court." *Timberlake v. State*, 753 N.E.2d 591, 597 (Ind. 2001) (citation omitted). For factual matters, we examine only the probative evidence and reasonable inferences that support the postconviction court's determination and do not reweigh the evidence or judge the credibility of the witnesses. *Taylor v. State*, 717 N.E.2d 90, 92 (Ind. 1999). The post-conviction court's decision will be disturbed "only if the evidence is without conflict and leads only to a conclusion contrary to the result of the postconviction court." *Timberlake*, 753 N.E.2d at 597. When [the petitioner] fails to meet this "rigorous standard of review," this Court will affirm the post-conviction court's denial of relief. *Wilson v. State*, 157 N.E.3d 1163, 1170 (Ind. 2020) (cleaned up).

Conley v. State, 183 N.E.3d 276, 282 (Ind. 2022).

1. The post-conviction court's conclusion that Anderson did not receive ineffective assistance of counsel is not contrary to law.

[7] We first address Anderson's argument that he received ineffective assistance from his trial and appellate counsels when they did not argue that Anderson should receive a lesser sentence based on the sentences received by George and Parker. As our Supreme Court has made clear:

> Ineffective assistance of counsel claims are evaluated under the well-known, two-part test articulated in *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). To prevail, [the petitioner] must show that: (1) counsel's performance was deficient based on prevailing professional norms; and (2) the deficient performance prejudiced the defense. *Ward v. State*, 969 N.E.2d 46, 51 (Ind. 2012) (citing *Strickland*, 466 U.S. at 687, 104 S. Ct. 2052). "Failure to satisfy either prong will cause the claim to fail." *French v. State*, 778 N.E.2d 816, 824 (Ind. 2002).
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> In analyzing whether counsel's performance was deficient, the Court first asks whether, "'considering all the circumstances,' counsel's actions were 'reasonable[ ] under prevailing professional norms.'" *Wilkes v. State*, 984 N.E.2d 1236, 1240 (Ind. 2013) (quoting *Strickland*, 466 U.S. at 668, 104 S. Ct. 2052). Counsel is afforded considerable discretion in choosing strategy and tactics, and judicial scrutiny of counsel's performance is highly deferential. *Id.*
>
> There is a strong presumption that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Stevens v. State*, 770 N.E.2d 739, 746 (Ind. 2002). Counsel is afforded considerable discretion

> in choosing strategy and tactics and these decisions are entitled to deferential review. *Id.* at 746-47 (citing *Strickland*, 466 U.S. at 689, 104 S. Ct. 2052). Furthermore, isolated mistakes, poor strategy, inexperience, and instances of bad judgment do not necessarily render representation ineffective. *Id.* at 747 (citations omitted).
>
> To demonstrate prejudice, "the defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694, 104 S. Ct. 2052.

Id. at 282-83 (alteration in original).

[8] Here, the post-conviction court found that Anderson was not similarly situated to George and Parker and, thus, any argument as to alleged disparate sentences would have failed. The post-conviction court's findings are supported by the record. George was convicted pursuant to a plea agreement in 1980 of four Class C felony robberies. Parker likewise was convicted pursuant to a plea agreement in 1980 of four Class B felony robberies. Anderson, in contrast, was convicted after a jury trial of three Class B felony robberies and Class B felony criminal confinement, and he was convicted pursuant to a guilty plea some two decades later of attempted murder. Further, George and Parker testified against Anderson at his original jury trial.

[9] We agree with the post-conviction court that the number of Anderson's convictions, his conviction for attempted murder, and the fact that he did not

originally plead guilty like George and Parker or provide testimony for the State places him in a dissimilar situation to them for purposes of sentencing. Thus, had Anderson's trial or appellate counsel raised this argument, the argument likely would have failed. In other words, Anderson cannot show that he was prejudiced by his trial or appellate counsel not raising a disparate-sentencing argument. We therefore affirm the post-conviction court's denial of Anderson's petition for post-conviction relief on those claims.

2. Anderson's 100-year aggregate sentence is inappropriate.

[10] We thus turn to Anderson's freestanding claim to have his 100-year aggregate sentence reviewed and revised under Indiana Appellate Rule 7(B) and our Supreme Court's opinion in *Stidham*.[1] We initially note that, although Anderson's amended petition for post-conviction relief properly presented this issue as a freestanding issue, the post-conviction court decided it under the framework of ineffective assistance of appellate counsel. Thus, the post-conviction court's failure to address the issue as a freestanding claim is clearly erroneous.

[11] In *Stidham*, our Supreme Court held that juvenile defendants convicted of and sentenced for offenses prior to the 2003 implementation of our current version

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[1] In his brief on appeal, Anderson adds a freestanding argument that his sentence should be revised under Indiana Appellate Rule 7(B) based on the disparity of his sentence to George's and Parker's sentences. We doubt this argument could have been raised by Anderson in the post-conviction court, as it is not a juvenile-specific argument, which was at issue in *Stidham*. In any event, Anderson did not raise this argument to the post-conviction court, and he may not raise it for the first time on appeal. *See* Appellant's App. Vol. 2, pp. 25-27; Tr. p. 6.

of Indiana Appellate Rule 7(B) may raise a freestanding claim to have their sentences reviewed and revised in a petition for post-conviction relief.[2] 157 N.E.3d at 1191-98. In particular, in *Stidham*, a seventeen-year-old defendant committed several "horrific" offenses in 1991, including murder. *Id.* at 1195. For his offenses, the trial court sentenced him to 141 years. On direct appeal, he challenged his sentence as "unreasonable." *Id.* at 1189. In a divided opinion, our Supreme Court found that one of the defendant's convictions should have been vacated under double jeopardy law, but our Supreme Court otherwise affirmed the remaining 138-year sentence. *Id.*

[12] In 2016, the defendant filed a petition for post-conviction relief and sought review and revision of his sentence under the current version of Indiana Appellate Rule 7(B). The post-conviction court granted the petition, but our Court reversed and held that the defendant's claim was substantially the same as his argument on direct appeal, and, thus, the doctrine of *res judicata* precluded the claim. *See id.* at 1189-90.

[13] However, our Supreme Court granted the defendant's petition for transfer and affirmed the post-conviction court's judgment. In doing so, our Supreme Court

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[2] Although Anderson was resentenced on his attempted murder conviction in April 2003, about four months after the implementation of the current version of Indiana Appellate Rule 7(B), there is no suggestion that his sentences for his four Class B felony convictions were ever available for review under that Rule. And we note that his forty-year sentence on his attempted murder conviction was identical to the sentence he had originally received on that charge; indeed, in resentencing him, the trial court substantially relied on our Supreme Court's 1983 opinion in *Anderson I*. We therefore conclude that the precise timing of Anderson's resentencing for his attempted murder conviction is not a barrier to applying *Stidham* here.

held that the 2003 promulgation of the current version of Indiana Appellate Rule 7(B) along with a "major shift in the law" from the Supreme Court of the United States that "began limiting when juveniles could be sentenced to the harshest punishments" presented "extraordinary circumstances necessary" to allow courts in the post-conviction process to "to proceed to consider the merits of" a petitioner's "appropriateness argument[s]." *Id.* at 1192-94. The opinions of the Supreme Court of the United States on which the *Stidham* Court relied, in turn, were based

> on [the Court's] recognition of fundamental differences between adults and juveniles. Relying on developments in the fields of psychology, brain science, and social science, along with common sense, the Court summarized three important differences between adults and juveniles: juveniles "have a lack of maturity and an underdeveloped sense of responsibility," an increased vulnerability "to negative influences and outside pressures," and a still evolving character. *Graham[v. Florida]*, 560 U.S. [48,] 68, 130 S. Ct. 2011 [(2010)] (quoting *Roper[v. Simmons]*, 543 U.S. [551,] 569-70, 125 S. Ct. 1183 [(2005)]). *See also Miller[v. Alabama]*, 567 U.S. [460,] 472 n.5, 132 S. Ct. 2455 [(2012)] (noting that "the science and social science supporting *Roper*'s and *Graham*'s conclusions have become even stronger"). Based in part on these differences, the Court concluded that "juveniles have diminished culpability and greater prospects for reform" and that "the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes." *Id.* at 471, 472, 132 S. Ct. 2455. Therefore, the Court acknowledged that "*Roper* and *Graham* establish[ed] that children are constitutionally different from adults for sentencing purposes." *Id.* at 471, 132 S. Ct. 2455.

Id. at 1193-94 (last alteration in original).

[14] Turning to the facts of the case before it, the *Stidham* Court then held that the defendant's 138-year sentence was inappropriate. *Id.* at 1195. The Court noted that the defendant's crimes were "horrific" and "brutal" and did "not weigh in favor" of revising his sentence. *Id.* at 1195. However, the Court also noted that the defendant's character was "less damning" and included "a difficult childhood" with abuse and trauma. *Id.* at 1195-96. But "[m]ost significantly," the Court found that the defendant "was just seventeen years old when he committed the crimes," stating:

> As noted above, both the U.S. Supreme Court and this Court have recognized that, "[b]ecause juveniles have diminished culpability and greater prospects for reform," they "are less deserving of the most severe punishments." *Miller*, 567 U.S. at 471, 132 S. Ct. 2455 (citation omitted). *Accord Brown[v. State]*, 10 N.E.3d [1,] 7 [(Ind. 2014)]. This conclusion flows from the recognition of three important differences between children and adults. First, juveniles' "lack of maturity and . . . underdeveloped sense of responsibility" leads to "recklessness, impulsivity, and heedless risk-taking." *Miller*, 567 U.S. at 471, 132 S. Ct. 2455 (citation omitted). Second, their susceptibility "to negative influences and outside pressures," along with their limited ability to control their environment, can leave them lacking "the ability to extricate themselves from horrific, crime-producing settings." *Id.* (citation omitted). Third, "a child's character is not as well formed as an adult's; his traits are less fixed and his actions less likely to be evidence of irretrievable depravity." *Id.* (internal quotation marks, alteration marks, and citation omitted). "These salient characteristics mean that '[i]t is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare

> juvenile offender whose crime reflects irreparable corruption.'" *Brown*, 10 N.E.3d at 7 (alteration in original) (quoting *Graham*, 560 U.S. at 68, 130 S. Ct. 2011). Therefore, "juvenile offenders cannot with reliability be classified among the worst offenders." *Graham*, 560 U.S. at 68, 130 S. Ct. 2011 (quoting *Roper*, 543 U.S. at 569, 125 S. Ct. 1183). Yet, although we have said that "the maximum possible sentences are generally most appropriate for the worst offenders," *Buchanan v. State*, 767 N.E.2d 967, 973 (Ind. 2002) (citations omitted), [the defendant] received the maximum possible term-of-years sentence for crimes he committed as a juvenile. As we and the U.S. Supreme Court have held before, [the] juvenile status weighs against a maximum sentence.

Id. at 1196 (omission in original). The *Stidham* Court then revised the defendant's sentence downward by fifty years, down from 138 years to eighty-eight years. *Id.* at 1198.

[15] We hold that *Stidham* controls Anderson's claim under Indiana Appellate Rule 7(B). The State asserts on appeal that *res judicata* should preclude Anderson's claim. But just as *res judicata* did not preclude the *Stidham* Court from proceeding to the merits of the petitioner's request for relief, neither does the doctrine preclude Anderson's claim from being heard.

[16] As for the merits of Anderson's claim, we agree that his 100-year sentence is inappropriate. While the facts underlying Anderson's offenses do not weigh favorably toward a revision of his sentence, and the record here does not reflect the history of abuse and trauma that existed in *Stidham*, nonetheless Anderson committed the offenses over the course of one day, with peers, at the age of seventeen. We therefore exercise our discretion to revise Anderson's total

sentence downward by fifteen years, and we remand with instructions for the court to order Anderson's conviction for Class B felony criminal confinement to run concurrently with his other sentences, resulting in an aggregate sentence of eighty-five years.

Conclusion

[17] For all of the above reasons, we affirm the post-conviction court's judgment as to Anderson's claims of ineffective assistance of trial and appellate counsel, but we reverse the post-conviction court's denial of Anderson's petition for relief under Indiana Appellate Rule 7(B) and *Stidham*. On that issue, we remand with instructions for the court to revise Anderson's sentence such that his fifteen-year sentence for Class B felony criminal confinement runs concurrently with his other sentences, for an aggregate sentence of eighty-five years.

[18] Affirmed in part, reversed in part, and remanded with instructions.

Robb, J., and Foley, J., concur.