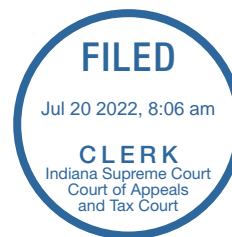


MEMORANDUM DECISION

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

Dalvinder Singh,
Appellant-Petitioner,

v.

State of Indiana,
Appellee-Respondent.

July 20, 2022

Court of Appeals Case No.
21A-PC-2257

Appeal from the Marion Superior
Court

The Honorable Charnette D.
Garner, Judge

Trial Court Cause No.
49D35-1411-PC-52304

Weissmann, Judge.

[1] Dalvinder Singh, who was convicted of sexual battery nearly a decade ago, contends his trial counsel failed to explain the essence of a jury trial and jury trial waiver to him. Singh also asserts his counsel improperly failed to use an interpreter or translator before allegedly directing Singh to sign such a waiver. Based in part on these alleged omissions, Singh petitioned for post-conviction relief, claiming he was denied his right to effective assistance of counsel and a jury trial. Singh's counsel refuted such claims at the later hearing. The trial court denied Singh's petition. On appeal, Singh asks us to reweigh evidence and judge witness credibility—tasks assigned to the trial court. We affirm.

Facts

[2] When Singh was charged in 2013 with three felony counts of sexual battery, he hired a father-son lawyer team to represent him. Singh signed a waiver of jury trial during a pretrial hearing. After a bench trial, the trial court convicted him of one of the counts, and this Court affirmed his conviction on appeal. *Singh v. State*, no. 49A05-1306-CR-313, 2014 WL 1645228 (Ind. Ct. App. April 23, 2014). Singh, who was born in India and lived in Germany before overstaying his visa in the United States, was deported to Germany after resolution of his criminal case.

[3] Singh petitioned for post-conviction relief five years after his conviction, alleging, among other things, that he was denied effective assistance of counsel and his right to a jury trial. After an evidentiary hearing at which Singh testified via Zoom from Germany, the trial court denied Singh's petition. Singh appeals.

Discussion and Decision

[4] Singh claims he was denied his Sixth Amendment right to effective assistance of counsel by his trial counsel's failure to advise him properly as to his right to jury trial. Singh contends that omission led to his involuntary waiver of that right. As the trial court properly relied on testimony from Singh's counsel revealing an adequate advisement and voluntary waiver, Singh's claim fails.

I. Standard of Review

[5] Post-conviction proceedings are civil proceedings in which a defendant may present limited collateral challenges to a conviction and sentence. Ind. Post-Conviction Rule 1(1)(b); *Gibson v. State*, 133 N.E.3d 673, 681 (Ind. 2019). The defendant bears the burden of establishing his claims by a preponderance of the evidence. P-C.R. 1(5). As Singh is appealing from a negative judgment denying post-conviction relief, he "must establish that the evidence, as a whole, unmistakably and unerringly points to a conclusion contrary to the post-conviction court's decision." *Gibson*, 133 N.E.3d at 681.

[6] In determining whether Singh has met that standard, we consider only the evidence and reasonable inferences supporting the post-conviction court's judgment without reweighing the evidence or judging witness credibility. *Baumholser v. State*, 186 N.E.3d 684, 688 (Ind. Ct. App. 2022). We do not defer to the trial court's legal conclusions but reject its factual findings only when they are clearly erroneous. *Gibson*, 133 N.E.3d at 681. We will affirm the post-conviction court's denial of relief when a defendant fails to meet this "rigorous standard of review." *DeWitt v. State*, 755 N.E.2d 167, 169-70 (Ind. 2001).

II. No Ineffective Assistance of Counsel

- [7] The essence of Singh’s claim is that his trial counsel inadequately advised him of his right to a jury trial and waiver of that right. He claims his counsel should have arranged to translate the written jury trial waiver into Punjabi, Singh’s primary language. Singh also seems to suggest that his counsel should have arranged for a Punjabi interpreter so that Singh would understand his jury trial right and waiver. Singh asserts his counsel simply directed him to sign the jury trial waiver, and he complied, without knowledge of its implications.
- [8] To succeed on his ineffective assistance of counsel claim, Singh must satisfy the two-part test set forth in *Strickland v. Washington*, 466 U.S. 668, 686 (1984). First, he must show his counsel’s deficient performance: that is, representation that fell below an objective standard of reasonableness, resulting in errors so serious that Singh lacked the “counsel” guaranteed by the Sixth Amendment. *Baumholser*, 186 N.E.3d at 688-89 (quoting *Humphrey v. State*, 73 N.E.3d 677, 682 (Ind. 2017)), *trans denied*. To satisfy the second prong of the *Strickland* test, Singh must show prejudice. *Id.* at 689.
- [9] We need not address the prejudice prong because Singh has failed to establish his counsel’s deficient performance. *See Baer v. State*, 942 N.E.2d 80, 91 (Ind. 2011) (“Although the performance prong and the prejudice prong are separate inquiries, failure to satisfy either prong will cause the claim to fail.”). All of Singh’s claims rest on his testimony that his understanding of English is limited and that his counsel essentially was silent about his jury trial right and the consequences of waiving it. The only evidence to support those claims was

Singh's testimony in Punjabi, presented to the court in English by an interpreter at the post-conviction hearing. But one of Singh's attorneys—the elder of the father-son team—directly refuted all of Singh's testimony.

[10] As the trial court found, Singh's counsel testified that:

- Singh always spoke in English to counsel and appeared to understand counsel's communications in English.
- Both of Singh's counsel spoke to him about the choice between a jury trial and a bench trial and informed him that he had an absolute right to a jury trial.
- Singh's counsel expressed their views on the jury trial/bench trial choice.
- Singh decided to waive his right to jury trial because he was "more comfortable" with a bench trial, a decision with which his counsel did not disagree.

App. Vol. II, pp. 8-9.

[11] The record also reveals that Singh, against his counsel's advice, participated in a police interview and provided a statement without the help of an interpreter. Tr. Vol. II, pp. 72-73. During the sexual battery prosecution, Singh also waived his right to jury trial in open court, aided by an interpreter.¹ Singh also responded appropriately in English to several questions by the trial court during

¹ Singh did not provide a copy of that transcript on appeal. However, Singh's trial counsel testified at the post-conviction hearing that a court-appointed interpreter assisted at every pre-trial hearing and at trial. Tr. Vol. II, pp. 26-27.

the post-conviction hearing, without waiting for the interpreter to intervene. *Id.* at 3-4, 6, 10-11, 39, 56-57.

[12] A resident of the United States for 10 years prior to his deportation, Singh communicates in English with his grandchildren here. He also was a BP gas station manager in Indianapolis prior to his deportation. In that capacity, he worked as a cashier at times, presumably dealing with English-speaking customers. The sexual battery for which Singh was convicted occurred at the gas station, and the victim was a supplier with whom Singh communicated, both at the station and by text, in English.

[13] Given all of this evidence, the trial court credited the testimony of Singh's counsel over Singh. The court also found that Singh's testimony was not "persuasive on any issue raised in his petition." App. Vol. II, p. 8. On appeal, Singh merely asks us to reweigh the evidence and reach a different determination of his credibility. Consistent with the applicable standard of review, we reject that invitation. *See Baumholser*, 186 N.E.3d at 688.

[14] We affirm the judgment of the post-conviction court.

Robb, J., and Pyle, J., concur.