

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Cleveland Bynum,
Appellant-Petitioner,

v.

State of Indiana,
Appellee-Respondent.

December 13, 2021

Court of Appeals Case No.
21A-PC-608

Appeal from the Lake Superior
Court

The Honorable Natalie Bokota,
Judge

Trial Court Cause No.
45G02-0208-PC-15

Weissmann, Judge.

[1] Cleveland Bynum appeals the denial of his successive petition for postconviction relief (PCR), which alleged newly discovered evidence justified reversal of his convictions for murdering five people in Lake County in 2000. He claims the trial court should have granted him a new trial based on this new evidence, which included confessions to all five murders by a man who was murdered days after recording those confessions seven years ago. As Bynum’s arguments largely request that we trespass on trial court territory by reweighing the evidence and judging credibility, we affirm the postconviction court’s judgment.¹

Facts

[2] In 2001, a jury found Bynum guilty of murdering Anthony Jeffers, Suzanne Wallace, Angela Wallace, Elizabeth Daily-Ayres, and Sheila Bartee in Gary. In Bynum’s direct appeal of his convictions, we described the offenses as follows:

On February 16, 2000, Bynum argued with Anthony Jeffers and accused Jeffers of saying that Bynum sold drugs. Elizabeth Daily-Ayres was with Bynum during this argument. In the late night hours of February 16, 2000 and the early morning hours of February 17, 2000, Bynum again argued with Jeffers at the residence of Jeffers and Angie Wallace. Angie’s eighteen month-old daughter, Angie’s sister Susan Wallace, and Susan’s thirteen-year-old son (“L.B.”) were also in the residence at the time of the argument. L.B. heard the argument end . . . [and] went back to

¹ We conducted oral argument in this case on November 16, 2021, at Prairie Heights High School in LaGrange. We thank counsel for their able arguments and the students and faculty for their attention and hospitality.

sleep. Later, L.B. was awakened by five loud, banging noises and heard Bynum talking to another man. After Bynum and the other man left, L.B. found Jeffers, Angie, and Susan lying on the floor and the baby screaming and covered in blood. Jeffers, Angie, and Susan died from gunshot wounds.

That same night, Sheila Renee Bartee and Elizabeth Daily-Ayres were staying at the residence of Michelle Fliris. Daily-Ayres used the telephone to page someone and received a call a few minutes later. Daily-Ayres and Bartee then left the residence to go to the liquor store . . . A few hours later, Fliris awoke to find that Daily-Ayres and Bartee had not returned. She found a piece of paper near the telephone that contained the name “Chris” . . . The next day, the bodies of Daily-Ayres and Bartee were found at a baseball park. Both women died from gunshot wounds.

In statements to the police, Bynum admitted that he shot Jeffers, Angie, and Susan. He also admitted that Daily-Ayres had his pager number. However, he gave conflicting statements regarding the deaths of Daily-Ayres and Bartee [whom he denied killing].

Bynum v. State, Case No. 45A03-0104-CR-108, slip. op. at 2 (Ind. Ct. App. November 5, 2001), *trans. denied*.

- [3] Bynum was charged with and convicted of five counts of murder. After the trial court sentenced him to a total of 300 years imprisonment, he appealed, and we affirmed his convictions and sentences. The Indiana Supreme Court denied transfer. Bynum then filed his first PCR petition in state court and a petition for writ of habeas corpus in federal court, asserting claims of ineffective assistance of counsel. Both petitions failed. *Bynum v. State*, case no. 45A03-0407-PC-304, slip op. at 11 (Ind. Ct. App. Feb. 4, 2005), *trans. denied*; *Bynum v. Buss*, 3:05-cv-

374 (N.D. Ind. June 14, 2007), *affirmed by Bynum v. Lemmon*, 560 F.3d 678, 687 (7th Cir. 2009), *cert. denied*, 558 U.S. 1014 (2009).

- [4] In 2011, Bynum sought permission to file a successive PCR petition based on allegations of newly discovered evidence. That evidence consisted of four affidavits connecting two other men to the 2001 murders: Robert Carr, who died in 2002, and Deunderick “Shakey” McIntosh. We denied that request in September 2011.
- [5] In 2016, we granted Bynum’s new request for permission to file a successive PCR petition based on allegations of other newly discovered evidence: written and video confessions from Gerald T. Mathews to all five murders. Mathews, then 37, was murdered shortly after recording his confessions in July 2014. Prior to his death, Mathews provided the confessions to his new employer, Roger Shannon, with instructions to give the materials to the authorities if anything happened to Mathews. After learning of Mathews’ death, Shannon reviewed the confessions and then mailed that evidence to Bynum’s counsel. Five years after Bynum filed the successive PCR petition, the PCR court denied it after a three-day evidentiary hearing. Bynum appeals that judgment.

Discussion and Decision

- [6] Bynum contends the PCR court improperly denied his successive petition and, instead, should have granted him a new trial based on Mathews’ confessions. The PCR court found Mathews’ confessions were not credible and would not be admissible if Bynum were retried. On that basis, the PCR court rejected

Bynum's claim that Mathews' confessions were newly discovered evidence justifying a new trial. As Bynum's arguments on appeal simply request that we reweigh the evidence and determine credibility, we affirm the trial court's judgment because he has failed to prove any error by the PCR court.

I. Standard of Review

[7] To prevail, a PCR petitioner must show “that the evidence, as a whole, unmistakably and unerringly points to a conclusion contrary to the post-conviction court’s decision.” *Bradbury v. State*, 174 N.E.3d 608, 611 (Ind. 2021) (citing *Wilson v. State*, 157 N.E.3d 1163, 1170 (Ind. 2020)). An appellate court should not reverse a denial of PCR unless “there is no way within the law that the court below could have reached the decision it did.” *Id.* (citing *Stevens v. State*, 770 N.E.2d 739, 745 (Ind. 2002)). We accept the PCR court’s findings of fact unless clearly erroneous, as the PCR court is the sole judge of the evidence and credibility of the witnesses. *Id.*

II. Bynum’s Challenges to the Findings Fail

[8] Bynum challenges a number of the PCR court’s findings related to its conclusion that Bynum presented no newly discovered evidence justifying a retrial. Newly discovered evidence mandates a new trial only when the defendant demonstrates each of the following nine requirements: (1) the evidence has been discovered since the trial; (2) it is material and relevant; (3) it is not cumulative; (4) it is not merely impeaching; (5) it is not privileged or incompetent; (6) due diligence was used to discover it in time for trial; (7) the

evidence is worthy of credit; (8) it can be produced upon a retrial of the case; and (9) it will probably produce a different result at retrial. *Bunch v. State*, 964 N.E.2d 274, 283 (Ind. Ct. App. 2012), *trans. denied* (citing *Taylor v. State*, 840 N.E.2d 324, 329-30 (Ind. 2006)).

[9] As postconviction proceedings are civil in nature, Bynum bore the burden of proving those requirements by a preponderance of the evidence. *See* Ind. Post-Conviction Rule 1(5). The PCR court found Bynum failed to prove two of the requirements: that Mathews' confessions were worthy of credit and could be produced upon a retrial of the case. We agree.

A. Affidavits Were Not Newly Discovered Evidence

[10] Bynum first attacks the PCR court's findings as improperly indicating that Mathews' confessions were the only newly discovered evidence. Bynum contends he presented newly discovered evidence in the form of the four affidavits originally offered in his first, unsuccessful attempt to file a successive PCR petition in 2011. Those affidavits connecting Deunderick "Shakey" McIntosh and Robert Carr to the murders were attached as exhibits to Bynum's second petition for permission to file a successive PCR that this Court granted in 2016.

[11] Bynum largely focuses on the PCR court's Conclusion No. 4, which specified that Bynum was authorized by this Court to raise only Mathews' confessions as newly discovered evidence. App. Vol. II, p. 32. Nonetheless, the PCR court did not refuse to consider the four affidavits. *Id.* at 33 n.2 ("Because Bynum has

previously been denied permission to litigate whether these affidavits constitute newly discovered evidence that warrants post-conviction relief, their relevance *in this proceeding* is only to the question of whether *Mathews' statement* constitutes newly discovered evidence.” (emphases in original)). The PCR court concluded that Mathews’ confessions were not “worthy of credit” partly because they either conflicted with or were not substantiated by the four affidavits. *Id.* at 34.

[12] The PCR court’s consideration of the affidavits as evidence offered to bolster Mathews’ confessions is consistent with Bynum’s own strategy and statements in his filings with this Court. *Id.* at 130; App. Reply Br., p. 17. Bynum did not claim that the affidavits themselves were newly discovered evidence meriting retrial, either in his petition to this Court or in his subsequent PCR petition. We find no error.

B. Mathews’ Confessions Were Not Worthy of Credit

[13] Bynum next contends the PCR court erred in finding Mathews’ confessions were not “worthy of credit.” *Id.* at 34. The PCR court based its refusal to credit Mathews’ confessions on the following findings:

- Mathews’ mother testified at the postconviction hearing that Mathews lacked any gap in his teeth at the time of the murders. (L.B. had testified at Bynum’s trial that he recognized the voice of the man present at the killings of his mother and that man had a gap in his teeth. Direct Appeal Tr. Vol. II, p. 100.) Mathews’ mother also testified that the handwritten text of the written confession did not

appear to match Mathews' handwriting, and that she thought, based on Mathews' behavior during the video confession, that he was being untruthful when he admitted murdering the five people.

- Mathews' confession conflicts with the four affidavits. Mathews stated he alone shot all five victims, but none of the affidavits place Mathews at either murder scene. Spural's affidavit indicated he saw Shakey shooting one of the victims in the home, although Mathews' confession suggested only Mathews and Carr were involved. Newsom's affidavit alleges Shakey told her that Carr, not Mathews, shot all five victims. Newsom's affidavit does not reflect any statement by Carr that Mathews was involved.
- DNA results did not produce a match with Mathews, although he claimed to have had sex with two of the women and his DNA was available in the system to match.

Id. at 33-34. Bynum attacks each of these findings and suggests the preponderance of the evidence establishes Mathews was the shooter.

i. Testimony of Mathews' Mother

[14] Bynum contends the PCR court misinterpreted the testimony of Mathews' mother by ignoring her statements that Mathews was a drug dealer and used the name "Chris"—evidence that Bynum views as supporting the credibility of Mathews' confessions. The remaining portion of the testimony of Mathews'

mother “was not logically dispositive” of the credibility of Mathews’ confessions, according to Bynum. Appellant’s Br., p. 39.

[15] The PCR court did not ignore the testimony of Mathews’ mother. It simply weighed such evidence differently than Bynum did, which is not error. *See Bradbury*, 174 N.E.3d at 611 (ruling that PCR court is the sole judge of witness credibility). The PCR court found credible the testimony of Mathews’ mother that her son’s confession was false, and we will not disturb that determination on appeal. *See id.*

ii. Testimony About Murderer’s Tooth Gap

[16] Bynum next focuses on evidence indicating the murderer had a gap in his teeth, suggesting such evidence does not diminish the credibility of Mathews’ confessions. Bynum first addresses the postconviction hearing testimony of Larry Brooks, identified in our decision on direct appeal as L.B., the then teenaged son of Susan Wallace and only surviving non-infant witness to the shootings of Wallace and two others. Bynum notes that Brooks expressed confusion years after the murder about whether the perpetrator had a gap in his teeth. Bynum seems to suggest Brooks’ testimony at the PCR hearing negates his statement at the time of the murders. If there is no reliable evidence that the murderer had a gap in his teeth, Bynum suggests, Mathews’ lack of a gap does not mean Mathews falsely confessed.

[17] This argument is another attempt to reweigh the evidence. The PCR court had the task of weighing the accounts of Brooks’ statements at the time of the

murders and testimony in Bynum’s trial against Brooks’ testimony two decades later. The PCR court found the tooth gap identification credible. It also found probative the evidence suggesting Mathews lacked a gap in his teeth at the time of the murders. We will not disturb that weighing of evidence and determination of credibility. *Id.*

iii. Affidavits Do Not Support Mathews’ Confessions

[18] Bynum also nitpicks the trial court’s description of the four affidavits, suggesting various reasons why the affiants might have not mentioned Mathews. For instance, Bynum speculates that Mathews might not have mentioned Shakey in Mathews’ confessions because Mathews was scared of him. We need not detail all of Bynum’s speculations, which are a repetition of his unavailing efforts to obtain a reweighing of evidence and judgment of credibility on appeal. *See id.* The PCR court correctly determined that the affidavits, which identified other people as the murderers, did not support a finding that Mathews’ confessions were credible.

iv. DNA Evidence Did Not Support Mathews’ Confessions

[19] Bynum also suggests the PCR court erred in determining that the DNA evidence diminished the credibility of Mathews’ confessions. The trial court specifically found that “[t]here was no hit to Mathews’ DNA, despite his claims of sex with [Dailey-Ayres and Bartee], and despite the fact that his DNA is in the CODIS system.” App. Vol. II, p. 34.

[20] Bynum argues that Mathews did not state that he consummated the sexual act or even engaged in it—only that he went into the field to do so. He also notes that unidentifiable male DNA was found in Daily-Ayres’ oral and vaginal cavities. As he claims Mathews could be one of the unidentified DNA contributors or he might not have consummated the sexual act, Bynum paints as clear error the PCR court’s finding that the DNA results do not support Mathews’ confessions. Bynum suggests the DNA evidence, instead, points to another drug dealer—the son of a Gary police officer—as the killer.

[21] Bynum’s arguments are speculative, at best, and not supported fully by citations to the record. It is undisputed that DNA testing did not show a match with Mathews’ DNA. Without such a match, the PCR court correctly determined the DNA evidence did not support a finding that Mathews’ confessions were credible.

C. Mathews’ Confessions Would be Inadmissible at a Retrial

[22] Bynum also disputes the PCR court’s determination that Mathews’ confessions could not be produced upon retrial. The PCR court concluded that the confessions were hearsay that did not meet the requirements of a statement against penal interest under Indiana Evidence Rule 804(b)(3).

[23] That rule defines a statement against interest as one “that a reasonable person in the declarant’s position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant’s proprietary or

pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability.” Evid. R. 804(b)(3). A statement against interest is not excluded by the hearsay rule if the declarant is unavailable as a witness. Evid. R. 804(b).

[24] Matthews ensured his confessions would not be revealed until after his death. He also specifically noted in his confessions that he could not come forward during his lifetime because he “couldn’t go to prison.” Exhs. Vol. I, p. 7. The PCR court concluded Mathews’ confessions were not made with the belief that he would suffer any penal consequences and, therefore, lacked the necessary indicia of reliability and trustworthiness.

[25] Bynum disputes that ruling, contending Mathews faced penal consequences at the time he confessed, even if he did not after his death. He is wrong, as shown in *Williams v. State*, 757 N.E.2d 1048 (Ind. Ct. App. 2001). In *Williams*, a father confessed to a shooting for which his son had been convicted a few days earlier. *Id.* at 1068. Six days after the verdict, the father committed suicide. *Id.* Affirming the postconviction court’s finding that the father’s confession was not admissible under exclusion of the evidence of the father’s confession, we found the trial court properly determined the requirements of Evidence Rule 804(b)(3) were not met. *Id.* at 1068-69. We ruled that the confession, likely made while the father was contemplating his own death, was not so contrary to the father’s interest that a reasonable person in the declarant’s position would not have made the statement without belief that it was true. *Id.*

[26] Similarly, the PCR court here was justified in finding that Mathews' confessions, made when he believed his life was in jeopardy, were not statements against interest under Evidence Rule 804(b)(3). Bynum offered no other basis for admissibility of Mathews' confessions. Thus, Matthews' confessions are not newly discovered evidence because they cannot be produced upon a retrial of the case. *See Bunch*, 964 N.E.2d at 283.

[27] We affirm the denial of Bynum's successive PCR petition.

Mathias, J., and Molter, J., concur.