

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Mark Bonds,
Appellant-Petitioner,

v.

State of Indiana,
Appellee-Respondent.

February 23, 2023

Court of Appeals Case No.
22A-MI-1583

Appeal from the Henry Circuit
Court

The Honorable Kit C. Dean Crane,
Judge

Trial Court Cause No.
33C02-2204-MI-31

Memorandum Decision by Judge Weissmann
Judges May and Crone concur.

Weissmann, Judge.

- [1] Mark Bonds has requested permission to file successive petitions for post-conviction relief (PCR) at least four times. This Court denied each request, finding no reasonable possibility that he would be entitled to post-conviction relief. Bonds now appears before this Court with different tactics but the same arguments.
- [2] Bonds filed a petition for a writ of habeas corpus in Henry County, where he is incarcerated. The Henry Circuit Court dismissed the petition, and Bonds appeals. Finding the Henry Circuit Court did not have jurisdiction over Bonds's petition, we reverse the dismissal and remand with instructions to transfer the case to the court where Bonds was convicted and sentenced.

Facts

- [3] In 2012, Bonds was convicted of two counts of Class A felony child molesting in Marion Superior Court and sentenced to 25 years imprisonment. On direct appeal, this Court affirmed Bonds's conviction about a year later. Bonds filed his first PCR petition three months later. The postconviction court denied Bonds's petition, and this Court affirmed.
- [4] Less than a year later, Bonds requested permission from this Court to file a successive PCR petition under Indiana Post-Conviction Rule 1(12). That rule requires an appellate court to "authorize the filing of the petition if the petitioner establishes a reasonable possibility that the petitioner is entitled to post-conviction relief." P-C.R. 12(b). This Court denied Bonds's request. Over

the next two years, Bonds sought and was denied permission to file successive PCR petitions three more times.

- [5] In 2018, Bonds filed his first petition for a writ of habeas corpus in Henry County, where he was incarcerated. The Henry Circuit Court transferred the case to Marion County after finding Bonds’s purported habeas petition was merely a successive PCR petition attacking “the validity of his sentence.” Appellee’s App. Vol II, p. 50. The Marion Superior Court eventually denied Bonds’s petition.
- [6] Undaunted, Bonds filed a second petition for writ of habeas corpus in Henry County, two years after his first. The Henry Circuit Court ordered the Indiana Attorney General, on behalf of Mark Sevier, the warden of the prison housing Bonds, to respond within 30 days. The State, however, responded a week late, prompting Bonds to move for default judgment. After receiving the State’s response, the Henry Circuit Court dismissed the petition, effectively denying Bonds’s motion for default judgment in the process.

Discussion and Decision

- [7] On appeal, Bonds argues that the trial court erred in dismissing his latest habeas petition. Though we agree with him in so far as his petition was wrongly dismissed, this is only because the Henry Circuit Court should have instead transferred Bonds’s petition to the court where he was convicted and sentenced. We reverse and remand with instructions to transfer the case accordingly.

[8] A petition for a writ of habeas corpus is a request for the court to “inquire into the cause of the” prisoner’s incarceration and release him if the incarceration is illegal. Ind. Code § 34-25.5-1-1. “The purpose of habeas corpus is to determine the lawfulness of a person’s restraint and may not be used to attack collateral matters.” *Love v. State*, 52 N.E.3d 937, 939 (Ind. Ct. App. 2016). A petitioner must file for PCR if they desire to attack their conviction or sentence. *Id.* “[I]f a petitioner erroneously captions his action as [a] petition for a writ of habeas corpus rather than post-conviction relief, courts will frequently and properly treat the petition as one for post-conviction relief, based on the content of the petition, rather than the caption.” *Partlow v. Superintendent, Miami Corr. Facility*, 756 N.E.2d 978, 980 (Ind. Ct. App. 2001), *superseded by statute on other grounds*.

[9] Although the trial court did not offer its reasons for dismissing Bonds’s second habeas petition, the State had argued that the petition actually was a successive PCR petition, captioned differently to avoid another rejection by this Court. Indeed, Bonds’s habeas petition and appellate brief are filled with claims alleging errors in his trial on child molesting charges that, according to him, prove his incarceration is unconstitutional. These are claims properly brought in a PCR petition. “[A] petitioner must file a petition for post-conviction relief . . . when he attacks the validity of his conviction and/or does not allege that he is entitled to immediate discharge.” *Id.*

[10] Attempting to circumvent the successive PCR rules by framing a petition as a writ of habeas is not a novel strategy. *See Hawkins v. Jenkins*, 374 N.E.2d 496, 139 (Ind. 1978). Our Post-Conviction rules expressly address this scenario:

[I]f a person applies for a writ of habeas corpus in the county where the person is incarcerated and challenges the validity of his conviction or sentence, that court shall transfer the cause to the court in which the conviction took place, and the latter court shall treat it as a petition for relief under this Rule.

P-C.R. 1(1)(c).

- [11] The State urges us to adopt a new rule allowing for the immediate dismissal of wrongfully filed habeas petitions for serial PCR petitioners like Bonds without first transferring the case to the court that convicted and sentenced the petitioner. We have declined a similar invitation by the State in the past. *See Manley v. Butts*, 71 N.E.3d 1153, 1155-57 (Ind. Ct. App. 2017) (ordering the trial court to transfer, instead of dismiss, a habeas petition challenging a conviction or sentence when the State had argued that “transferring the case would merely waste resources”).
- [12] Moreover, the State’s proposal is foreclosed by the plain text of Indiana Post-Conviction Rule 1. We find no ambiguity in that portion of the rule specifying that when a trial court is presented with a PCR petition disguised as a petition for writ of habeas corpus, the court “shall transfer the cause” to the court where the prisoner was convicted and sentenced. P-C.R. 1(1)(c). We have confronted this issue many times and always done exactly that. *See, e.g., Miller v. Lowrance*, 629 N.E.2d 846, 848 (Ind. 1994); *Martin v. State*, 901 N.E.2d 645, 647 (Ind. Ct. App. 2009).

[13] Accordingly, we reverse and remand with instructions to transfer the case to the court where Bonds was convicted and sentenced.¹

May, J., and Crone, J., concur.

¹ With this disposition, we do not reach the merits on any of Bonds's claims.