

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

John T. Mangus,
Appellant-Petitioner,

v.

State of Indiana,
Appellee-Respondent.

March 15, 2022

Court of Appeals Case No.
21A-PC-1885

Appeal from the Delaware Circuit
Court

The Honorable Linda Ralu Wolf,
Judge

Trial Court Cause No.
18C03-1904-PC-5

Weissmann, Judge.

[1] John Mangus pleaded guilty to rape but now, for the first time on appeal, claims his plea was coerced. Because Mangus waived this argument by offering it for the first time on appeal, we affirm the post-conviction court's denial of his petition for relief.

Facts

[2] After drinking heavily, Mangus knocked on K.C.'s door, claiming to be police. When K.C. opened the door, Mangus barged in and threatened K.C. and her 10-year-old daughter with death. He then repeatedly forced his penis into K.C.'s mouth. A neighbor called police, who, after a brief struggle, took Mangus into custody.

[3] The State charged Mangus with six counts, including: rape, a Level 3 felony; residential entry, a Level 6 felony; impersonation of a public servant, a Level 6 felony; intimidation, a Level 6 felony; strangulation, a Level 6 felony; and resisting law enforcement, a Class A misdemeanor. He also faced other unrelated charges.

[4] Mangus agreed to plead guilty to the Level 3 felony rape charge in exchange for the State's dismissal of the other charges. He also agreed to waive his right to appeal his sentence. The trial court accepted the plea agreement and sentenced Mangus to seven years in the Department of Correction, with one year suspended to probation.

[5] About a year after his sentencing hearing, Mangus moved to withdraw his guilty plea. Following Indiana law, the court treated Mangus' filing as a

petition for post-conviction relief (PCR). Mangus claimed that his Miranda rights were violated, he was innocent, there was insufficient evidence to support his guilt, and his trial counsel was ineffective for failing to properly investigate the crime scene. The PCR court denied relief on all grounds. Mangus now appeals on different grounds. Specifically, he argues his trial counsel was ineffective for proffering false and misleading information about the consequences of going to trial, effectively coercing Mangus' guilty plea.

Discussion & Decision

[6] Post-conviction actions are civil proceedings where the petitioner—here, Mangus—must prove his claims by a preponderance of the evidence. *Bobadilla v. State*, 117 N.E.3d 1272, 1279 (Ind. 2019). Where, as here, the petitioner appeals from a negative judgment, he must prove “that the evidence, as a whole, unmistakably and unerringly points to a conclusion contrary to the post-conviction court’s decision.” *Id.* (quoting *Wilkes v. State*, 984 N.E.2d 1236, 1240 (Ind. 2013)). We do not defer to the post-conviction court’s legal conclusions and reverse only upon a finding of clear error, which leaves us “with a definite and firm conviction that a mistake has been made.” *Id.* (quoting *Humphrey v. State*, 73 N.E.3d 677, 682 (Ind. 2017)).

[7] Because Mangus argues that he suffered ineffective assistance of counsel, he must show both that: (1) counsel’s performance fell short of prevailing professional norms; and (2) counsel’s deficient performance prejudiced his defense. *Gibson v. State*, 133 N.E.3d 673, 682 (Ind. 2019) (citing *Strickland v.*

Washington, 466 U.S. 668 (1984)). Mangus argues that trial counsel was ineffective in convincing him that going to trial would definitely result in a 30-year prison sentence. Mangus only faced 23 years of imprisonment—a maximum he claims he could have avoided by winning at trial or earning the judge’s leniency at sentencing. Mangus, driven by a desire to minimize the likelihood of his elderly family dying while he was imprisoned, argues that he sacrificed his right to trial based on counsel’s erroneous advice.

[8] Though Mangus claimed ineffective assistance of counsel in his amended petition for relief, he cited different grounds. Exh. Vol. III, p. 12. The evidentiary hearing and subsequent order denying relief were based on his claim that trial counsel failed to investigate the crime scene, not that trial counsel coerced a guilty plea. *Id.*; App. Vol. II, p. 189. The first time the argument about his plea appears is in Mangus’ proposed findings of fact and conclusions of law, filed after the evidentiary hearing and about two years into post-conviction proceedings. App. Vol. II, pp. 178-79. Because Mangus never amended his PCR petition to include this claim, he has waived it. *See, e.g., Jones v. State*, 151 N.E.3d 790, 805 (Ind. Ct. App. 2020), *trans. denied*; Ind. Post-Conviction Rule 1(8) (“All grounds for relief available to a petitioner under this rule must be raised in his original petition.”).

[9] Though waiver may feel harsh to litigants, as evidenced here, it promotes fairness. *See, e.g., Clarkson v. Dep’t of Ins. of State*, 425 N.E.2d 203, 206 (Ind. Ct. App. 1981) (Justifying waiver because opposing party and trial court “rely upon the allegations of error contained in the petition” and “judicial ineconomy and

gross unfairness” would result “if appellant were permitted to raise additional issues before the appellate court.”); *City of Mich. City v. Lake Air Corp.*, 459 N.E.2d 760, 763 (Ind. Ct. App. 1984) (“It is improper to raise this issue for the first time on appeal since it would deprive [the opposing party] of the opportunity to litigate the question, and to raise any factual and legal contentions concerning it.”).

[10] In this case, Mangus relies on his own testimony that trial counsel “told me that if I did not take this plea that I would get 30 years.” Tr. Vol. II, p. 38. He then faults counsel for failing to counter an argument he did not make: “Trial counsel never contradicted that Mangus had received this inaccurate advice, nor did the State cross-examine or otherwise contest the testimony of Mangus on this point.” Appellant’s Br., p. 13. Mangus attempts to benefit from his own blunder in failing to properly plead and argue his case. Because the State was not on notice that the guilty plea was subject to an ineffective assistance of counsel challenge, we cannot know what evidence the State would have presented to counter Mangus’s claim. Additionally, we cannot say that the post-conviction court “erred as to an issue or argument it never had an opportunity to consider.” *Newland Res., LLC v. Branham Corp.*, 918 N.E.2d 763, 770 (Ind. Ct. App. 2009).

[11] The denial of Mangus’ PCR petition is therefore affirmed.

Najam, J., and Vaidik, J., concur.