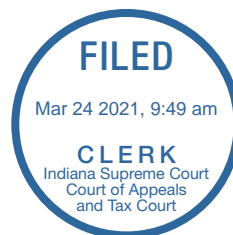


## MEMORANDUM DECISION

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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APPELLANT PRO SE

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## IN THE COURT OF APPEALS OF INDIANA

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Timothy Hall,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

March 24, 2021

Court of Appeals Case No.  
20A-PC-1414

Appeal from the Allen Circuit  
Court

The Honorable Thomas J. Felts,  
Judge

The Honorable Steven O. Godfrey,  
Magistrate

Trial Court Cause No.  
02C01-1812-PC-94

**Altice, Judge.**

## Case Summary

- [1] Timothy Hall, pro se, appeals the denial of his petition for post-conviction relief. As is relevant here, his petition asserted that the Allen Circuit Court lacked jurisdiction to accept his guilty plea and enter a conviction for Class D felony nonsupport of a dependent because the paternity child support proceedings had previously been transferred, pursuant to statute, to the Whitley Circuit Court.
- [2] We affirm.

## Facts & Procedural History

- [3] In 1993, as part of paternity proceedings, the Allen Superior Court under cause number 02D07-9304-JP-187 (JP-187) ordered Hall to pay \$42 per week in child support, which was later modified to \$60 per week and \$5 per week toward an arrearage. In 1998 or 1999, JP-187 was transferred to Whitley Circuit Court pursuant to the authority of Ind. Code chapter 31-16-20, providing for transfer of jurisdiction of support orders if certain conditions exist and if it would be in the best interest of the children.
- [4] I.C. § 31-16-20-2 provides:

The court may order the proceedings with:

- (1) all papers and files pertaining to the order for support; and
- (2) certified copies of all orders for support;

transferred to the court having jurisdiction over such matters in the county in which the parent or other person having custody of the children is residing.

The next section, I.C. § 31-16-20-3 (Section 3), provides that the court to which the proceedings are transferred (1) shall accept the proceedings, and (2) “*thereafter has jurisdiction* over the children and matters relating to their support by the parent so ordered.” (Emphasis added.) In accordance with Section 3, the Whitley Circuit Court accepted jurisdiction of JP-187 under cause number 92C01-9902-JP-84 (JP-84).

[5] On July 28, 2004, the prosecutor in Allen County charged Hall with Class D felony neglect of a dependent in Allen Circuit Court under cause number 02C01-0407-FD-402 (FD-402). According to Hall,<sup>1</sup> the charge read:

During the period of time between 3/1/2002 and 5/31/2004, in the County of Allen and in the State of Indiana, said Defendant, Timothy L. Hall, did knowingly or intentionally fail to provide support to his dependent children. . . ., to wit: on April 16th, 1993, Timothy L. Hall was ordered to pay child support in the Allen Superior Court, cause number 02D07-9304-JP-187, in the amount of \$42.00 per week which the Allen Superior Court modified in the amount of \$60.00 per week effective December 23rd, 1993. Said order was reaffirmed by the South Whitley Circuit Court under cause# 92C01-9902-JP-84, and said Defendant has not complied with the Court’s order.

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<sup>1</sup> A copy of the charging information is not included in the record before us.

*Appellant's Brief* at 8-9. On October 1, 2004, Hall pled guilty to the Class D felony charge and received a suspended two-year sentence. Hall was represented by counsel at every stage of the criminal proceeding. Hall did not appeal the conviction.

[6] In December 2018, Hall filed a pro se petition for post-conviction relief asserting, among other things, that the Allen County Circuit Court lacked subject matter jurisdiction, as his child support proceedings had been transferred to Whitley County, and therefore the judgment of conviction was void.<sup>2</sup> The court ordered Hall to submit his post-conviction case by affidavit. Hall failed to do so, but, eventually, he requested a continuance. In February 2020, Hall filed an amended petition for post-conviction relief, alleging that the Allen Circuit Court lacked subject matter jurisdiction to enter judgment of conviction against him and that the prosecutor lacked standing to file the criminal charge. Hall's petition acknowledged that for the charged time period of March 1, 2002 to May 31, 2004, he was living in Allen County.

[7] Both parties submitted proposed findings of fact and conclusions of law. The State acknowledged that “the Whitley Circuit Court would have had jurisdiction over a criminal charge of failure to provide the support ordered under [JP-84], had such a charge been filed in that court[,]” but it rejected Hall's

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<sup>2</sup> Hall filed an affidavit of indigency and requested appointment of counsel. A public defender appeared and then withdrew, filing a notice of non-representation under P-C Rule 1(9). *See* P-C Rule 1(9) (stating that, after review, counsel determined that the proceedings were not meritorious or not in the interests of justice).

claim that, due to the transfer of JP-187, the Allen Circuit Court was divested of jurisdiction. *Appellant's Appendix* at 72. The State's position was that Section 3 conferred jurisdiction on the Whitley Circuit Court but it did not confer *exclusive* jurisdiction on it.

[8] On May 28, 2020, the court held a hearing on Hall's petition for post-conviction relief.<sup>3</sup> At the hearing, Hall asserted that, once the case was transferred to Whitley County, the Allen County courts lost jurisdiction. He testified, "I can't even get any information or anything done in Allen County about the current case because they just keep referring me back to Whitley County. Everything is in Whitley County." *Transcript* at 6. Hall argued that, although Section 3 does not expressly state that the transferee court assumes exclusive jurisdiction, the chapter read as a whole indicates that "exclusive jurisdiction was intended[.]" *Id.* at 7.

[9] The State argued that it would be "an absurd and unjust result if [Allen Circuit Court] was found to have been deprived of jurisdiction over the criminal case merely because Whitley Circuit Court acquired jurisdiction" and that there "is no authority" for the proposition that jurisdiction in Whitley County was exclusive. *Id.* In support of its position, the State highlighted that, pursuant to Ind. Code § 35-32-2-1, venue for a criminal trial can be had in multiple courts, and "it would be impossible for [venue] to be proper in a court that did not have

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<sup>3</sup> Hall was incarcerated on an unrelated matter at the time and appeared by telephone.

jurisdiction over the matter[,] i.e., “since venue can be proper in multiple courts, jurisdiction can also exist in multiple courts over the same criminal matter.” *Transcript* at 4. The court took the matter under advisement.

[10] On June 25, 2020, the court denied Hall’s petition for post-conviction relief. The court stated, in part:

16. At the time of Petitioner’s conviction and sentencing in the underlying cause, the circuit court had original jurisdiction in all criminal cases except where exclusive jurisdiction was conferred by law upon other courts of the same territorial jurisdiction. *See* I.C. § 33-28-1-2.

17. Pursuant to I.C. § 31-16-20-3, when a support order is transferred, the court to which the proceedings are transferred thereafter has jurisdiction over the children and matters relating to their support by the parent so ordered. Importantly, this statute does not include the word “exclusive.”

18. While venue in the underlying cause may more properly have been in the Whitley Circuit Court, the Allen Circuit Court still had jurisdiction over the subject matter. Furthermore, any venue arguments Petitioner may have possessed have been waived.

19. Although Petitioner’s support obligation was transferred to the Whitley Circuit Court, the Allen Circuit Court had subject matter jurisdiction over and properly adjudicated the criminal proceedings relating to Petitioner’s support obligations.

*Appellant’s Appendix* at 12 (internal citation omitted). Hall now appeals.

## Discussion & Decision

[11] Hall asserts that the trial court erred in denying his petition for post-conviction relief. In a post-conviction proceeding, the petitioner bears the burden of establishing grounds for relief by a preponderance of the evidence. *Bethea v. State*, 983 N.E.2d 1134, 1138 (Ind. 2013). “When appealing the denial of post-conviction relief, the petitioner stands in the position of one appealing from a negative judgment.” *Id.* (quoting *Fisher v. State*, 810 N.E.2d 674, 679 (Ind. 2004)). On review, findings of fact are accepted unless they are clearly erroneous. *Bethel v. State*, 110 N.E.3d 444, 449 (Ind. Ct. App. 2018), *trans. denied*. However, we do not defer to the post-conviction court’s legal conclusions. *Id.* Here, Hall challenges the post-conviction court’s conclusion that Allen Circuit Court had subject matter jurisdiction over the criminal nonsupport matter. When jurisdictional facts are not in dispute, the question of whether a trial court had jurisdiction is reviewed de novo. *State v. D.B.*, 819 N.E.2d 904, 906 (Ind. Ct. App. 2004), *trans. denied*.

[12] Subject-matter jurisdiction is the constitutional or statutory power of a court ‘to hear and determine cases of the general class to which any particular proceeding belongs.’” *State v. Reinhart*, 112 N.E.3d 705, 711-12 (Ind. 2018) (quoting *K.S. v. State*, 849 N.E.2d 538, 540 (Ind. 2006)). In determining whether a court has subject-matter jurisdiction, the only relevant inquiry is whether the claim “falls within the general scope of the authority conferred upon such court by the constitution or by statute.” *Reinhart*, 112 N.E.3d at 711-

12 (quoting *State ex rel. Young v. Noble Circuit Court*, 263 Ind. 353, 356, 332 N.E.2d 99, 101 (1975)).

[13] Ind. Code § 35-34-1-1, concerning commencement of a criminal prosecution, provides that, with certain exceptions, “all prosecutions of crimes shall be instituted by the filing of an information or indictment by the prosecuting attorney, in a court with jurisdiction over the crime charged.” The 2004 version of I.C. § 33-28-1-2(a), concerning jurisdiction of circuit courts, provides that “[t]he circuit court has original jurisdiction in all civil cases and in all criminal cases, except where exclusive jurisdiction is conferred by law upon other courts of the same territorial jurisdiction.” The Allen Circuit Court thus had jurisdiction over the criminal nonsupport charge unless Whitley Circuit Court had exclusive jurisdiction of it. Hall’s argument is that, pursuant to Section 3, Allen County was divested of jurisdiction of the paternity proceedings and child support orders upon the transfer of JP-187 to the Whitley Circuit Court. Therefore, he claims, the judgment of conviction in FD-402 is void and must be vacated. We disagree.

[14] The primary goal when interpreting a statute is to effectuate the legislative intent, and courts must give effect to the plain and ordinary meaning of the language. *Herron v. State*, 729 N.E.2d 1008, 1010 (Ind. Ct. App. 2000), *trans. denied*. Courts will not read into a statute that which is not the expressed intent of the legislature. *Id.* When interpreting a statute, “it is just as important to recognize what a statute does not say as it is to recognize what it does say.” *Id.*



(citing *Rush v. Elkhart Cnty. Plan Comm'n*, 698 N.E.2d 1211, 1215 (Ind. Ct. App. 1998), *trans. denied*).

[15] As the State observes, Section 3 does not provide that the transferee court obtains exclusive jurisdiction over the transferred proceedings. Rather, as discussed above, it states that the court to which the proceedings are transferred shall accept the proceedings, and “*thereafter has jurisdiction over the children and matters relating to their support by the parent so ordered.*” I.C. 31-16-20-3 (emphasis added.) We decline to read into the statute words that the legislature did not include when drafting it. *See Hale v. State*, 785 N.E.2d 641, 644 (Ind. Ct. App. 2003) (“the courts will not add something to a statute that the legislature has purposely omitted,” citing *Rush*, 698 N.E.2d at 1215).

[16] Moreover, as the State observes, here the “support order transfer was civil in nature.” *Appellee’s Brief* at 9. Indeed, I.C. § 31-16-20-4 instructs that the transferred proceedings “shall be docketed *as other civil matters* are docketed” and “a *civil costs fee*” shall be collected. (Emphases added). The State argues that this language reflects that the legislature’s intent that the matters to be covered by the chapter were the civil matters associated with child support. We agree with the State in this regard. That is, even if Section 3 could be interpreted as granting exclusive jurisdiction to the transferee court, as Hall claims, that “would only give [Whitley Circuit Court] exclusive jurisdiction over the [transferred] civil proceedings[.]” *Appellee’s Brief* at 6. Stated differently, we find that the Allen Circuit Court’s power to accept and enter

judgment of conviction on the criminal nonsupport charge was unaffected by the transfer of JP-187.

[17] Hall was alleged to have failed to pay child support in Allen County, and, by his own admission, Hall was living in Allen County during the time period he was alleged to have failed to pay. Under the circumstances of this case, we find that the Allen Circuit Court had jurisdiction to enter judgment of conviction on Hall's guilty plea to Class D felony nonsupport of a dependent. Accordingly, we affirm the court's denial of Hall's petition for post-conviction relief.

[18] Judgment affirmed.

Mathias, J. and Weissmann, J., concur.