MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Larry D. Blanton, Jr.
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 3, 2023

Court of Appeals Case No. 22A-CR-3128

Appeal from the Monroe Circuit Court

The Honorable Mary Ellen Diekhoff, Judge

Trial Court Cause No. 53C05-0404-FA-360

Memorandum Decision by Judge Foley
Judges Vaidik and Tavitas concur.

Foley, Judge.

[1] Before us is the latest in a series of attempts—spanning seventeen years—by Larry D. Blanton, Jr. ("Blanton") to collaterally attack his convictions for four counts of felony child molesting. By our count, this is at least the sixth appeal filed by Blanton. He seeks to file a belated appeal of his resentencing, arguing that he was not advised at the time that he had a right to appeal that resentencing. He has, however, previously sought post-conviction relief. Litigants are required to seek permission to file second or successive petitions for post-conviction relief, which Blanton did not do. We dismiss his appeal as an impermissible attempt to collaterally attack his resentencing order.

Facts and Procedural History

[2] We need not again recount the lengthy procedural history culminating in this appeal.[1] Suffice it to say that Blanton was convicted after jury trial of four counts of felony child molesting in 2006.[2] His original sentence was an aggregate of 105 years. We deemed that sentence inappropriate under Appellate Rule 7(B) and remanded with instructions to reduce the sentence to an aggregate of 30 years. *Blanton v. State*, 865 N.E.2d 723 (Ind. Ct. App. 2007) (mem.). Since then, he has filed a series of attempts to invalidate his resentencing, including at least two petitions for post-conviction relief. The wending path of these various cases is littered with an assortment of additional

[1] We have already done so. *See, e.g., Blanton v. State,* 188 N.E.3d 928 (Ind. Ct. App. 2022) (mem.); *Blanton v. State*, 38 N.E.3d 738 (Ind. Ct. App. 2015) (mem.).

[2] The crimes were committed in 2004.

frivolous motions, many of which essentially seek alternative avenues by which to launch a collateral attack on the underlying convictions.

[3] In the instant matter, Blanton seeks to appeal the trial court's December 7, 2022, order "Denying Petition for Verified Petition for Permission to File Belated Notice of Appeal." Appellant's App. Vol. II p. 16. This order appears to respond to a handwritten filing dated October 27, 2022. That filing indicates that after Blanton was initially successful on direct appeal, and he was resentenced on remand, he failed to file a second direct appeal. He claims that the failure to file was through no fault of his own, and that the trial court did not advise him of his right to counsel for a second direct appeal. The filing further indicates that this is not Blanton's first attempt to file a new appeal via Post-Conviction Rule 2. Blanton filed his notice of appeal on December 27, 2022.

Discussion and Decision

[4] "An order granting or denying permission to file a belated notice of appeal is a Final Judgment for purposes of Ind[iana] Appellate Rule 5." Ind. Post-Conviction Rule 2(1)(e). "Generally, the decision whether to grant permission to file a belated notice of appeal or belated motion to correct error is within the sound discretion of the trial court." *Russell v. State*, 970 N.E.2d 156, 160 (Ind. Ct. App. 2012) (citing *Moshenek v. State*, 868 N.E.2d 419, 422 (Ind. 2007)). "However, if the trial court does not hold a hearing before granting or denying a petition to file a belated notice of appeal, the appellate court owes no deference to the trial court's decision, and the review of the granting of the

petition is *de novo*." *Id*. (citing *Baysinger v. State*, 835 N.E.2d 223, 224 (Ind. Ct. App. 2005)).

[5] We have recently addressed Blanton's attempts to collaterally attack his resentencing. Blanton has previously "filed a motion to correct the allegedly erroneous resentencing order. That motion was denied, as was his subsequent motion, per P-C.R. 2(1), seeking leave to file a belated notice of appeal of the denial of the motion to correct sentence." *Blanton v. State*, 188 N.E.3d 928 (Ind. Ct. App. 2022) (mem.), *trans denied.* We concluded that Blanton failed to follow the correct procedures for filing a successive petition for post-conviction relief:

> Then Blanton filed a petition for permission to file a successive PCR petition attacking the resentencing order once again, and we denied that petition in August of 2021. App. at 94. In an apparent attempt to circumvent the results of the unsuccessful prior PCR actions and decisions regarding his resentencing, Blanton filed motions in the trial court purporting to once again challenge the October 12, 2007, resentencing order. However, in order to challenge that order again, Blanton was required to file in this Court another request for leave to file a successive PCR petition. P-C.R. 1(12). Blanton failed to do so. Therefore, the trial court did not err in denying his improper motions seeking to once more challenge his resentencing, as the issues raised in those motions could only be addressed via a proper request to file a successive PCR petition.

Id.

[6] No amount of creative re-packaging can disguise the fact that Blanton has already—many times—sought to collaterally attack his sentence as entered on

remand of his direct appeal. Each and every time, his attempts have been rebuffed. "If the petitioner has sought post-conviction relief before [ ] he or she must follow the procedure found in Post-Conviction Rule 1(12) for successive petitions. Post-Conviction Rule 1(12) provides a petitioner must request and receive permission from the appellate court to pursue a successive petition for relief." *Currie v. State*, 82 N.E.3d 285, 287 (Ind. Ct. App. 2017) (citing *Love v. State*, 52 N.E.3d 937, 939-40 (Ind. Ct. App. 2016)). Blanton did not seek permission. "When a court encounters an improper successive petition for post-conviction relief, it should dismiss the action." *Id.* (citing *Beech v. State*, 702 N.E.2d 1132, 1137 (Ind. Ct. App. 1998)). Notwithstanding our skepticism that Blanton did not realize at the time of his resentencing that he was entitled to appeal, Blanton has already sought to attack his resentencing order. He may not do so again.

[7] Dismissed.

Vaidik, J., and Tavitas, J., concur.