IN THE

Indiana Supreme Court

Supreme Court Case No. 21S-PC-256

Andrew Conley,
Appellant-Petitioner,

–v–

State of Indiana,
Appellee-Respondent.

Argued: September 9, 2021 | Decided: March 23, 2022

Appeal from the Ohio Circuit Court
No. 58C01-1302-PC-2
The Honorable James D. Humphrey, Judge

On Petition to Transfer from the Indiana Court of Appeals
No. 19A-PC-3085

Opinion by Justice David

Justices Massa, Slaughter, and Goff concur.
Chief Justice Rush concurs in result.

David, Justice.

Seventeen-year-old Andrew Conley was sentenced to life in prison without parole (LWOP) for the brutal murder of his ten-year old brother. We affirmed his sentence on direct appeal. At issue now is whether trial counsel's failure to present evidence of Conley's age and juvenile brain development, to call or examine certain witnesses and expert witnesses, to challenge the State's mental health experts, and failure to conduct further investigation constituted ineffective assistance of counsel at sentencing. We hold Conley did not receive ineffective assistance of counsel and affirm the post-conviction court.

Facts and Procedural History

As this Court explained in *Conley v. State*, 972 N.E.2d 864, 869–70 (Ind. 2012) ("*Conley I*"):

> Conley was [a] seventeen-and-a-half-year-old when he murdered his ten-year-old brother, Conner. The murder took place between 8:30 p.m. and 10:00 p.m. His mother and adoptive father were at work that evening until the early morning hours. As was not uncommon, Conley was responsible for watching Conner that evening. Conley's mother told him he would have to find a babysitter for Conner if he wished to go out with his friends.
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> Conley wanted to go out that evening, so Conley drove Conner to their grandmother's house in Rising Sun, Indiana, but she was not home. He next asked his uncle to watch Conner but was told no. After they returned home, Conley and Conner began wrestling.
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> At some point, Conley got behind his brother and choked him in a headlock with his arm until Conner passed out. Conner was bleeding from the nose and mouth. Conner was still breathing. Conley drug Conner into the kitchen, retrieved a

pair of gloves, and continued to choke Conner from the front, around his throat. Conley choked Conner for approximately twenty minutes total.

Conley next got a plastic bag from a drawer in the kitchen and placed it over Conner's head. Conley used black electrical tape to secure the bag by wrapping the tape around Conner's head. Conner was still alive. In fact, Conner's last words were "Andrew stop."

Conley then drug Conner's body to the steps that lead to the basement, drug him down the steps by his feet, across the floor, and outside the home. Conley slammed Conner's head on the concrete multiple times to ensure Conner was dead and then placed his body in the trunk of his car. Conley cleaned himself up and put on new clothes. He put the bloody clothes in his closet and hid the bloody gloves in a chair.

Conley next drove to his girlfriend's house. While there they watched a movie, and he gave her a "promise ring." Conley's girlfriend testified at the sentencing hearing that Conley was "[h]appier than I'd seen him in a long time." Conley spent two hours at his girlfriend's house, while Conner's body remained in the trunk of the car. After leaving his girlfriend's house, Conley drove to an area behind the Rising Sun Middle School. Conley decided to drag Conner's body into the woods and covered the body with sticks and vegetation.

Conley returned home during the early morning hours on Sunday the 29th when no one was home. He cleaned up the blood in the house. When his father returned home around 2:30 a.m., Conley was acting normal. Conley said that Conner was at his grandmother's house and Conley also asked his father for some condoms.

> Conley's mother arrived home around 5:45 a.m., and Conley and his mother had popcorn, watched a movie together, and cracked jokes back and forth. His mother fell asleep. On two occasions that early morning, Conley went into his father's bedroom and stood over him with a knife. Conley said he had the intent to kill his father, but he decided not to.
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> Later that same Sunday, Conley watched football with his father. Following football, Conley left home and drove to the park in Rising Sun where Conner's body had been discarded, but he never went to the actual location. Instead, Conley spoke to two friends and told [them] that he had killed Conner. Thereafter, around 8:00 p.m., Conley drove his car to the Rising Sun Police Department and voluntarily reported he "accidentally killed his brother" or that he "believed" he had killed his brother.
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> The police contacted Conley's parents, and after consulting with his parents and waiving his right to counsel, Conley confessed to intentionally killing his ten-year-old brother. Conley was charged with murder and ultimately pleaded guilty, without a plea agreement. The penalty phase of the trial was conducted from September 15 to 21. Following the sentencing hearing, the trial court sentenced Conley to life imprisonment without the possibility of parole.

This Court affirmed Conley's sentence on direct appeal. Thereafter, Conley sought post-conviction relief, alleging, among other things, that he received ineffective assistance of counsel at sentencing. Our Court of Appeals reversed the post-conviction court on this issue (affirming on the other issues), finding that Conley received ineffective assistance of counsel. *Conley v. State*, 164 N.E.3d 787 (Ind. Ct. App. 2021), *vacated*. The State sought transfer, which we granted, vacating the Court of Appeals' opinion. *See* Ind. App. R. 58(A).

Standard of Review

Because Conley failed to carry his burden of proving his claims by a preponderance of evidence in the post-conviction court, he appeals from a negative judgment. As such, Conley must show that "the evidence as a whole leads unerringly and unmistakably to a decision opposite that reached by the postconviction court." *Timberlake v. State*, 753 N.E.2d 591, 597 (Ind. 2001) (citation omitted). For factual matters, we examine only the probative evidence and reasonable inferences that support the post-conviction court's determination and do not reweigh the evidence or judge the credibility of the witnesses. *Taylor v. State*, 717 N.E.2d 90, 92 (Ind. 1999). The post-conviction court's decision will be disturbed "only if the evidence is without conflict and leads only to a conclusion contrary to the result of the postconviction court." *Timberlake*, 753 N.E.2d at 597. When a defendant fails to meet this "rigorous standard of review," this Court will affirm the post-conviction court's denial of relief. *Wilson v. State*, 157 N.E.3d 1163, 1170 (Ind. 2020) (cleaned up).

Discussion and Decision

Conley alleges that he received ineffective assistance of trial counsel at sentencing. That is, he raises several evidentiary issues, and argues counsel was deficient in the handling of records, lay witnesses, and expert witnesses.[1] Although not raised by Conley, our Court of Appeals *sua sponte* found that counsel was ineffective for not presenting evidence of juvenile brain development under United States Supreme Court precedent

[1] Conley raises several additional grounds on which he argues that he received ineffective assistance of counsel. He argues that he received ineffective assistance of trial counsel for failing to provide proper advice on a guilty plea and that his plea was not knowing, voluntary, and intelligent. He also argues that the post-conviction court should vacate his sentence because of newly discovered evidence (i.e., Conley's mother's updated victim statement) and that he received ineffective assistance of appellate counsel for failing to request permission to re-brief or present a *Miller v. Alabama* argument in the rehearing brief, 567 U.S. 460, 473, 132 S.Ct. 2455, 2465, 183 L.Ed. 2d 407 (2012). On these issues, we summarily affirm the Court of Appeals. *See* App. R. 58(A)(2); *see also Conley*, 164 N.E.3d at 806, 813–14.

and found that there was cumulative prejudice necessitating a new sentencing hearing. For the reasons discussed herein, we hold that Conley did not receive ineffective assistance of counsel at sentencing and accordingly, we affirm the post-conviction court in full.

Ineffective assistance of counsel claims are evaluated under the well-known, two-part test articulated in *Strickland v. Washington*, 466 U.S. 668 (1984). To prevail, Conley must show that: (1) counsel's performance was deficient based on prevailing professional norms; and (2) the deficient performance prejudiced the defense. *Ward v. State*, 969 N.E.2d 46, 51 (Ind. 2012) (citing *Strickland,* 466 U.S. at 687). "Failure to satisfy either prong will cause the claim to fail." *French v. State*, 778 N.E.2d 816, 824 (Ind. 2002).

In analyzing whether counsel's performance was deficient, the Court first asks whether, "'considering all the circumstances,' counsel's actions were 'reasonable[ ] under prevailing professional norms.'" *Wilkes*, 984 N.E.2d 1236, 1240 (Ind. 2013) (quoting *Strickland,* 466 U.S. at 668). Counsel is afforded considerable discretion in choosing strategy and tactics, and judicial scrutiny of counsel's performance is highly deferential. *Id.*

There is a strong presumption that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Stevens*, 770 N.E.2d 739, 746 (Ind. 2002). Counsel is afforded considerable discretion in choosing strategy and tactics and these decisions are entitled to deferential review. *Id.* at 746–47 (citing *Strickland*, 466 U.S. at 689). Furthermore, isolated mistakes, poor strategy, inexperience, and instances of bad judgment do not necessarily render representation ineffective. *Id.* at 747 (citations omitted).

To demonstrate prejudice, "the defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland,* 466 U.S. at 694.

I. Counsel was not ineffective for failing to present evidence on Conley's age and juvenile brain development.

Our Court of Appeals reversed the post-conviction court on a ground Conley did not raise on appeal. It found counsel was deficient for not presenting evidence of juvenile brain development and juveniles' lesser moral culpability, as discussed in U.S. Supreme Court precedent, *Roper v. Simmons*, 543 U.S. 551 (2005), and *Graham v. Florida*, 560 U.S. 48 (2010). We agree with the State that an appellate court's role is an impartial adjudicator, not an advocate. *See, e.g., Thomas v. State*, 965 N.E.2d 70, 77 n.2 (Ind. Ct. App. 2012) (stating that an appellate court should not "make up its own arguments" when a "party has not adequately presented them" because this causes the court to become "an advocate rather than an adjudicator") (internal citations and quotations omitted). Nevertheless, we will address this issue briefly.

It is true that counsel did not raise any brain development cases during sentencing. But we note that *Roper* and *Graham*'s ultimate holdings are not directly applicable to Conley's case. For example, *Roper* held that it is unlawful to impose the death penalty for a crime that was committed while the offender was under the age of eighteen. 543 U.S. at 575–78. And *Graham* held that a juvenile LWOP sentence is unlawful for a conviction other than homicide. 560 U.S. at 82. Here, Conley did not receive the death penalty, and he was convicted of homicide. Therefore, neither *Roper* nor *Graham*'s holdings clearly apply to or otherwise conflict with the facts here.

Instead, counsel made arguments based on Conley's age and character, focusing on mitigators specific to Conley rather than evidence about juvenile brain development in general. While counsel could have brought this line of cases regarding juvenile brain development to the court's attention, we do not find the failure to do so falls below the prevailing professional norms because neither *Roper* nor *Graham*'s ultimate holdings clearly apply to Conley's case.

In addition, we find no prejudice for failing to present this line of precedent. When this Court considered the aggravating and mitigating factors on direct appeal, we noted: "The most fundamental take away from *Graham* was that 'youth matters in determining the appropriateness of a lifetime of incarceration without the possibility of parole.'" *Conley I*, 972 N.E.2d at 875 (quoting *Miller*, 567 U.S. at 473). And, after noting the duty of a trial court to recognize that children are different for purposes of sentencing, we held that "Judge Humphrey did just that in the present case." *Conley I*, 972 N.E.2d at 876. Indeed, in the detailed sentencing statement, the trial court **did** find that Conley's age was a mitigator and it assigned "some" weight to it. DA Tr. Vol. 5 at 1030. However, the court noted Conley was just six months from his eighteenth birthday, had normal cognitive functioning, and could make rational decisions. Further, the post-conviction court (again, Judge Humphrey) found that Conley's situation was distinguishable from other juvenile cases in that Conley was the caretaker of his brother, he was not acting out of immature rage or outside pressures, and he took care to avoid creating evidence of his crime.

Because the trial court did thoughtfully consider Conley's age, did find it to be mitigating, and explained in great detail why it gave this factor only some weight, we do not find a reasonable probability that the outcome would have been different had counsel presented additional evidence about juvenile brain development. This is especially true, as this Court was well aware of the case law at issue on direct appeal and we still upheld Conley's LWOP sentence in response to his Appellate Rule 7(B) challenge.

Of course, juvenile LWOP sentences are not the default, but the exception. Moreover, this Court has recognized that juveniles have diminished culpability and greater prospects for reform, and we have given juvenile offenders relief where appropriate. *See, e.g., State v. Stidham*, 157 N.E.3d 1185 (Ind. 2020) (revising a 138-year sentence to 88 years for a seventeen-year-old convicted of stabbing a man 47 times and throwing his body in a river); *Wilson*, 157 N.E.3d at 1163 (revising a 181-year sentence to 100 years for a sixteen-year-old convicted of two murders, a robbery, and a criminal gang enhancement); *Taylor v. State*, 86 N.E.3d 157 (Ind. 2017)

(revising an LWOP sentence to 80 years for a sixteen-year-old convicted of shooting and killing another juvenile); *Brown v. State*, 10 N.E.3d 1 (Ind. 2014) (revising a 150-year sentence to 80 years for a sixteen-year-old convicted of two counts of murder and one count of burglary). Yet, we consider *Conley I* to be an important guidepost for juvenile LWOP cases where, even considering the notable differences between juveniles and adults, the juvenile's crimes are so reprehensible and heinous that an LWOP sentence would be appropriate.

II. Counsel was not ineffective for failing to call certain witnesses close to Conley.

Conley also argues that counsel was ineffective for failing to call or failing to effectively examine witnesses who knew him well and could provide helpful mitigation evidence. However, it is not clear if or how such evidence would have helped Conley. As the post-conviction court found, many of the witnesses called to testify at the post-conviction hearing had also been called at the sentencing hearing; the bulk of the testimony from the witnesses on post-conviction was about how shocked they were that Conley killed his brother. The post-conviction court further found not only that Conley failed to elicit anything new and helpful, but also that some of the new testimony would have harmed him. For instance, Ashley Palaima, a witness called at the post-conviction hearing but not at the sentencing hearing, acknowledged on cross-examination that she could not think of a more serious or worse crime than what Conley did to his brother Conner.

At sentencing, defense counsel presented numerous lay witnesses, including Conley's grandmother, his former Cub Scout leader, two of his teachers, his high school principal, and his former school counselor, who also owned a restaurant where Conley once worked Counsel also elicited testimony from lay witnesses called by the State, including Conley's parents, his girlfriend, and two of his close friends. Conley fails to demonstrate how such additional evidence would have been helpful. The fact that counsel did not call every person Conley knew or present cumulative evidence regarding how his crime was out of character does

not constitute deficient performance. *See Moredock v. State*, 540 N.E.2d 1230, 1232 (Ind. 1989) (observing that the decision not to call a witness whose testimony is cumulative does not constitute ineffective assistance of counsel). Conley also has not shown prejudice when the testimony offered at post-conviction contained information that either was not new or was not helpful to him. Therefore, Conley has failed to meet his burden to show that the result of the proceeding would have been different if counsel had called additional witnesses.

III. Counsel was not ineffective for failing to challenge the State's expert regarding factual issues about the nature of the crime.

Conley argues that he received ineffective assistance of counsel when his counsel failed to call a defense pathologist to refute testimony from the State's pathologist, Dr. Hawley. Dr. Hawley's testimony included the facts that: (1) Conner had been sexually assaulted; and (2) Conner could have been alive when the plastic bag was placed over his head. During the post-conviction hearing, Conley presented evidence through pathologist, Dr. Nichols. Conley argues that Dr. Nichols was able to refute both of Dr. Hawley's points and that trial counsel was ineffective for not presenting such evidence at sentencing.

However, Dr. Nichols' testimony isn't as clear or helpful as Conley suggests. While Dr. Nichols takes issue with some of Dr. Hawley's findings about the precise cause of Conner's death, ultimately, he admits that it was unknown whether Conner was alive when Conley placed the plastic bag on Conner's head. The most he could testify to is that Conner did not live long enough to develop hypoxic ischemic encephalopathy, a brain injury caused by oxygen deprivation, as Dr. Hawley opined he did. While it seems Conley is attempting to allege that Conner's murder is not as horrific as Dr. Hawley made it seem, the trial court considered the full nature of Conner's death in detail, including the fact that Conley "performed four separate violent acts on his brother, Conner, over a considerable period of time." DA Tr. Vol. 5 at 1032. Also, as the post-

conviction court aptly noted: "[t]he issue of whether the child was still alive at the time the bag was placed on his head is but a small part of the horror that was this child's death." PCR Order at 14.

It cannot be said that counsel was deficient for failing to put on an expert witness who provides evidence about points which were not necessary or even considered by the trial court. Further, the post-conviction court weighed the testimony of both experts, considered the record, and reaffirmed the testimony of Dr. Hawley. Moreover, our standard of review demands that we do not reweigh this type of evidence. *See Taylor*, 717 N.E.2d at 92. And there is certainly no prejudice where the trial court would have come to the same conclusions about the horrific nature of the crime regardless of whether Conner was alive when the bag was placed over his head.

With regard to the evidence that Conner was sexually assaulted, Dr. Nichols testified that evidence of anal dilation, without more, is not necessarily indicative of sexual assault. This evidence would serve to rebut testimony from Dr. Hawley that there had been a forced anal sexual act. However, again, it is not clear how such evidence would have been helpful to Conley or impacted the outcome where the State conceded at sentencing that there was no evidence of sexual assault and the court found the same. Indeed, the court did not even mention this information when discussing the nature of the crime at sentencing. Because the State conceded that there was no evidence on this issue, counsel was not ineffective for not putting on an opposing expert, and Conley cannot show prejudice where the court did not consider this evidence when determining his sentence.

IV. Counsel was not ineffective for failing to properly challenge State's experts regarding Conley's mental health.

Conley also faults counsel for not properly challenging the State's mental health experts, Dr. Daum and Dr. Olive. He argues counsel was ineffective for not having Dr. Daum's testimony excluded when Dr. Daum

never examined Conley himself and based his opinions only on written records. Conley also argues that counsel failed to bring to the court's attention the fact that there was a Seventh Circuit opinion wherein a Dr. Olive was "discredited." However, Conley has shown neither deficient performance of counsel nor prejudice.

As for Dr. Daum, his testimony was offered by the State to rebut the evidence of Conley's expert, Dr. Connor. Defense counsel moved to strike Dr. Daum's testimony after asking preliminary questions about the methodology he used and otherwise objected to him offering his opinions. The court denied the motion to strike and overruled the objections but noted that counsel's objections would be taken into account when considering the weight of the evidence. Defense counsel also cross-examined Dr. Daum to reveal flaws in his position. The court specifically noted at sentencing that it did not allow Dr. Daum the opportunity to opine as to Conley's diagnosis; the same court noted later that it had discounted Dr. Daum's testimony at sentencing.

While counsel did not put on another expert to rebut Dr. Daum or ask certain questions, he did move to strike Dr. Daum, made appropriate objections, and effectively cross-examined Dr. Daum. Accordingly, we do not find that counsel's performance was deficient. Also, the sentencing statement and the post-conviction order make clear that the court gave Dr. Daum's testimony little weight compared to the other experts. For instance, the post-conviction order observes that "the Court discounted Dr. Daum's testimony at sentencing, a point shown by the fact that Dr. Daum is only referenced twice in the Court's Order and Judgment. The Court only found as to Dr. Daum that he testified and was not permitted to present a diagnosis of psychopathy." Conley has failed to show prejudice from counsel's failure to prevent Dr. Daum's testimony.

As for Dr. Olive, he was appointed by the court to render an opinion. Conley argues briefly that defense counsel failed to alert the court to the fact that there was a Seventh Circuit case where a Dr. Olive was "discredited." However, as the post-conviction court aptly notes, it is not

clear that this is the same Dr. Olive.[2] It also is not clear that the Seventh Circuit opinion, even if offered, would have been admitted and/or resulted in precluding Dr. Olive's testimony in this case. Notably, Conley does not demonstrate how Dr. Olive's testimony was objectionable or how he was prejudiced by its inclusion. We agree with the post-conviction court and will not reweigh these factual findings under our standard of review.

V. Counsel was not ineffective for failing to more thoroughly investigate.

Finally, Conley argues that counsel was ineffective for failing to complete a more thorough investigation through the defense investigator and for not requesting Conley's jail records. Our Court of Appeals is critical of the fact that the investigator stated in a letter that this matter was "very complex" and "there are several matters that require further investigation." *Conley*, 164 N.E.3d at 809-10 (quoting PCR Ex. Vol. 1, p. 101). It found this additional investigation was not completed.

Here, the investigator made this statement in his first letter outlining the scope of his completed work and indicating work he believed he still needed to complete, which he estimated was about ten to twelve more interviews. As indicated in subsequent letters, he then completed additional work by conducting at least ten interviews and gathering more records. Further, the investigator supplied an affidavit for the post-conviction proceedings outlining the work he performed during the case; it does not aver that he had work left undone. Thus, under our standard of review, counsel's investigation does not fall below the prevailing professional norms because the record does not support the allegation that work remained incomplete after the investigator's first letter. As such, counsel was not ineffective for failing to permit a more thorough investigation.

[2] *Holmes v. Buss*, 506 F.3d 576, 578 (7th Cir. 2007), refers to a "Dr. Dan A. Olive." The doctor in this case is Don Olive.

Conley also argues that he received ineffective assistance of counsel when his trial counsel failed to request certain jail records from Conley's arrest and incarceration. Specifically, Conley argues that these records would have further corroborated the fact that he was experiencing "thought disturbance and suicidal ideation," and their introduction would have assisted expert witnesses in evaluating Conley's mental state at the time of the crime. Appellant's Br. at 22–23. However, Conley had already presented other evidence about his mental health at the time of his crime, and such additional jail records would be cumulative of the evidence that was already presented.

For example, Conley already presented evidence that he suffered from schizoaffective disorder and depression; that he suffered from a mental disease or defect that affected his ability to control himself; that he felt remorse for the crime; and that he did not have a psychopathic personality. And Conley's expert, Dr. Connor, testified that he did not find anything significant in the new materials provided in the post-conviction proceeding—which included these jail records—and that they simply corroborated what he had already known and considered. Therefore, given the cumulative effect of these jail records, counsel's decision not to request them was objectively reasonable. *See Moredock*, 540 N.E.2d at 1232. In sum, Conley did not receive ineffective assistance of counsel for failing to conduct a more thorough investigation, either through the investigator or by not requesting Conley's jail records.

VI. Conley's Appellate Rule 7(B) arguments are barred by *res judicata*.

Conley argues that his LWOP sentence should be revised under Appellate Rule 7(B). This Rule enables this Court to "revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Ind. App. R. 7(B). The principal role of 7(B) review is to leaven the outliers, not to achieve a perceived correct sentence. *Hall v. State*, 177 N.E.3d 1183, 1197 (Ind. 2021) (citations and quotations omitted).

However, we already addressed the appropriateness of Conley's LWOP sentence in *Conley I*, and therefore, Conley's 7(B) arguments seeking sentence revision are barred by *res judicata*. *See Conley I*, 972 N.E.2d at 876–77 (holding Conley's LWOP sentence was not inappropriate in light of Conley's character and the nature of his offenses). "As a general rule, when a reviewing court decides an issue on direct appeal, the doctrine of *res judicata* applies, thereby precluding its review in post-conviction proceedings." *Stidham*, 157 N.E.3d at 1191 (citations omitted). Notwithstanding *res judicata*, "[a] court has the power to revisit prior decisions of its own or of a coordinate court in any circumstance." *Id.* (quoting *State v. Huffman*, 643 N.E.2d 899, 901 (Ind. 1994)). This power should only be used in "extraordinary circumstances" where the initial decision "was clearly erroneous and would work manifest injustice." 157 N.E.3d at 1191 (internal quotations omitted).

In *Stidham*, we found the requisite "extraordinary circumstances" existed to overcome *res judicata*'s bar on revisiting and revising a juvenile offender's sentence under Article 7, Section 4 of the Indiana Constitution.[3] *Id.* at 1192–93. There, we observed two fundamental shifts in sentencing law between 1994, when our Court of Appeals first evaluated whether Stidham's sentence should be revised, and 2020, when we considered the matter on post-conviction relief. *Id.* The first major shift was that Indiana's standard for reviewing and revising sentences under Article 7, Section 4 of the Indiana Constitution changed. *Id.* (noting the change from the "manifestly unreasonable" standard to the existing "inappropriate in light of the nature of the offense and character of the offender" standard under App. R. 7(B)). The second major shift between 1994 and 2020 was the evolution in the way that we evaluate juvenile offenders, informed by U.S. Supreme Court precedent from the 2000s. *Id.* at 1193 (citing *Roper*, 543 U.S. 551; *Graham*, 560 U.S. 48; and *Miller*, 567 U.S. 460).

[3] Article 7, Section 4 of the Indiana Constitution provides, in part: "The Supreme Court shall have, in all appeals of criminal cases, the power to review all questions of law and to review and revise the sentence imposed."

Conley's case does not present "extraordinary circumstances" sufficient to overcome *res judicata*. Unlike in *Stidham*, the Appellate Rule 7(B) review standard has remained the same since 2012, when *Conley I* was issued. In *Conley I*, we also had the benefit of considering the evolution in how our jurisprudence treats juveniles convicted of serious crimes—indeed, *Conley I* discussed and cited *Roper*, *Graham*, and *Miller*. *See Conley I,* 972 N.E.2d at 875–79. And even considering this shift, *Conley I* carefully evaluated Conley's sentence and considered the brutal nature of his crimes and his character, including his juvenile status, when holding that his LWOP sentence was not inappropriate. *Id.* at 876–77. And given that we do not find that Conley received ineffective assistance of counsel, we cannot say that this is one of the rare cases that present "extraordinary circumstances" to overcome the restraints of *res judicata*.

Because *Conley I*'s 7(B) decision was not clearly erroneous and would not work manifest injustice, his post-conviction argument that his sentence is inappropriate under 7(B) is barred by *res judicata*.

Conclusion

Because Conley cannot overcome the "rigorous standard of review" for evaluating the post-conviction court's determinations, *Wilson*, 157 N.E.3d at 1170, we cannot say that the evidence "leads unerringly and unmistakably to a decision opposite that reached by the postconviction court." *Timberlake*, 753 N.E.2d at 597. Therefore, in light of the facts in the record, which we will not reweigh, Conley has not demonstrated that he received ineffective assistance of counsel. Moreover, Conley has not met his burden to show that counsel's performance fell objectively below the prevailing professional norms or that he was prejudiced by any of counsel's alleged errors. We affirm the post-conviction court.

Massa, Slaughter, and Goff, JJ., concur.
Rush, C.J., concurs in result.

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