

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

Jonathan W. Opel,
Appellant-Petitioner,

v.

State of Indiana
Appellee-Respondent.

September 21, 2021

Court of Appeals Case No.
21A-MI-684

Appeal from the Putnam Superior
Court

The Honorable Charles D. Bridges,
Judge

The Honorable Melinda Jackman-
Hanlin, Magistrate

Trial Court Cause No.
67D01-2101-MI-1

Bradford, Chief Judge.

Case Summary

[1] On May 12, 2012, Jonathan Opel pled guilty to Class C felony possession of methamphetamine and was sentenced to fifteen years of incarceration in the Indiana Department of Correction (“DOC”). On November 14, 2019, Opel was released on parole. Opel, who was not staying at his parole-approved residence, missed a scheduled meeting with his parole officer on September 21, 2020. A parole-violation warrant for Opel’s arrest was issued on September 25, 2020 and Opel was arrested on October 1, 2020. Due to the Covid-19 pandemic, Opel’s parole revocation hearing was delayed until December 14, 2020. Ultimately, Opel’s parole was revoked, and he was ordered to serve the balance of his time. In response, Opel filed a petition for a writ of habeas corpus alleging that his due process rights had been violated. The post-conviction court denied Opel’s petition, determining that he had actually filed a mislabeled petition for post-conviction relief (“PCR”). Opel appeals, arguing that the post-conviction court improperly characterized his petition and that his due process rights were violated by the parole board’s delay in bringing him to a hearing and failure to allow him to present certain evidence. Concluding that the post-conviction court did not mischaracterize Opel’s PCR petition, that the delay had good cause, and that other potential errors were harmless, we affirm.

Facts and Procedural History

- [2] On May 12, 2012, Jonathan Opel pled guilty to Class C felony possession of methamphetamine and was sentenced to fifteen years of incarceration. On November 14, 2019, Opel was released on parole. Opel, who was not staying at his parole-approved residence, missed a scheduled meeting with his parole officer on September 21, 2020. A parole-violation warrant for Opel's arrest was issued on September 25, 2020 and Opel was arrested on October 1, 2020.
- [3] Due to the Covid-19 pandemic, the parole revocation hearing was scheduled for December 14, 2020, a delay longer than the required sixty-day timeframe for holding a parole revocation hearing. At the hearing, the parole board unanimously determined that Opel was guilty of the alleged parole violations, concluded that Opel had admitted to his violation, and ordered him to serve the balance of his time.
- [4] On January 4, 2021, Opel filed a petition for a writ of habeas corpus. Opel argued that his due process rights had been violated because of the delay in scheduling his hearing and because he was unable to present evidence; specifically, a voicemail he received from his parole officer on the date of his appointment and evidence of his living arrangements. On March 22, 2021, the post-conviction court, after determining that Opel had filed a mislabeled PCR petition, denied his petition.

Discussion and Decision

I. PCR Petition

[5] Opel argues that, because his petition was a petition for writ of habeas corpus, and not a petition for PCR, the post-conviction court improperly substituted the appropriate standard of review and that his due process rights were violated. Indiana Post-Conviction Rule 1(1)(a)(5) provides that, “[a]ny person who has been convicted of, or sentenced for, a crime by a court of this state, and who claims: [...] that his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint[,]” may institute PCR proceedings. However, where a petitioner challenges his parole revocation but does not claim that he is entitled to immediate release, a court may treat a mislabeled petition as a PCR petition under Indiana Post-Conviction Rule 1(1)(a)(5). *See Hawkins v. Jenkins*, 268 Ind. 137, 140, 374 N.E.2d 496, 498 (1978) (stating that a petitioner who erroneously captions his petition as a petition for a writ of habeas corpus without asking for immediate release due to a defect in his conviction or sentence may be treated as having filed a PCR petition). While Opel labeled his petition as a petition for writ of habeas corpus, the content of his petition argued that his parole was improperly revoked because he was unable to present evidence and that the hearing was untimely, not the validity of his conviction or sentence; therefore, the post-conviction court acted properly by treating his petition as a petition for post-conviction relief. *See id.*

II. Due Process

[6] “In [*Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)], the United States Supreme Court held that parolees charged with violations of parole are within the

protection of the Due Process Clause of the Fourteenth Amendment.” *Harris v. State*, 836 N.E.2d 267, 279–80 (Ind. Ct. App. 2005). Therefore, parolees are entitled to a two stage procedure for parole revocation: “(1) a ‘preliminary hearing’ to determine whether there is probable cause to believe that the arrested parolee has committed acts that would constitute a violation of parole conditions; and (2) a final revocation hearing prior to the final decision on revocation to consider whether the facts as determined warrant revocation.” *Id.* at 280. The *Morrissey* Court determined that a parolee’s due process, at minimum, must include: (1) written notice of the parole violation charges, (2) disclosure of the evidence against the parolee, (3) an opportunity to be heard in person and to present evidence, (4) the right to confront and cross-examine adverse witnesses, (5) a neutral and detached parole hearing board, and (5) a written statement by the board of the evidence relied upon and the reasons for revoking parole. *Id.* (citing *Morrissey*, 408 U.S. at 489–90). Finally, the parole revocation hearing must take place within a “reasonable time.” *Morrissey*, 408 U.S. at 489.

[7] Opel argues that his due process rights were violated because his hearing was delayed. We disagree. Under Indiana Code section 11-13-3-10(a)(1)(A), “[a] parolee who is confined due to an alleged violation of parole shall be afforded a parole revocation hearing within sixty (60) days after the parolee is made available to the department by a jail or state correctional facility[;]” however, Indiana Code section 11-13-3-10(e) allows for the revocation hearing to be held past sixty days for “good cause.” Opel’s hearing was delayed because of the

Covid-19 pandemic, which we believe to be sufficient cause for such a delay. Due to the magnitude of Covid-19's impact and the logistical difficulties of operating during a pandemic, we believe that there was good cause for a delay in bringing Opel to a hearing. Further, given that the delay extended only two weeks over the required sixty-day window, we are less concerned that a serious due process violation may have occurred.

[8] Opel also argues that his due process rights were violated because he was unable to present certain evidence at the hearing, namely that he was unable to present a voicemail from his parole officer and documents concerning his current address. Though Opel may not have been able to present that evidence before the parole board, we believe that error to be harmless. "We have held that even where findings and conclusions of the post-conviction court are inadequate, where the claims presented by the defendant are not claims which would entitle him to relief, the inadequacies are harmless." *Berry v. State*, 483 N.E.2d 1369, 1373 (Ind. 1985). The voicemail in question, which Opel received at work at 12:19 p.m. on the day of his scheduled 1:00 p.m. meeting with his parole officer, consisted solely of his parole officer stating "this is Arnold checking on you[,] when you get this message please call me back[.]" While Opel insists that this voicemail "would have easily corroborated that no meeting with his parole officer" was scheduled, we are unconvinced. Appellant's Br. p. 13. The substance of the voicemail does nothing to suggest that there was no meeting scheduled and, if anything, suggests that the parole officer was calling to remind Opel of his scheduled meeting.

[9] As for the documents concerning Opel's unapproved address, we believe their exclusion was also harmless. Opel argues that he should have been allowed to present a letter from the landlord of his current address, which states:

To whom it may concern

[...] I am the owner of the house. This address has been Jonathan Opel's address since July of 2020. His parole Agent [sic] has been to the house once and both Jonathan [and] I were present. Local law enforcement never came to the house looking for Jonathan.

Appellant's App. Vol. II p. 32. Even if true, his landlord's statements do not change the fact that his residence was unapproved. Likewise, Opel argues that he should have been allowed to present an insurance policy showing his intent to live at his current address. Similarly, though this evidence might indicate Opel's intent to reside at his current address, that does not make it an approved address. Because this evidence would have done nothing to assist Opel in proving that he had not violated his parole, we view their exclusion from the hearing as harmless. *See Berry*, 483 N.E.2d at 1373 (alleged errors in a PCR proceeding are subject to harmless error standard).

[10] The judgment of the post-conviction court is affirmed.

Robb, J., and Altice, J., concur.