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IN THE COURT OF APPEALS OF INDIANA

Leandrew Beasley,
Appellant-Petitioner,

v.

State of Indiana,
Appellee-Respondent.

August 11, 2022

Court of Appeals Case No. 21A-PC-2115

Appeal from the Marion Superior Court

The Honorable Angela Davis, Special Judge

Trial Court Cause No. 49D27-1603-PC-10322

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant/Cross-Appellee/Petitioner, Leandrew Beasley (Beasley), appeals the denial of his petition for post-conviction relief, and Appellee/Cross-Appellant/Respondent, the State of Indiana (State), cross-appeals.

[2] We dismiss.

ISSUE

[3] Beasley presents this court with two issues. However, we find the State's cross-appeal issue to be dispositive and restate the issue as: Whether Beasley forfeited his right to appeal by failing to file a timely notice of appeal from the post-conviction court's Order denying him relief.

FACTS AND PROCEDURAL HISTORY

[4] On September 28, 2012, the State filed an Information, charging Beasley with murder, Class A felony attempted murder, Class B felony possession of a firearm by a serious violent felon, and Class C felony battery. After a jury trial, Beasley was convicted of murder, attempted murder, and possession of a firearm by a serious violent felon. On May 9, 2014, the trial court sentenced Beasley to an aggregate sentence of seventy-five years. This court affirmed Beasley's convictions, holding that the trial court had committed harmless error in admitting certain officer hearsay testimony, that the trial court had not committed fundamental error by failing to declare a mistrial after an officer provided testimony that was unsupported by her investigation but which the trial court had stricken from the record and admonished the jury not to

consider, and that the trial court had properly denied Beasley's motion for mistrial after a juror who was concerned for her safety had been replaced, the remaining jurors had expressed no similar concerns, and the jury had been admonished not to consider the removal of the juror in rendering its verdict. *Beasley v. State*, 30 N.E.3d 56, 64-75 (Ind. Ct. App. 2015). Our supreme court subsequently granted transfer on one of Beasley's hearsay arguments and affirmed the trial court's admission of the challenged evidence. *Beasley v. State*, 46 N.E.3d 1232, 1235-39 (Ind. 2016).

[5] On March 17, 2016, Beasley filed a petition for post-conviction relief, amended twice by his post-conviction counsel, in which he raised claims of ineffective assistance of trial counsel. Beasley argued that his trial counsel was ineffective for proposing both a mistrial and an admonishment in response to the officer's testimony that had been unsupported by her investigation, by failing to file a pre-trial request to have the State declare its intent to present certain evidence of Beasley's prior bad acts, and by failing to present certain mitigating evidence at sentencing. On March 3, 2020, the post-conviction court held a hearing on Beasley's petition. On August 19, 2020, the post-conviction court entered its Order, denying Beasley relief. The post-conviction court's Order was entered on the Chronological Case Summary on August 21, 2020.

[6] On September 10, 2020, Beasley filed a pro se request to proceed in forma pauperis on appeal in which he requested to be allowed "to proceed on appeal without being required to prepay fees, costs or give security therefore[.]" (PCR App. Vol. II, p. 79). Beasley did not request that his appeal be initiated or that

pauper post-conviction appellate counsel be appointed for him. On September 15, 2020, the post-conviction court granted Beasley's motion to proceed in forma pauperis.

[7] On September 22, 2021, Beasley filed his Verified Petition for Permission to File a Belated Notice of Appeal Pursuant to Post-Conviction Relief 2, in which he alleged that he had filed a timely motion to proceed in forma pauperis that the court had granted, that he had not filed a timely notice of appeal "due to no fault of his own as *pauper counsel* was never appointed[,]" and that he had "been diligent in requesting permission to file a belated notice of appeal." (PCR App. Vol. II, p. 85) (emphasis in original). Beasley argued that he was entitled to file his belated notice of appeal pursuant to Post-Conviction Rule 2. On September 23, 2021, the post-conviction court granted Beasley leave to file his belated notice of appeal in an order that echoed the averments contained in Beasley's petition. The post-conviction court ruled that Beasley was eligible under Post-Conviction Rule 2 to belatedly file his appeal.

[8] On September 27, 2021, Beasley filed his Notice of Appeal with this court, and on January 29, 2022, Beasley filed his Appellant's Brief. On March 24, 2022, the State filed a motion to dismiss, arguing that Beasley had forfeited his right to appeal by failing to file a timely notice of appeal, that Beasley was not eligible to file a belated appeal under Post-Conviction Rule 2, and that he had failed to show any extraordinarily compelling reasons why this court should restore his forfeited right to appeal. On March 28, 2022, Beasley filed his response to the State's dismissal motion in which he did not address Post-

Conviction Rule 2 but argued that (1) his appeal should not be dismissed because he had attempted to initiate an appeal through the filing of his motion to proceed in forma pauperis which the post-conviction court had granted, (2) the post-conviction court had found that he had filed a timely in forma pauperis petition, he had been diligent in requesting permission to file his belated notice of appeal, Beasley's failure to file a timely notice of appeal was due no fault of his own, and that pauper counsel had never been appointed, and (3) his Sixth Amendment fundamental liberty interest in having competent and effective trial and appellate counsel was at issue. On April 22, 2022, the motions panel of this court denied the State's motion to dismiss. On June 6, 2022, after receiving an extension of time, the State filed its Brief of Appellee in which it cross-appealed and sought dismissal of Beasley's belated appeal. On July 2, 2022, and July 13, 2022, the parties filed their respective replies.

[9] Beasley now appeals, and the State cross-appeals.

DISCUSSION AND DECISION

[10] In its cross-appeal, the State re-asserts its arguments for the dismissal of Beasley's belated appeal from the denial of his petition for post-conviction relief. We acknowledge that the motions panel of this court has already denied the State's motion to dismiss. However, it is well-established that we may reconsider a ruling by the motions panel. *Pryor v. State*, 189 N.E.3d 167, 169 (Ind. Ct. App. 2022). Although we do not overrule prior orders of our motions panel lightly, we have the inherent authority to do so while an appeal remains pending. *Id*.

[11] Appellate Rule 9 provides that a "party initiates an appeal by filing a Notice of Appeal . . . within thirty (30) days after the entry of a Final Judgment is noted in the Chronological Case Summary" and that the failure to do so results in the forfeiture of the right to appeal "except as provided by P.C.R. 2." Ind. Appellate Rule 9(A)(1), (5). Our supreme court has long held that Post-Conviction Rule 2 only applies to those seeking to belatedly appeal criminal convictions and does not apply to those seeking to belatedly appeal other types of judgments, including the denial of post-conviction relief. *See Core v. State*, 122 N.E.3d 974, 978 (Ind. Ct. App. 2019) (summarizing our supreme court's opinions on this principle spanning from 1995 to 2014). However, in *In re Adoption of O.R.*, 16 N.E.3d 965, 971 (Ind. 2014), our supreme court clarified that, while the failure to file a timely notice of appeal does not deprive this court of jurisdiction, it will result in the forfeiture of the right to appeal unless "there are extraordinarily compelling reasons why this forfeited right should be restored." In *O.R.*, a father had failed to file a timely notice of appeal of the trial court's grant of a third-party adoption of his child. *Id*. at 968. The *O.R*. court concluded that the father's right to appeal should be restored, observing that the Appellate Rules are "merely means for achieving the ultimate end of orderly and speedy justice[,]" four days prior to the deadline for filing a timely notice of appeal, the father had requested appointment of counsel for the express purpose of appealing the adoption order, and because the father's interest in the care, custody, and control of his child was at issue, an interest that the *O.R*. court recognized as especially established and valued. *Id*. at 971-72.

[12] Here, the parties agree that Beasley did not file a timely notice of appeal. The post-conviction court relied exclusively on Post-Conviction Rule 2 in granting Beasley permission to file his belated appeal from the denial of post-conviction relief. In light of longstanding Indiana supreme court precedent, we conclude that the post-conviction court's ruling was erroneous. *See Core*, 122 N.E.3d at 978. Beasley appears to concede as much, as he did not address Post-Conviction Rule 2 in his response to the State's dismissal motion or in his other appellate filings.

[13] Beasley maintains that extraordinarily compelling reasons prohibit the forfeiture of his appeal, even though he did not seek to file his belated appeal until more than one year after the post-conviction court entered its Order denying him relief. Beasley first argues that, by filing his motion to proceed in forma pauperis, he is like the father in *O.R.* in that he attempted to perfect his appeal before the thirty-day deadline had expired. Beasley contends that after the post-conviction court granted that request, he "had no reason to believe that the [c]ourt would fail to timely appoint counsel or that his newly appointed counsel would not be filing the notice of appeal." (Cross-Appellee's Br. p. 7). Beasley then asserts for the first time that the post-conviction court failed to appoint counsel and that it would be a manifest injustice if he were denied his appeal as a result of the post-conviction court's error.

[14] We cannot credit these arguments for several reasons, the first of which being that there is no evidence before us that Beasley ever attempted to file a notice of appeal or to perfect his appeal in any manner prior to September 22, 2021,

when he filed his Verified Petition for Permission to File a Belated Notice of Appeal Pursuant to Post-Conviction Relief 2. Beasley offers no legal authority for his proposition that an Indiana Appellate Rule 40(D) petition to proceed in forma pauperis was the functional equivalent of a notice of appeal, and we are aware of none. The substance of Beasley's in forma pauperis motion did not refer to initiating his appeal. In addition, there is no evidence in the record that Beasley ever requested post-conviction appellate counsel or that he believed that his in forma pauperis motion would result in the appointment of counsel or lead to the initiation of his appeal. Beasley has filed verified motions and petitions in this matter, yet none contained any averment that he intended his in forma pauperis motion to operate as a notice of appeal or as a request for an appointment of counsel. Without any evidence to the contrary, we decline to interpret his motion in this manner, as we observe that Beasley's in forma pauperis motion was consistent with an intention to proceed pro se on appeal, which he had a right to do.

[15] Neither can we credit Beasley's argument relying on the post-conviction court's findings. The post-conviction court relied exclusively on Post-Conviction Rule 2 in granting Beasley permission to file his belated appeal, a rationale which we have already held was in error. In *O.R.*, our supreme court indicated that precedent establishing that Post-Conviction Rule 2 only applies to direct appeals of criminal convictions and cannot be used to salvage other types of belated appeals was correct. *O.R.*, 16 N.E.3d at 970 n.2. Unless and until we are directed otherwise by our supreme court, we will not hold that a trial court's

findings pursuant to Post-Conviction Rule 2 establish the "extraordinarily compelling reasons" sufficient to restore an untimely appeal. *Id*. at 971.

[16] Lastly, we do not find Beasley's invocation of his Sixth Amendment right to counsel sufficiently compelling to justify addressing his appeal on the merits despite his forfeiture. This is not the same liberty interest that was at issue in *O.R.*, and as the State correctly notes, there is no Sixth Amendment right to counsel for purposes of pursuing an appeal from the denial of post-conviction relief. *See Baum v. State*, 533 N.E2d 1200, 1201 (Ind. 1989) (observing that the "right to counsel in post-conviction proceedings is guaranteed by neither the Sixth Amendment of the United States Constitution nor [Article 1, section 13] of the Constitution of Indiana"). In addition, this is a rationale that would always apply to belated appeals from the denial of post-conviction relief no matter what other circumstances were present in a particular case, and thus, it cannot be said, in and of itself, to be an extraordinarily compelling reason sufficient to restore a right to appeal.

CONCLUSION

[17] Based on the foregoing, we conclude that Beasley forfeited his right to appeal from the denial of his petition for post-conviction relief and that no extraordinarily compelling reasons exist sufficient to restore that right.

[18] Dismissed.

[19] May, J. and Tavitas, J. concur