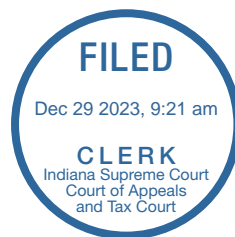


## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Gregory L. Hale,  
*Appellant-Petitioner,*

v.

State of Indiana,  
*Appellee-Respondent*

December 29, 2023

Court of Appeals Case No.  
23A-PC-1365

Appeal from the Sullivan Superior  
Court

The Honorable Hugh R. Hunt,  
Judge

Trial Court Cause No.  
77D01-2303-PC-130

**Memorandum Decision by Judge Weissmann**  
Chief Judge Altice and Judge Kenworthy concur.

## **Weissmann, Judge.**

- [1] After spending over a decade in prison for murder, Gregory Hale petitioned for post-conviction relief (PCR), alleging a scrivener’s error in his sentencing order resulted in ineffective assistance of counsel. The PCR court found no merit to Hale’s arguments, and we affirm that decision.

## **Facts**

- [2] In the summer of 2009, Hale strangled Jennifer Peak to death. Charged with murder, among other things, Hale entered into a plea agreement with the State in which he agreed to plead guilty in exchange for an aggregate sentence of 45 years imprisonment.
- [3] At a change-of-plea hearing, Hale confirmed that he wanted to plead guilty and that no one had “forced or threatened” him to do so. App. Vol. II, p. 66. Hale’s trial counsel laid out the factual basis underlying his crimes, and Hale agreed that it was accurate. The trial court then accepted Hale’s guilty plea, entered judgment of conviction, and issued a written sentencing order imposing a 45-year sentence.
- [4] Shortly after pleading guilty, Hale filed his first PCR petition in 2010. But after a few preliminary filings, he moved to withdraw his petition, and the trial court dismissed it without prejudice. Eleven years later, in 2023, Hale filed a new PCR petition. In it, he alleged ineffective assistance of trial counsel and asserted that the trial court and prosecution had violated his right to due process.

[5] According to Hale, his trial counsel showed him a proposed written sentencing order before the change-of-plea hearing, and that document referred to Count I as “attempted murder” and not “murder.” App. Vol. II, p. 23. Hale brought the issue to his counsel’s attention and was told that the error would be “fixed later.” *Id.* at 24. But it was not fixed, and Hale alleged that this mistake prejudiced him by effectively having him plead guilty to a charge that he did not commit.

[6] The PCR court denied Hale’s petition for relief, finding the error in the trial court’s sentencing order was “effectively a scrivener’s error” that did not invalidate his plea agreement, conviction, or sentence. *Id.* at 11. Ultimately, the PCR court concluded that Hale “failed to demonstrate any meritorious argument[] which would entitle him to relief.” *Id.* Hale moved the PCR court to reconsider its order, and the court denied the motion the next day.

## **Discussion and Decision**

[7] Because PCR proceedings are civil in nature, the petitioner bears the burden of establishing error by a preponderance of the evidence. Ind. Post-Conviction Rule 1(5). A petitioner appealing from a judgment denying PCR “must establish that the evidence, as a whole, unmistakably and unerringly points to a conclusion contrary to the [PCR] court’s decision.” *Gibson v. State*, 133 N.E.3d 673, 681 (Ind. 2019) (internal quotation omitted). Failure to meet this “rigorous standard of review” will result in an affirmance of the PCR court’s judgment. *DeWitt v. State*, 755 N.E.2d 167, 169-70 (Ind. 2001). Here, the PCR court correctly found that Hale did not clear the high bar for relief.

***The PCR Court Did Not Err in Denying Hale's PCR Petition.***

- [8] First, Hale did not have deficient trial counsel. To successfully make an ineffective assistance of counsel claim, Hale was required to show that: “(1) counsel’s performance fell below an objective standard of reasonableness based on prevailing professional norms; and (2) the deficiency was so prejudicial as to create a reasonable probability the outcome would have been different absent counsel’s errors.” *Bradbury v. State*, 180 N.E.3d 249, 252 (Ind. 2022). In laymen’s terms, a criminal defendant has the constitutional right to “reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Id.* (quoting *Yarborough v. Gentry*, 540 U.S. 1, 8 (2003)).
- [9] Hale claims that he received ineffective assistance of counsel because his trial counsel pressured him to plead guilty to a crime he did not commit. The record says otherwise. At Hale’s change-of-plea hearing, the trial court asked Hale if he understood that he was pleading guilty to murder. Hale responded, “Yes.” App. Vol. II, p. 64. The trial court also asked if Hale understood the plea agreement and its effects. Hale again said, “Yes.” *Id.* And when his trial counsel established the factual basis for Hale’s crimes, Hale admitted that he choked Jennifer Peak to death. *Id.* at 67-70. Thus, Hale knowingly and voluntarily pleaded guilty to murder, and both his trial counsel and the trial court judge made every effort to inform him that he was doing so.
- [10] Next, Hale claims the PCR court erred in denying his petition without holding an evidentiary hearing. Under Indiana’s Post-Conviction Rules, the court “may deny the [PCR] petition without further proceedings” if the pleadings

“conclusively show” the petitioner is entitled to no relief. P-C.R. 1(4)(f). As the PCR court correctly determined, this was such a case.

[11] Hale raised no factual disputes in his PCR petition that would have benefited from a hearing. The most that can be said is Hale identified a scrivener’s error in his sentencing order, as it mistakenly identified him as pleading guilty to attempted murder instead of murder.<sup>1</sup> But Hale’s own pleadings plainly demonstrate that he suffered no prejudice from the mistake.

[12] As Hale tells it, he noticed the error in the proposed sentencing order before his change-of-plea hearing, and his trial counsel advised that it would be fixed. So Hale went into the hearing both knowing that the proposed order mistakenly listed attempted murder as the crime to which he was pleading guilty and believing that the final sentencing order would correctly reflect that he had pleaded guilty to murder.

[13] Moreover, the error occurred only once throughout the entire guilty plea process. Hale’s plea agreement correctly stated that he would plead guilty to murder, and both his trial counsel and the trial court advised him that he was doing so during his change-of-plea hearing. Other documents from Hale’s

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<sup>1</sup> We note and reject Hale’s additional claim that the State and the PCR Court demonstrated bias against him by categorizing this mistake as a harmless scrivener’s error. It was a scrivener’s error indeed. And Hale alleges no colorable claim of bias. *See Perry v. State*, 904 N.E.2d 302, 307 (Ind. Ct. App. 2009) (noting that the presumption on appeal is that a trial court judge’s actions were “unbiased and unprejudiced”).

sentencing also correctly reflect that he pleaded guilty to murder. *See App. Vol. II, pp. 56-77.*

[14] Although Hale alleges a litany of prejudices from the mistake in his sentencing order, he has failed to prove that any prejudice actually resulted. Accordingly, Hale failed to demonstrate ineffective assistance of counsel or any other meritorious argument warranting relief. We affirm the denial of Hale's PCR petition.

Altice, C.J., and Kenworthy, J., concur.