MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Kevin James Tolliver,
Appellant-Petitioner

v.

State of Indiana,
Appellee-Respondent.

April 11, 2023

Court of Appeals Case No. 21A-PC-1542

Appeal from the Elkhart Superior Court

The Honorable Teresa Cataldo, Judge

Trial Court Cause Nos. 20D03-1809-PC-44 20D03-1810-PC-55

Memorandum Decision by Judge Pyle

Judges Robb and Weissmann concur.

Pyle, Judge.

Statement of the Case

[1] In this consolidated appeal, Kevin James Tolliver ("Tolliver") appeals the post-conviction court's denial of his petition for post-conviction relief in two causes in which he had been convicted of child molesting. Specifically, Tolliver argues that the post-conviction court: (1) abused its discretion when ruling on the admission of evidence during the post-conviction hearing; (2) abused its discretion by denying his oral motion for a continuance made during the post-conviction hearing; and (3) failed to enter findings of fact and conclusions of law as required by Indiana Post-Conviction Rule 1(6). Concluding that there was no error, we affirm the post-conviction court's judgment.

[2] We affirm.

Issues

1. Whether the post-conviction court abused its discretion when ruling on the admission of evidence during the post-conviction hearing.

2. Whether the post-conviction court abused its discretion by denying Tolliver's oral motion for a continuance made during the post-conviction hearing.

3. Whether the post-conviction court failed to enter findings of fact and conclusions of law as required by Indiana Post-Conviction Rule 1(6).

Facts

[3] The relevant facts of Tolliver's underlying offenses, as set forth by this Court in Tolliver's direct appeal, are as follows:

> In November 2006, K.C, age 7, and J.C., age 5, (the Children) were spending the night at the home of their paternal aunt (Aunt) and her boyfriend, Tolliver, whom they referred to as "Uncle Kevin." Tr. p. 283. The Children had previously visited Aunt's home to play with their cousins, but had never spent the night until this occasion. Sometime in the afternoon, Aunt left for work, leaving the Children in Tolliver's care.
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> In the evening, the Children and their cousins watched a movie in the living room and fell asleep. K.C. awakened to find that the movie was ending. Tolliver "dragged" K.C. by the arm, forcing her into a bedroom. *Id.* at 334. K.C. later recalled, "He put me on the bed, took his clothes off. He made me took [sic] mine, and then he laid on the bed and put me on top of him, and then he started to suck my tinkie." *Id.* K.C. identified her "tinkie" as her vagina. *Id.* at 328. K.C also stated that Tolliver placed his hands on her legs and that he kissed her on her chest, and touched her "butt and [ ]boobs" with his hands and lips. *Id.* at 335. Tolliver then said "suck my wee-wee," which K.C. identified as his penis. *Id.* at 336-37. Tolliver forced K.C. to perform oral sex on him three times and instructed her "not to bite it." *Id.* at 340. K.C. tried to escape, "but then he pulled me back and started kissing me on the chest." *Id.* at 339. Tolliver told K.C. "[t]o not tell or [she would] be a bad girl" and ordered her to take a shower. *Id.*
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> After some time, K.C. watched Tolliver transfer her cousins from the living room, where they had watched the movie, to the other bedroom; however, J.C. was left in the living room. J.C. recalled that when he was the only one left, Tolliver forced him to touch his "wee wee," which J.C. identified as Tolliver's penis. *Id.* at

361, 363. Tolliver made J.C. perform oral sex on him and warned him that if he ever told anyone about the incident, Tolliver would kill his parents. Tolliver then ordered J.C. to go to bed and the Children were returned to their parents the following day.

Approximately seven months later, on June 4, 2007, K.C. left her bed three times complaining of a stomachache. After K.C. had left her bed for the fourth time, she told Mother that there was something bothering her, but that she would go to jail if she told. Mother reassured K.C. that she would not go to jail and K.C. described what Tolliver had done to her. Mother spoke with the Children's father later that night and he called the police the following day.

On June 25, 2007, the State filed two informations under different cause numbers, charging Tolliver with class A felony child molesting. The first information (FA-37) pertained to J.C. and alleged one count of child molesting, and the second information (FA[-]38) pertained to K.C. and alleged two counts of child molesting. On October 10, 2008, the State filed a motion to consolidate the two cause numbers, and on October 31, 2008, Tolliver entered into a stipulation consolidating the two cause numbers for trial purposes.

Tolliver's two-day jury trial commenced on November 17, 2008, and the jury found him guilty as charged. On February 5, 2009, the trial court conducted a sentencing hearing, where it concluded there were "two separate incidents" with "two separate victims." Sent. Tr. p. 14. The trial court found that Tolliver's adult criminal history, consisting of two misdemeanor convictions, to be of little aggravating weight, but gave significant aggravating weight to Tolliver's juvenile history of sex offenses. The trial court also noted that the psychosexual evaluation, which indicated that there was a significant risk that Tolliver would reoffend, was an aggravating circumstance. The trial court also observed that Tolliver was the sole adult in charge of the Children when he molested them and that the Children were

> too young to defend themselves in any way. The trial court declined to consider Tolliver's work history to be mitigating, noting that there was no nexus between his work history and the offense. The trial court found the absence of past felony offenses to be the sole mitigating circumstance, but [it] declined to give it substantial weight in light of Tolliver's juvenile adjudications for sex offenses.
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> Upon balancing the aggravating factors with the sole mitigating factor, the trial court concluded that an elevated sentence was appropriate and sentenced Tolliver to forty years imprisonment on the one count of child molesting in FA-37. In addition, the trial court sentenced Tolliver to forty years on each of the two counts in FA-38, to be served concurrently with each other but consecutively with the sentence imposed in FA–37, for an aggregate term of eighty years imprisonment. The trial court also classified Tolliver as a credit restricted felon, and, accordingly, gave him 595 days credit for the time that Tolliver had spent in custody prior to sentencing, together with eighty-five days of good-time credit.

Tolliver v. State, No. 20A03-0904-CR-134, 2009 WL 3047546 at *1-2 (Ind. Ct. App. 2009) (footnote omitted), *trans. denied*.

[4] Tolliver filed a direct appeal, and his two causes were consolidated for appeal. On appeal, Tolliver argued that: (1) his two child molesting convictions in FA-38 violated the prohibition against double jeopardy; (2) the trial court abused its discretion by admitting testimony from the victim's mother; (3) his aggregate sentence was inappropriate; and (4) his classification as a credit restricted felon was an ex post facto violation. This Court affirmed Tolliver's convictions and sentence. However, upon this Court's determination that the trial court had

erred by classifying Tolliver as a credit restricted felon, we reversed that classification and remanded to the trial court to recalculate Tolliver's credit time calculation and credit time. *Tolliver*, No. 20A03-0904-CR-134 at *8-9.

[5] In September 2018, Tolliver filed a pro se post-conviction petition from his conviction in FA-37. This post-conviction petition was filed in cause 20D03-1809-PC-44 ("PC-44"). In his petition, Tolliver raised three claims of ineffective assistance of trial counsel and one general claim of ineffective assistance of appellate counsel. Specifically, Tolliver alleged that his trial counsel had rendered ineffective assistance by failing to: (1) move to sever the causes for trial; (2) object to prosecutorial misconduct and vouching; and (3) object to the trial court's determination of aggravating and mitigating circumstances. Tolliver generally alleged that his appellate counsel had rendered ineffective assistance by failing to raise the ineffective assistance of trial counsel claims above or by failing to properly raise the issues on appeal.

[6] The following month, Tolliver filed a pro se post-conviction petition from his two convictions in FA-38. This post-conviction petition was filed in cause 20D03-1810-PC-55 ("PC-55"). In his petition, Tolliver raised the same three ineffective assistance of trial counsel claims as contained in the post-conviction petition filed in PC-44 along with two additional claims. Specifically, Tolliver alleged that his trial counsel had rendered ineffective assistance by failing to: (1) move to sever the causes for trial; (2) object to prosecutorial misconduct and vouching; (3) object to improper coaching of the victim during her interviews with investigating officers; (4) move to dismiss his two convictions based on an

assertion that they "were not sustained by evidence of jury unanimity[;]" and (5) object to the trial court's determination of aggravating and mitigating circumstances. (App. Vol. 2 at 238). Tolliver also raised a general claim of ineffective assistance of appellate counsel and again alleged that his appellate counsel had rendered ineffective assistance by failing to raise the issues above or by failing to properly raise the issues on appeal.

[7] Initially, a deputy public defender from the Indiana Public Defender's Office entered an appearance in both post-conviction causes but later withdrew the appearance pursuant to Indiana Post-Conviction Rule 1(9)(c) in April 2019. The following month, the post-conviction court held a status conference, and Tolliver informed the post-conviction court that he would be proceeding pro se. The post-conviction court then set Tolliver's evidentiary hearing for October 2019. During a September 2019 status conference, Tolliver requested a continuance, and the post-conviction court granted his request. Thereafter, Tolliver submitted multiple subpoenas to the post-conviction court for issuance to witnesses to appear at the post-conviction hearing.

[8] The post-conviction court rescheduled the post-conviction hearing various times due to Covid-19 concerns, and it held status hearings to determine Tolliver's readiness to proceed with the post-conviction hearing. In January 2021, the post-conviction court eventually set Tolliver's post-conviction hearing for April 2021. In a March 2021 status hearing, Tolliver informed the post-conviction court that he was ready for his evidentiary hearing.

[9] On April 6, 2021, the post-conviction court held a consolidated post-conviction hearing for Tolliver's petitions in PC-44 and PC-55. At the beginning of the hearing, the post-conviction court explained to Tolliver how the hearing would proceed.

> All right. This cause is coming on for an evidentiary hearing. Let me just tell you kind of the ground rules for this hearing. Basically, it is your burden, so you'll be able to speak first. If you want to do an opening statement, you can. You don't have to. Then we'll get to the presentation of evidence, as far as your case. You'll have the opportunity to question your witnesses first. The State of Indiana has the opportunity to cross-examine. And then I just kind of go back and forth until everybody is done with questions for that witness, to give everybody the ample opportunity. If there's an objection made by the State of Indiana or if you have an objection to anything the State of Indiana is trying to present, then you must present your case in accordance with the rules of evidence. So you need to give me a basis for your objection, and then we'll move on from there. Do you have any questions before we get started?

(Tr. Vol. 2 at 3-4). Tolliver stated that he did not have any questions. The post-conviction court also told Tolliver that the admission of exhibits would be governed by the rules of evidence and that he would be required to provide an adequate basis for the admission of any exhibit. Additionally, the post-conviction court informed Tolliver that, as a pro se petitioner, he would be held to the same standards as a licensed attorney and that the post-conviction court could not give him any legal advice.

[10] During the hearing, Tolliver called five witnesses: (1) Jeri Cornelius, who was Tolliver's girlfriend at the time of the offenses and who is the aunt of K.C. and

J.C. ("Tolliver's former girlfriend"); (2) William Cornelius, Jr., who is K.C. and J.C.'s father ("the victims' father"); (3) Jason Sunday ("Sunday"), who had been a police officer at the time of Tolliver's crimes; (4) Fay Schwartz, who was Tolliver's appointed public defender for a limited time period before trial ("Public Defender Schwartz"); and (5) Susan Snyder, who was the deputy prosecuting attorney for Tolliver's trial ("Deputy Prosecutor Snyder").[1] The majority of these witnesses did not have an independent recollection of Tolliver's case. For example, when Tolliver asked the victims' father about his prior testimony during the protected person hearing and about what he had reported to the police when the father had initially reported the crimes, the victims' father testified that he did not recall his testimony or what he had reported.

[11] Tolliver introduced and asked the post-conviction court to take judicial notice of the transcript from the October 2008 protected persons hearing (Exhibit E) and Tolliver's November 2008 jury trial (Exhibit F). Additionally, Tolliver introduced and asked the post-conviction court to take judicial notice of some pleadings that had been filed in his underlying causes in October 2008 (Exhibit A). Specifically, from Exhibit A, the post-conviction court took judicial notice of the State's motion to join Tolliver's two underlying causes, the State's and

[1] Some of the witnesses that Tolliver had subpoenaed did not appear because their subpoenas had been returned as not being at the address that Tolliver had provided.

Tolliver's joint stipulation and agreement to join the causes, and the trial court's order joining the causes.[2]

[12] Tolliver also attempted to introduce into evidence a police incident report that Sunday had written in June 2007 (Exhibit D).[3] Sunday wrote the report after he had been dispatched to the victims' house after the victims' father had called the police to report K.C.'s molestation allegations. The police report contained statements attributed to the victims' father in addition to the father's recitation of what his daughter had told him about the molestation allegations. Sunday testified that he had written the police incident report but that he did not recall taking the statements in the report, did not independently recall the events of that day, and did not remember Tolliver's case. The State objected to the admission of Exhibit D based on a lack of foundation and hearsay. The post-conviction court sustained those objections and denied Tolliver's request to admit Exhibit D.

[13] Additionally, Tolliver attempted to introduce into evidence Public Defender Schwartz's case file from March 2008 (Exhibit K). The case file consisted of the following: Public Defender Schwartz's notice of appearance filed on March 19, 2008; a motion to continue the trial filed by Public Defender Schwartz on

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[2] At the time Tolliver entered into the stipulation and agreement to join the causes, he was represented by public defender, Chris Crawford, who was the attorney who represented Tolliver during his November 2008 trial ("Trial Attorney Crawford").

[3] Exhibit D also contained two pages of transcript from the protected persons hearing, and these two pages had already been admitted under Exhibit E. The post-conviction court explained to Tolliver that those two pages had already been admitted into evidence.

March 20, 2008; the trial court's order granting the continuance; CCS entries for Public Defender Schwartz's appearance and continuance motion; and an April 2008 handwritten letter from Tolliver to Schwartz.[4] Public Defender Schwartz did not have any independent recollection of representing Tolliver, which she had done for less than thirty days, and did not remember talking to Tolliver or receiving a letter from him. The State objected to the admission of Exhibit K based on a lack of foundation. The post-conviction court sustained the objection and denied Tolliver's request to admit Exhibit K.

[14] During the hearing, the State also objected multiple times to Tolliver's questioning of witnesses. For example, the State objected based on hearsay, relevance, speculation, and compound questions. It also objected based on Tolliver asking leading questions, being argumentative with a witness, assuming facts not in evidence, and attempting to testify and not asking questions. The post-conviction court explained the objections to Tolliver and attempted to see if he had any response or exception that would overcome the objections. The post-conviction court also told Tolliver that he needed to ask questions when questioning witnesses and not to make statements or arguments. Additionally, the court also assured Tolliver that he would have the opportunity to make his arguments at the end of the hearing.

[4] In the letter, Tolliver apologized to Public Defender Schwartz for his behavior when she had visited him at the jail and had asked her to file a motion to dismiss his charges.

[15] After Tolliver had finished questioning Sunday, who was Tolliver's third witness, Tolliver expressed uncertainty about which witness he was going to call next. The post-conviction court gave Tolliver a ten-minute break so that he could collect his thoughts. After the recess, Tolliver stated that he was having difficulty getting exhibits admitted and asked the post-conviction court for a continuance to "a later date[.]" (Tr. Vol. 2 at 64). The post-conviction court denied Tolliver's request. The post-conviction court reminded Tolliver that the court had previously asked him "several times to make sure that he w[as] prepared" and that he had told the court that he was ready to proceed. (Tr. Vol. 2 at 65). The post-conviction court also reminded Tolliver of the court's previous indication that it would "not entertain a motion for a continuance once he got" to the evidentiary hearing. (Tr. Vol. 2 at 65). Tolliver apologized and then presented his next witness.

[16] Thereafter, the post-conviction court issued two post-conviction orders, one for PC-44 and the other for PC-55. Each order was eleven pages in length and contained findings of fact and conclusions of law relating to the post-conviction claims specifically raised in PC-44 and PC-55. The orders were nearly identical, but the order in PC-55 contained an additional paragraph and findings that addressed the two additional ineffective assistance of trial counsel claims that Tolliver had not raised in his post-conviction petition in PC-44. In both orders, the post-conviction court denied post-conviction relief to Tolliver.

[17] Tolliver now appeals.

Decision

[18] Tolliver appeals from the post-conviction court's two orders denying post-conviction relief. Tolliver does not challenge the post-conviction court's denial of post-conviction relief on his claims of ineffective assistance of trial and appellate counsel. Instead, he raises procedural issues regarding the post-conviction court's handling of the post-conviction proceeding. Specifically, Tolliver argues that the post-conviction court: (1) abused its discretion when ruling on the admission of evidence during the post-conviction hearing; (2) abused its discretion by denying his oral motion for a continuance made during the post-conviction hearing; and (3) failed to enter findings of fact and conclusions of law as required by Indiana Post-Conviction Rule 1(6). We will review each argument in turn.

1. Evidentiary Rulings

[19] Tolliver argues that the post-conviction court abused its discretion when ruling on the admission of evidence during the post-conviction hearing. He contends that the post-conviction court abused its discretion when expecting Tolliver to proceed as if he were an attorney and to apply the rules of evidence. He further asserts that the cumulative effect of the post-conviction court's rulings resulted in a denial of due process. We disagree.

[20] "Post-conviction proceedings are governed by the same rules 'applicable in civil proceedings[.]'" *Wilkes v. State*, 984 N.E.2d 1236, 1251 (Ind. 2013) (quoting P-C.R. 1(5)). "The admission or exclusion of evidence is within the sound

discretion of the [post-conviction] court and will not be disturbed on review unless there was an abuse of discretion on the part of the [post-conviction] court." *Roche v. State*, 690 N.E.2d 1115, 1134 (Ind. 1997), *reh'g denied*. *See also Rondon v. State*, 711 N.E.2d 506, 516 (Ind. 1999). "As the admission or exclusion of evidence is within the PCR Court's sound discretion, a reviewing court defers to that court and will not disturb its ruling on review unless it has abused its discretion." *Badelle v. State*, 754 N.E.2d 510, 521 (Ind. Ct. App. 2001), *trans. denied*.

[21] Tolliver contends that the post-conviction court abused its discretion when sustaining objections to the introduction of Exhibit D (foundation and hearsay) and Exhibit K (foundation) and to his questioning of Deputy Prosecutor Snyder (leading questions) and Tolliver's former girlfriend (hearsay). His overarching argument is that the post-conviction court abused its discretion by expecting Tolliver to proceed as if he were an attorney and to apply the rules of evidence. We disagree. It is well settled that pro se litigants are held to the same legal standards as licensed attorneys. *Evans v. State*, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004), *trans. denied*. Thus, pro se litigants are bound to follow the established rules of procedure and must be prepared to accept the consequences of their failure to do so. *Id.*

[22] Moreover, in regard to the two exhibits, Tolliver has failed to show that the post-conviction court erred by excluding them. First, Tolliver fails to offer any argument as to why Exhibit K should have been admitted. Accordingly, he has not shown that the post-conviction court abused its discretion by excluding the

exhibit from evidence. *See, e.g., Roche*, 690 N.E.2d at 1134 (holding that the post-conviction court did not abuse its discretion by excluding evidence where the petitioner made "no argument that the exclusion of th[e] evidence violated any evidentiary rule nor even any argument as to why [the evidence] should have been admitted").

[23] Additionally, in regard to Exhibit D, Tolliver has failed to cite to a required hearsay exception that would have allowed for the admission of the police incident report, which contained statements attributed to the victims' father in addition to the father's recitation of what his daughter had told him about the molestation allegations. As a starting point, Tolliver was required to show that the police report itself qualified under one of the hearsay exceptions. *See Hardiman v. State*, 726 N.E.2d 1201, 1204 (Ind. 2000). Additionally, because the police report contained hearsay statements from the victims' father and his daughter, Tolliver was also required to show that these statements were independently admissible under an exception to the hearsay rule. *See* Ind. Evidence Rule 805 (providing that "[h]earsay within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception to the rule").

[24] Tolliver cites Evidence Rule 803(8) to argue that the police report was admissible. Evidence Rule 803(8) covers the hearsay exception for the admissibility of public records and reports. Investigative reports by police personnel fall within this exception only when "offered by the accused in a criminal case[.]" Evid. R. 803(8)(B)(i). *See also Hardiman*, 726 N.E.2d at 1204.

Here, however, Tolliver was offering the police incident report, Exhibit D, in a post-conviction hearing. Our supreme court has explained that post-conviction proceedings are collateral, quasi-civil, and "totally separate and distinct from the underlying criminal trial." *Hall v. State*, 849 N.E.2d 466, 472 (Ind. 2006). Thus, the admission of the police report in this post-conviction proceeding did not fall within Rule 803(8) exception. *See* Evid. R. 803(8)(B)(i) (providing that investigative reports by police "are not excepted from the hearsay rule" except when such a report is "offered by an accused in a criminal case").[5] Even if the police report would have been admissible under the hearsay exception in Rule 803(8), Tolliver fails to cite to an evidentiary rule and makes no separate argument as to why the hearsay statements contained therein were admissible. Accordingly, he has not shown that the post-conviction court abused its discretion by excluding the exhibit from evidence. *See, e.g., Roche*, 690 N.E.2d at 1134.

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[5] We note that Tolliver cites to *Wisehart v. State*, 693 N.E.2d 23 (Ind. 1997), *reh'g denied*, *cert. denied*, to support his contention that the police report was admissible under the hearsay exception in Evidence Rule 803(8). In *Wisehart*, which was a post-conviction appeal in a death penalty case, our supreme court noted that "investigative reports by police and other law enforcement personnel are not rendered admissible by Evid. R. 803(8) . . . except when offered by an accused in a criminal case." *Wisehart*, 693 N.E.2d at 34 n.7. However, our supreme court then stated that "Wisehart [had] offered the reports here[,]" indicating that a police report had been admitted during the post-conviction hearing. *Id.* While our supreme court's statement seems to suggest that the police report had been properly admitted, that case had no challenge to the admissibility of the report and no challenge to the application of the hearsay exception in Rule 803(8)(B)(i) in the post-conviction hearing. We consider such statement to be dicta. *See Koske v. Townsend Eng'g Co.*, 551 N.E.2d 437, 443 (Ind. 1990) ("In appellate opinions, statements not necessary in the determination of the issues presented are *obiter dictum*[;] [t]hey are not binding and do not become the law."); *State v. Hardy*, 7 N.E.3d 396, 401 (Ind. Ct. App. 2014) ("*Obiter dictum—dicta*—refers to statements that a court makes that are not necessary in the determination of the issues presented."). Instead, we interpret the hearsay exception in Rule 803(8) in conjunction with our supreme court's explanation that post-conviction proceedings are quasi-civil and totally separate and distinct from the underlying criminal trial. *See Hall*, 849 N.E.2d at 472.

2. Motion for Continuance

[25] Tolliver argues that the post-conviction court abused its discretion by denying his oral motion for a continuance made during the post-conviction hearing. Tolliver argues that the post-conviction court should have granted a continuance because he had been "completely overwhelmed" by dealing with objections during the post-conviction hearing. (Tolliver's Br. 15).

[26] We review a post-conviction court's grant or denial of a continuance for an abuse of discretion. *Tapia v. State*, 753 N.E.2d 581, 586 (Ind. 2001). An abuse of discretion occurs when the court's judgment is clearly against the logic and effect of the facts and circumstances before the court or the reasonable, probable, and actual deductions to be drawn therefrom. *Id* at 585. Continuances to allow time for additional preparation are generally disfavored and require a showing of "good cause" and how "it is in the interests of justice." *Williams v. State*, 681 N.E.2d 195, 202 (Ind. 1997). Furthermore, "[a] continuance requested for the first time on the morning of trial is not favored." *Lewis v. State*, 512 N.E.2d 1092, 1094 (Ind. 1987).

[27] Here, Tolliver filed his two post-conviction petitions in 2018. In 2019, the post-conviction court granted Tolliver a continuance of a scheduled post-conviction hearing. Thereafter, in 2021, after the post-conviction court had set Tolliver's post-conviction hearing, the court held readiness hearings and sought verification from Tolliver that he was ready for his evidentiary hearing. At the beginning of the April 2021 post-conviction hearing, the post-conviction court

then informed Tolliver that, as a pro se petitioner, he would be held to the same standards as a licensed attorney. In the middle of the hearing, Tolliver then made an oral motion for a continuance. When denying Tolliver's request, the post-conviction court reminded Tolliver that the court had previously asked him "several times to make sure that he w[as] prepared" and that he had told the court that he was ready to proceed. (Tr. Vol. 2 at 65). The post-conviction court also reminded Tolliver of the court's previous indication that it would "not entertain a motion for a continuance once he got" to the evidentiary hearing. (Tr. Vol. 2 at 65). We conclude that the post-conviction court's denial of Tolliver's oral continuance request was not an abuse of discretion.

3. Post-Conviction Court's Order

[28] Tolliver contends that the post-conviction court failed to enter findings of fact and conclusions of law as required by rules of post-conviction relief. We disagree.

[29] Post-Conviction Rule 1(6) provides, in relevant part, that a post-conviction court "shall make specific findings of fact, and conclusions of law on all issues presented, whether or not a hearing is held." A post-conviction court's findings "must be sufficient[] for review on appeal." *Rose v. State*, 120 N.E.3d 262, 268 (Ind. Ct. App. 2019) (cleaned up), *trans. denied*. *See also Lucas v. State*, 552 N.E.2d 35, 39 (Ind. 1990) (explaining that "the requirement in the [post-conviction] rule[s] for specific findings of fact and conclusions of law is to enable the reviewing court to dispose of the issues on appeal").

[30] Tolliver contends that the post-conviction court's two orders did not comply with the post-conviction rule because the "orders are identical" and because the order in PC-55 did not address two of his ineffective assistance of counsel claims raised in his petition. Specifically, he contends that the post-conviction court failed to address ineffective trial counsel claims (4) and (5) from his petition, which alleged that trial counsel had failed to move to dismiss his two convictions based on an assertion that they "were not sustained by evidence of jury unanimity[;]" and had failed to object to the trial court's determination of aggravating and mitigating circumstances. (App. Vol. 2 at 238).

[31] We conclude that Tolliver's challenge to the adequacy of the post-conviction court's orders is without merit. First, the post-conviction court issued two post-conviction orders, one for PC-44 and the other for PC-55, and each order was eleven pages in length. While the orders were substantially similar, the order in PC-55 contained an additional paragraph not contained in the order in PC-44. Additionally, the order in PC-55 contained findings that addressed the two ineffective assistance of trial counsel claims that Tolliver had not raised in his post-conviction petition in PC-44. Moreover, contrary to Tolliver's assertion, the order in PC-55 addressed the ineffective assistance of trial counsel claims regarding the failure to move to dismiss the two convictions and the failure to object to aggravating circumstances. The post-conviction court entered findings and conclusions, and both orders are sufficient for our review. Accordingly, we reject Tolliver's claim that the post-conviction court failed to enter findings and conclusions as required by Post-Conviction Rule 1(6). *See, e.g.*, *Rose*, 120

N.E.3d at 269 (rejecting the petitioner's challenge to the adequacy of the post-conviction court's findings and conclusions under Post-Conviction Rule 1(6)); *Lucas*, 552 N.E.2d at 39 (explaining that a post-conviction court's findings are adequate where they enable the reviewing court to understand the decision and the process used in making that decision).

[32] Affirmed.

Robb, J., and Weissmann, J., concur.