MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Terral Lerron Golden,
Appellant-Petitioner,

v.

State of Indiana,
Appellee-Respondent

October 10, 2023

Court of Appeals Case No. 23A-PC-246

Appeal from the St. Joseph Superior Court

The Honorable John M. Marnocha, Judge

Trial Court Cause No. 71D02-1805-PC-21

Memorandum Decision by Judge Crone
Judges Brown and Felix concur.

Crone, Judge.

Case Summary

[1] Terral Lerron Golden appeals the summary denial of his petition for post-conviction relief. We affirm.

Facts and Procedural History

[2] On September 18, 2015, the State charged Golden with murder and attempted murder, and a warrant was issued for his arrest. Three days later, Golden was taken into custody and advised of his rights, and he indicated that he wanted to hire a private attorney. At his initial hearing on October 6, 2015, Golden told the trial court that he wanted to represent himself. The court advised him of his right to be represented by a retained or an appointed attorney, his right to represent himself, and the dangers of self-representation. Golden stated that he understood and that he "still wish[ed] to represent himself[.]" *Golden v. State*, No. 71A03-1601-CR-167, 2016 WL 7183617, at *2 (Ind. Ct. App. Dec. 9, 2016), *trans. denied* (2017).[1]

> Golden then asserted his right to a speedy trial,[2] which caused the court to warn him that a speedy trial might be helpful, but also might put pressure on him to get his case together in a short period. The court repeated its warning regarding self-

[1] All citations to the trial transcript have been omitted.

[2] *See* Ind. Criminal Rule 4(B)(1) ("If any defendant held in jail on an indictment or an affidavit shall move for an early trial, he shall be discharged if not brought to trial within seventy (70) calendar days from the date of such motion, except where a continuance within said period is had on his motion, or the delay is otherwise caused by his act, or where there was not sufficient time to try him during such seventy (70) calendar days because of the congestion of the court calendar.").

> representation, to which Golden responded, "I know what I'm doing."

Id. at *3. "The trial court then set a trial date of December 14, 2015." *Id*.

[3] At a pretrial hearing on October 27, 2015, Golden reasserted his right to self-representation but "also informed the trial court that he needed time to hire private counsel." *Id*. At the next hearing on November 5, 2015, "Golden informed the trial court that he had been unable to retain private counsel." *Id*. The trial court then appointed public defender Mark Lenyo to represent Golden. At the next hearing on November 9, 2015, Lenyo "indicated that he could not prepare for Golden's trial in time for the December 14 trial date." *Id*.

The following exchange then occurred:

> [Golden]: This ain't even my lawyer, Your Honor.
>
> [Court]: Well, he can be your lawyer and is your lawyer.
>
> [Golden]: I've asked for a speedy trial.
>
> [Court]: Well, you have a right to a speedy trial at a time when your lawyer can be prepared.
>
> [Golden]: I don't want him as my lawyer then.
>
> [Court]: You don't get any other lawyer.
>
> [Golden]: Oh, well.
>
> [Court]: You want to continue to represent yourself?

> [Golden]: Yes, sir.
>
> [Court]: Okay, Mr. Golden will represent himself, pro se.… Against my advice.

Id. (alterations in *Golden*).

[4] The next day, the trial court held another hearing and explained to Golden that Lenyo, who had another murder trial scheduled for December 7, could not effectively represent him at trial on December 14 and that the court could not force Lenyo to represent Golden "and be unprepared." *Id*. The court reiterated some of the dangers of self-representation and told Golden that if he wanted Lenyo to represent him, a trial could be set for "mid-January or February rather than December." *Id*. at *4. Golden told the trial court that he was expecting his child to be born around December 24 and that he was willing to represent himself at trial on December 14 and risk a conviction and a lengthy sentence in order to be able to take care of the child, who was unwanted by its mother. "The court then noted that there was a hold on Golden from another jurisdiction and that, even if he were acquitted in this case, he might still be in custody." *Id*. The court told Golden, "So I'm willing to do whatever you want me to do." *Id*. Golden replied that he wanted to keep his trial date. The court asked Golden if he wanted to continue to proceed pro se, and Golden stated that he did. "The trial court … asked, 'I want to make sure that you are really clear about that,' to which Golden … responded in the affirmative." *Id*. The trial court thoroughly revisited the foregoing matters at pretrial hearings on

November 24 and December 9, 2015, and Golden insisted on going to trial on December 14 and representing himself.

[5] On the morning of December 14, the court informed Golden that it had consulted with the chief public defender about having someone besides Lenyo represent him and was told that no one who was qualified for the case was available or could get prepared in such a short timespan. The chief public defender also told the court that appointing standby counsel was not a viable option because of the amount of discovery involved. The court noted for the record that Lenyo had visited Golden in jail on December 7 to discuss trial procedure. The court "strongly" encouraged Golden to "get the advice of a lawyer" for either "conducting the trial" or engaging in plea negotiations with the State. *Id*. at *7. Finally, the court reminded Golden of the high stakes involved in a murder trial, gave him an opportunity (which he declined) to consult with friends or family regarding the appointment of counsel, and told him that a trial (with counsel) could be set within sixty days "if [he] wanted that." *Id*. Golden replied, "I'm good." *Id*. The trial was held, and the jury found Golden guilty as charged. The trial court sentenced him to 105 years.

[6] Lenyo was appointed to represent Golden on direct appeal and raised two issues in his appellate brief: "(1) whether Golden knowingly and intelligently waived his right to counsel, and (2) whether the trial court erred in overruling

Golden's *Batson*[3] challenge" regarding the State's striking of a prospective alternate juror. *Id*. at *1. After briefing was completed, Golden filed a pro se motion to discharge Lenyo for a conflict of interest, alleging that Lenyo "failed to protect [Golden's] right to a speedy trial and his right to counsel" and "failed to argue that the [trial] court had an obligation to honor both [Golden's] right to counsel and his right to a speedy trial, and if that obligation could not be met, to dismiss the charges against him." Appellant's App. Vol. 2 at 143. Lenyo filed a response to Golden's motion. The motions panel of this Court denied Golden's motion.

[7] As for the issues raised by Lenyo, the merits panel of this Court found that "Golden was well advised of the dangers of self-representation, and the [trial] court went out of its way to inquire into Golden's decision to proceed *pro se*." *Golden*, 2016 WL 7183617, at *9. The panel further found that Golden's insistence on a "speedy trial date" pursuant to Indiana Criminal Rule 4(B) was strategic and that, "when given the choice of a trial within seventy days and the assistance of counsel, Golden insisted on his early trial every time." *Id*. The court noted that "[a]lthough a delay in Golden's trial might have extended the trial beyond the seventy-day limit imposed [by that rule], this delay would likely not have implicated Golden's constitutional right to a speedy trial." *Id*. at n.2. Ultimately, the panel had "little difficulty in saying that Golden knowingly and

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[3] *Batson v. Kentucky*, 476 U.S. 79 (1986).

intelligently waived his right to counsel." *Id*. The panel also rejected Lenyo's second claim, noting that neither the United States Supreme Court nor the Seventh Circuit Court of Appeals had extended *Batson* to alternate jurors and that, even if *Batson* did apply, the State met its burden thereunder by offering a race-neutral reason for striking the prospective alternate juror. Lenyo filed a petition to transfer, which was denied by our supreme court.

[8] In May 2018, Golden filed a pro se petition for post-conviction relief in which he raised five claims: (1) his waiver of counsel was not voluntary because he "had to waive counsel to get a speedy trial"; (2) he was unable to play disks of witness interviews when he was in jail awaiting trial; (3) the State struck a juror based on race in violation of *Batson*; (4) Lenyo, "who was the same attorney who refused to represent [Golden] on appointment when [he] would not waive [his] right to a speedy trial, and the same attorney who acted as [his] 'advisory counsel' had a conflict of interest in representing [him]"; and (5) Lenyo "provided ineffective assistance of counsel at the time [Golden] chose to have a speedy trial over counsel by failing to object, and then on appeal by failing to raise the issue of [him] having to choose between counsel and a speedy trial on appeal …." Appellant's App. Vol. 2 at 44. The State Public Defender entered an appearance for Golden and ultimately withdrew it. In November 2022, Golden, by counsel, requested an evidentiary hearing. A status conference was set for January 13, 2023. At the conference, the post-conviction judge, who had also presided at Golden's trial, summarily denied Golden's petition based on oral findings that his claims were either waived or res judicata. Golden now appeals.

Discussion and Decision

[9] Golden contends that the post-conviction court erred in summarily denying his petition. As the petitioner, Golden "bore the burden of establishing the grounds for post-conviction relief by a preponderance of the evidence." *Lindsey v. State*, 888 N.E.2d 319, 322 (Ind. Ct. App. 2008) (citing, inter alia, Ind. Post-Conviction Rule 1(5)), *trans. denied*. "Post-conviction procedures do not afford a petitioner with a super-appeal, and not all issues are available." *Id*. "Rather, subsequent collateral challenges to convictions must be based on grounds enumerated in the post-conviction rules." *Id*. "If an issue was known and available, but not raised on direct appeal, it is waived. If it was raised on appeal, but decided adversely, it is res judicata." *Id*. (citation omitted).

[10] Indiana Post-Conviction Rule 1(4)(f) provides in pertinent part, "If the pleadings conclusively show that petitioner is entitled to no relief, the court may deny the petition without further proceedings." "When a court disposes of a petition under subsection f, we essentially review the lower court's decision as we would a motion for judgment on the pleadings." *Allen v. State*, 791 N.E.2d 748, 752 (Ind. Ct. App. 2003), *trans. denied*. As such, our review is de novo, and "a motion for judgment on the pleadings will not be granted unless it is clear from the face of the complaint that under no circumstances could relief be granted. [C]ourts of appeal accept as true all well-pleaded facts set out in the complaint. We look only to the pleadings in making this assessment." *Id*. at n.1 (quoting *Loomis v. Ameritech Corp.*, 764 N.E.2d 658, 661 (Ind. Ct. App. 2002), *trans. denied*). "The necessity of an evidentiary hearing is avoided when the

pleadings show only issues of law." *Clayton v. State*, 673 N.E.2d 783, 785 (Ind. Ct. App. 1996). "The need for a hearing is not avoided, however, when a determination of the ultimate issues hinges, in whole or in part, upon unresolved factual questions of a material nature." *Id*. "This is true even though the petitioner has only a remote chance of establishing his claim." *Id*.

[11] Based on our review, we conclude that the post-conviction court did not err in summarily denying Golden's petition. Claims (1) and (2) were known and available but not raised on direct appeal, so they are waived. Claim (3) was raised on appeal and decided adversely, so it is res judicata. Golden raised claim (4) in his pro se motion for discharge, but that motion was not ruled on by the merits panel, so it is questionable whether that issue is res judicata. *See Miller v. Patel*, 212 N.E.3d 639, 646 (Ind. 2023) (providing that res judicata requires, among other things, that "the former judgment must have been rendered on the merits") (quoting *Afolabi v. Atl. Mortg. Inv. Corp.*, 849 N.E.2d 1170, 1173 (Ind. Ct. App. 2006)). Regardless, we consider claim (4) to be intertwined with Golden's ineffective assistance of counsel allegations against Lenyo in claim (5), which are based on the false premise that the trial court forced Golden to choose between being represented by counsel and being tried within seventy days of his motion for speedy trial. Golden repeatedly insisted on representing himself, against the trial court's advice, and he has only himself

to blame for the consequences of that decision.[4] Accordingly, we affirm the post-conviction court in all respects.

[12] Affirmed.

Brown, J., and Felix, J., concur.

[4] Moreover, we note that a "criminal defendant is not entitled to the public defender of his choice[,]" *Bowie v. State*, 203 N.E.3d 535, 545 (Ind. Ct. App. 2023), *trans. denied*, and that the trial court determined that no public defender would have been able to effectively represent Golden at a trial held on December 14.