MEMORANDUM DECISION

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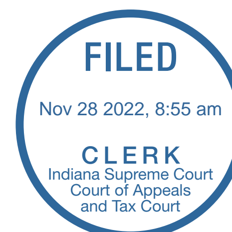

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IN THE COURT OF APPEALS OF INDIANA

Michael Hooten,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 28, 2022

Court of Appeals Case No. 22A-PC-440

Appeal from the Marion Superior Court

The Honorable Mark D. Stoner, Judge

Trial Court Cause No. 49D32-2001-PC-2236

Mathias, Judge.

[1] Michael Hooten appeals the Marion Superior Court's denial of his petition for post-conviction relief. Hooten raises a single issue for our review, which we

restate as whether the post-conviction court's judgment that Hooten did not receive ineffective assistance of trial counsel is clearly erroneous. We affirm.

Facts and Procedural History

[2] We described the facts underlying Hooten's convictions for murder and attempted murder in his direct appeal:

> On the afternoon of April 1, 2010, Kenyatta Robinson and Dante Lott went to an apartment complex in Indianapolis to visit a person Robinson knew as "Little Man." As Robinson, Lott, and Little Man walked through the apartment complex, they encountered two men, including a person later identified as Hooten. The groups went their separate ways after talking for about five minutes.
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> At approximately 1:30 a.m. on the following day, Robinson and Lott returned to the complex to visit Little Man again. As they walked toward Little Man's apartment, Robinson and Lott saw Hooten with two other men. Hooten asked them where Little Man was, and Robinson told him that they were going to his apartment. As Robinson and Lott approached Little Man's door, Hooten pulled out a handgun and shot them both. Robinson was shot twice, once in the arm and once in the back, as he tried to run away. He fell to the ground and pretended to be dead. Hooten approached Robinson, kicked him in the back of the head, and ran away. Hooten had shot Lott in the head, and Lott died as a result of the shooting.
>
> On June 4, 2010, the State charged Hooten with murder, attempted murder, and carrying a handgun without a license, a Class A misdemeanor . . . . The trial court issued a warrant for his arrest. The police arrested Hooten on June 9, 2010.

> On August 3, 2010, the trial court held a pretrial conference. During the conference, Hooten requested a speedy trial and also requested a continuance. The trial court granted both motions and noted for the record, "70th day is 10/12/10."
>
> On September 28, 2010, the parties attended another pretrial conference. During the conference, the State requested a continuance. The trial court granted the State's request over Hooten's objection. The trial court vacated the jury trial and noted that the new trial deadline was "10/12/10." On October 1, 2010, the State filed another request to continue the trial, requesting a continuance of thirty to ninety days. The trial court granted the continuance over Hooten's objection and rescheduled the trial for December 6, 2010.
>
> The parties appeared for trial on December 6, 2010. At that time, Hooten requested a continuance, which the trial court denied. The jury found Hooten guilty as charged. The trial court declined to enter a judgment of conviction on the handgun charge, citing double jeopardy concerns. The trial court sentenced Hooten accordingly, and he now appeals.

Hooten v. State, No. 49A04-1101-CR-11, 2011 WL 4914966, at *1 (Ind. Ct. App. Oct. 17, 2011) (citations omitted), *trans. denied*.

[3] On direct appeal, Hooten raised a single issue for our review, namely, whether the trial court abused its discretion when it granted the State's October 1, 2010, request for a continuance. We initially noted that Hooten had failed to preserve his argument for appellate review because his trial counsel did not move for discharge under Indiana Criminal Rule 4. *Id.* at *2. We then held that Hooten

could not establish fundamental error in the trial court's judgment. *Id.* Thus, we affirmed his convictions.

[4] In January 2020, Hooten filed a petition for post-conviction relief. In relevant part, he alleged that his trial counsel had rendered ineffective assistance when he failed to move for Hooten's discharge under Criminal Rule 4. After an evidentiary hearing, the post-conviction court found and concluded that Hooten had failed to demonstrate either that a motion for discharge would have been granted or that he was prejudiced by the lack of the motion. This appeal ensued.

Discussion and Decision

[5] Hooten appeals the post-conviction court's denial of his petition for post-conviction relief. As our Supreme Court has made clear:

> Because [the petitioner] failed to carry his burden of proving his claims by a preponderance of evidence in the post-conviction court, he appeals from a negative judgment. As such, [he] must show that "the evidence as a whole leads unerringly and unmistakably to a decision opposite that reached by the postconviction court." *Timberlake v. State*, 753 N.E.2d 591, 597 (Ind. 2001) (citation omitted). For factual matters, we examine only the probative evidence and reasonable inferences that support the postconviction court's determination and do not reweigh the evidence or judge the credibility of the witnesses. *Taylor v. State*, 717 N.E.2d 90, 92 (Ind. 1999). The post-conviction court's decision will be disturbed "only if the evidence is without conflict and leads only to a conclusion contrary to the result of the postconviction court." *Timberlake*, 753 N.E.2d at 597. When a defendant fails to meet this "rigorous standard of

> review," this Court will affirm the post-conviction court's denial of relief. *Wilson v. State*, 157 N.E.3d 1163, 1170 (Ind. 2020) (cleaned up).

Conley v. State, 183 N.E.3d 276, 282 (Ind. 2022).

[6] Hooten specifically asserts that he was denied the effective assistance of trial counsel. Ineffective-assistance-of-counsel claims are evaluated under the well-known, two-part test articulated in *Strickland v. Washington*, 466 U.S. 668 (1984). To prevail, the post-conviction petitioner must show that: (1) counsel's performance was deficient based on prevailing professional norms; and (2) the deficient performance prejudiced the defense. *Conley*, 183 N.E.3d at 282 (citing *Ward v. State*, 969 N.E.2d 46, 51 (Ind. 2012)). "Failure to satisfy either prong will cause the claim to fail." *Id.* at 283 (quoting *French v. State*, 778 N.E.2d 816, 824 (Ind. 2002)).

[7] Hooten cannot show that, had his trial counsel moved for discharge under Criminal Rule 4, the motion would have been granted. Indeed, the trial court overruled Hooten's objection to the State's motion to continue; a further, timely motion for discharge therefore would have been fruitless, and trial counsel has no obligation to raise a meritless argument. *See, e.g.*, *Peterson v. Douma*, 751 F.3d 524, 533 (7th Cir. 2014) (internal quotation omitted). Hooten thus cannot show that his trial counsel rendered unconstitutionally deficient performance on this issue.

[8] Nor can Hooten demonstrate that he was prejudiced by his trial counsel's failure to move for discharge. Here, Hooten asserts that his trial counsel's failure to move for discharge prejudiced him by denying him review on direct appeal of the merits of the trial court's October 2010 judgment. But, while Hooten spends much of his brief here arguing the merits of that judgment, those arguments are beside the point. As our Supreme Court has long held, to seek relief under Criminal Rule 4, a defendant must "maintain a position reasonably consistent with the request that he has made." *Mickens v. State*, 439 N.E.2d 591, 595 (Ind. 1982); *see also Hahn v. State*, 67 N.E.3d 1071, 1081 (Ind. Ct. App. 2016) (relying on *Mickens*), *trans. denied*. And we have recognized that moving for a continuance "is inconsistent with a desire to have [the] case tried in a speedy manner." *Roper v. State*, 79 N.E.3d 907, 911 (Ind. Ct. App. 2017). Thus, had Hooten's appellate counsel been able to raise the denial of the October 2010 motion on appeal, we could have affirmed the judgment based on Hooten's later, inconsistent motion to continue. *See id.*

[9] For these reasons, Hooten cannot demonstrate that the post-conviction court's denial of his petition for post-conviction relief is clearly erroneous. Accordingly, we affirm the post-conviction court's judgment.

[10] Affirmed.

Robb, J., and Foley, J., concur.