MEMORANDUM DECISION

APPELLANT PRO SE

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ATTORNEYS FOR APPELLEE

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IN THE COURT OF APPEALS OF INDIANA

Perry S. Miller,
Appellant-Petitioner,

v.

State of Indiana,
Appellee-Respondent

July 19, 2022

Court of Appeals Case No. 21A-CT-2046

Appeal from the Porter Superior Court

The Honorable Michael A. Fish, Judge

Trial Court Cause No. 64D01-9011-CF-181

May, Judge.

[1] Perry S. Miller appeals following the trial court's "Order on Defendant's Request for Access to Relevant Portions of the Record." (Appellant's App. Vol. II at 2.) We dismiss Miller's appeal.

Facts and Procedural History

[2] In 1990, Miller and two accomplices robbed a convenience store and kidnapped the clerk. *Miller v. State*, 623 N.E.2d 406-07 (Ind. 1993), *reh'g denied*. They drove the clerk to an isolated area where they proceeded to systematically rape and torture her. *Id*. at 407. They then killed her by shooting her in the head with a shotgun at close range. *Id*. In April 1991, Miller was tried and convicted of murder,[1] Class B felony criminal confinement,[2] Class A felony rape,[3] Class A felony criminal deviate conduct,[4] Class A felony robbery,[5] and Class A felony conspiracy to commit murder.[6] *Id*. at 405-06. The trial court sentenced Miller to death plus an additional 220 years. (Appellee's App. Vol. II at 3.) Our Indiana Supreme Court affirmed Miller's conviction and sentence on direct appeal. *Miller*, 623 N.E.2d at 413.

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[1] Ind. Code § 35-42-1-1 (1989).

[2] Ind. Code § 35-42-3-3 (1989).

[3] Ind. Code § 35-42-4-1 (1989).

[4] Ind. Code § 35-42-4-2 (1988).

[5] Ind. Code § 35-42-5-1 (1988).

[6] Ind. Code § 35-41-5-2 (1988).

[3] Miller then unsuccessfully sought postconviction relief. *Miller v. State*, 702 N.E.2d 1053, 1074 (Ind. 1998), *reh'g denied*, *cert. denied*, 528 U.S. 1083 (2000). Next, Miller filed a petition for habeas corpus in the United District Court for the Northern District of Indiana, and the district court denied his petition. *Miller v. Anderson*, 162 F. Supp. 2d 1057, 1083 (N.D. Ind. 2000). However, the Seventh Circuit held Miller received ineffective assistance of trial counsel and ordered the district court's "judgment is reversed with directions that the state either release Miller or retry him within 120 days." *Miller v. Anderson*, 255 F.3d 455, 460 (7th Cir. 2001). The State petitioned for rehearing en banc, but the petition was withdrawn once the parties reached a plea agreement. *Miller v. Anderson*, 268 F.3d 485 (7th Cir. 2001).

[4] Pursuant to their agreement, Miller would plead guilty to murder, Class B felony criminal confinement, Class C felony robbery, and Class A felony conspiracy to commit murder, and he would receive an aggregate 138-year sentence. In exchange, the State agreed to dismiss its death penalty request and the charges of rape and criminal deviate conduct. The trial court accepted the plea agreement, entered judgment of conviction, and imposed sentence on August 7, 2001.

[5] Twenty years later, Miller filed, in his criminal cause number, a "Request for Access to Relevant Portions of the Record" seeking record of the voir dire from his 1991 trial and "record of events during and after jury deliberation concerning all events, concerning health issues reported to the court." (Appellant's App. Vol. II at 4-5) (original formatting omitted). Miller asserted

the records were necessary because he "is currently in the process of preparing a pro se Petition for Postconviction Relief in order to challenge the conviction and/or sentence entered in these proceedings." (*Id.* at 5.) On September 1, 2021, the trial court issued an order stating:

> The Court, having reviewed the case summary and Defendant's request, now encloses only a copy of the docket in this case for Defendant and finds the following:
>
> 1. The record of the trial *voir dire* is immaterial to any matter of post-conviction relief because Defendant was sentenced on his plea.
>
> 2. Defendant's request for record of events during and after jury deliberation concerning all events and health issues reported to the court is too vague.
>
> 3. Defendant has already received the court's entire record in this matter for purposes of his appeal and petition for post-conviction relief.

(*Id.* at 2-3.) On September 15, 2021, Miller filed a notice of appeal with this Court challenging the trial court's denial of his motion for "Access to Relevant Portions of Record" and asserting he was appealing from a final judgment. (Notice of Appeal at 2.)

Discussion and Decision

[6] Initially, we note Miller proceeds on appeal pro se. Litigants who elect to proceed pro se assume the risk they may not know how to accomplish all that a

trained attorney may be able to accomplish. *Smith v. Donahue*, 907 N.E.2d 553, 555 (Ind. Ct. App. 2009), *trans. denied*, *cert. dismissed*, 558 U.S. 1074 (2009). Nonetheless, "[i]t is well settled that pro se litigants are held to the same legal standards as licensed attorneys." *Lowrance v. State*, 64 N.E.3d 935, 938 (Ind. Ct. App. 2016), *reh'g denied*, *trans. denied*. Consequently, "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*. We will not become an advocate for one of the parties or address an argument too poorly developed or expressed for us to understand. *Basic v. Amouri*, 58 N.E.3d 980, 984 (Ind. Ct. App. 2016), *reh'g denied*.

[7] The State asks us to dismiss Miller's appeal for lack of appellate jurisdiction, and we have a duty to ensure we possess jurisdiction over the matters presented to us. *Cohen v. Indianapolis Machinery Co., Inc.*, 339 N.E.2d 612, 613 (Ind. Ct. App. 1976) ("This Court has the duty to determine its jurisdiction over matters presented to it."). "This court's authority to exercise appellate jurisdiction is generally limited to appeals from final judgments, certain interlocutory orders, and agency decisions." *In re D.W.*, 52 N.E.3d 839, 841 (Ind. Ct. App. 2016), *trans. denied*; *see also* Ind. Appellate Rule 5. While Miller asserts we have jurisdiction because his appeal follows from a final judgment, the State argues Miller "has made no showing that the trial court's order at issue here, which denied a discovery motion filed outside the context of any open cause, is a final appealable order under Indiana Appellate Rule 2(H), which defines 'final judgment.'" (Appellee's Br. at 8 n.1.)

[8] Indiana Appellate Rule 2(H) provides:

> A judgment is a final judgment if:
>
> (1) it disposes of all claims as to all parties;
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> * * * * *
>
> (3) it is deemed final under Trial Rule 60(C);
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> (4) it is a ruling on either a mandatory or permissive Motion to Correct Error which was timely filed under Trial Rule 59 or Criminal Rule 16; or
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> (5) it is otherwise deemed final by law.

Here, final judgment occurred when the trial court entered judgment of conviction following Miller's guilty plea and imposed sentence. *See King v. State*, 720 N.E.2d 1232, 1235 (Ind. Ct. App. 1999) (holding trial court entered final judgment when it convicted and sentenced defendant). That order disposed of all parties' claims in the criminal action. While the Trial Rules allow for some post-judgment motions, Miller's request for records is not a post-judgment motion contemplated by Trial Rule 60, and the deadline for him to file a motion to correct error has long since passed. *See* Trial Rule 59(C) ("The motion to correct error, if any, must be filed not later than thirty (30) days after the entry of a final judgment is noted in the Chronological Case Summary."). Moreover, Miller has not provided any authority otherwise deeming the denial

of his request for records to be a final judgment.[7] We therefore dismiss Miller's appeal for lack of jurisdiction. *See Indy Auto Man, LLC v. Keown & Kratz, LLC*, 84 N.E.3d 718, 722 (Ind. Ct. App. 2017) (holding we lacked jurisdiction to consider appeal from order that was not a final judgment).

Conclusion

[9] While we possess jurisdiction to entertain appeals following final judgments, as that term is defined in Indiana Appellate Rule 2(H), the order Miller attempts to appeal is not a final judgment. As Miller has not pointed to any other authority allowing us to assume jurisdiction over his appeal, we dismiss it.

[10] Dismissed.

Riley, J., and Tavitas, J., concur.

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[7] Indiana Appellate Rule 2(H)(2) provides that a trial court may enter final judgment on less than all claims, but that subsection is not applicable here because the order accepting Miller's guilty plea, entering judgment of conviction, and sentencing him disposed of all claims.