MEMORANDUM DECISION

APPELLANT PRO SE

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IN THE
COURT OF APPEALS OF INDIANA

Sonny Davis,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 21, 2023

Court of Appeals Case No. 23A-PC-426

Appeal from the Marion Superior Court

The Honorable Peggy Hart, Magistrate

Trial Court Cause No. 49D27-2011-PC-34183

Memorandum Decision by Judge Brown
Judges Vaidik and Bradford concur.

Brown, Judge.

[1] Sonny Davis appeals the denial of his petition for post-conviction relief. We affirm.

Facts and Procedural History

[2] On April 24, 2001, Davis was convicted of two counts of robbery as class C felonies under cause number 49G01-0010-CF-185265 ("Cause No. 185265") and sentenced to four years in the Indiana Department of Correction ("DOC").

[3] On January 9, 2002, he pled guilty to resisting law enforcement and possession of cocaine as class D felonies under cause number 49F18-0111-DF-217090. On August 15, 2002, a Notice of Probation Violation was filed under Cause No. 185265 for new charges under cause number 49G21-0208-FD-210710 and cause number 49G01-0208-FA-211427 ("Cause No. 211427").

[4] Under Cause No. 211427, on February 28, 2003, Davis was convicted and received an aggregate sentence of fifty years. After it sentenced Davis under Cause No. 211427, the court stated, "[a]ll right. Oh. Tell [Davis] to come back. He's got a probation violation. We have to do the probation violation. The defendant is also -- Mr. Davis, we brought you back her[e] on probation under cause number 00185265," and the court revoked his probation and ordered him to serve four years executed in the DOC consecutive to his sentence under Cause No. 211427. Exhibits Volume I at 58-59. On direct appeal, Davis challenged his conviction for burglary under Cause No. 211427, and this Court affirmed. *Davis v. State*, No. 49A05-0303-CR-140, slip op. at 2 (Ind. Ct. App. December 18, 2003), *trans. denied*. On September 19, 2017, his

petition for post-conviction relief challenging his convictions under Cause No. 211427 was denied. Davis appealed the denial of his petition for post-conviction relief, and this Court affirmed. *Davis v. State*, No. 49A05-1710-PC-2328, 2018 WL 3384858, at *1 (Ind. Ct. App. July 12, 2018), *trans. denied*.

[5] On September 9, 2021, Davis filed a petition for post-conviction relief under cause number 49D27-2011-PC-34183 ("Cause No. 34183") challenging the revocation of his probation under Cause No. 185265. Davis alleged that the trial court deprived him of his rights by conducting the probation violation hearing without his counsel being present, his appellate counsel provided ineffective representation, and the trial court erred in its credit time calculation.

[6] On July 15, 2022, the court held a hearing on Davis's petition for post-conviction relief under Cause No. 34183, at which Davis appeared *pro se* and presented the testimony of Judge Steven Poore, who had been his attorney in the proceedings under Cause No. 211427. At the hearing, the parties stipulated "that there was no appeal taken under" Cause No. 185265.[1] Transcript Volume II at 40. Attorney Dennis Lopes was subpoenaed, but did not appear at the hearing, and the court told Davis, "[w]e subpoenaed him on your behalf. And

[1] Although referenced at points in the transcript under multiple different cause numbers, no such cause numbers appear to exist in the Odyssey Case Management System. Throughout the hearing, different cause numbers were stated to refer to Davis's probation revocation under Cause No. 185265, including "49G05-0010-CF-185265," and "49G01-0010-FC-185265." *See, e.g.*, Transcript Volume II at 15, 31, 38, 40. Davis's brief refers to "49G01-0010-FC-185265" and "49G05-0010-FC-1853265/49G01-0010-FC-1853265." Appellant's Brief at 1, 7. The State's Brief refers to the probation revocation under cause number "49G05-0010-CF-185265." Appellee's Brief at 6, 7. None of these alternative cause numbers appear to exist in the Odyssey Case Management System, and it appears that all were intended to refer to Cause No. 185265.

we subpoenaed him to the address that is on the role [sic] of attorneys. And we don't know if service was perfected or not." *Id.* at 41. The parties agreed on a stipulation, and the following exchange occurred:

> THE COURT: Alright. Here's the stipulation. Goldie, I'm going to need your help. Attorney Dennis Lopes was appointed to the defendant to represent him on [Cause No. 185265] for a violation of probation in Courtroom Five (5). However, after [Cause No. 185265] was transferred into Court One (1), attorney Lopes did not appear on behalf of the defendant in said cause in Courtroom One (1). State? Correct?
>
> [State]: Yes.
>
> THE COURT: Correct? Okay. So, let me read that again just so are clear because it's a stipulation. Okay?
>
> [Davis]: Yes, ma'am.
>
> THE COURT: Stipulation is that attorney Dennis Lopes was appointed to the defendant for a probation violation in Courtroom Five (5), for [Cause No. 185265]. But [Cause No. 185265] got transferred into Courtroom One (1). After the case got transferred, attorney Lopes did not appear on behalf of the defendant relating to said cause number in Courtroom One (1). Perfect. That's the stipulation. Okay. Now, do we have to re-subpoena Lopes again, then?
>
> [Davis]: No, ma'am. If that was stipulated --
>
> THE COURT: Because that is all the testimony you wanted elicited from him, correct?
>
> [Davis]: Yes, ma'am.
>
> THE COURT: Okay. So, we no longer have to re-issue a subpoena to Dennis Lopes. Thank you so much, Goldie. Okay.

Id. at 49-50. On January 16, 2023, the court denied Davis's petition for post-conviction relief.

Discussion

[7] Davis argues that the trial court adopted the State's proposed findings verbatim and that the findings are unsupported by the record. He claims that "the evidence as a whole, unerringly and unmistakably leads to a conclusion opposite that reached by the Post-Conviction Court on the three (3) claims presented." Appellant's Brief at 7. He claims that he received ineffective assistance of probation counsel because his counsel was not present at the probation revocation hearing under Cause No. 185265. He alleges that his credit time was improperly calculated and that he received ineffective assistance of appellate counsel when his counsel did not appeal his probation case under Cause No. 185265. He argues the post-conviction court exhibited bias in making racial remarks, specifically, when the post-conviction court stated it would need help from someone it identified as "Goldie" and thanked them after clarifying a stipulation. *Id.* at 35-36.

[8] The State argues that Davis did not establish error in the court's findings and has waived his credit time claim and, regardless, he did not provide an adequate record to address the claim. It claims that Davis cited no evidence or authority to support his claim of ineffective assistance of appellate counsel, and his counsel's performance satisfied due process. It further argues that the issue of the trial court's bias is waived, but regardless, the trial judge was not biased.

[9] We note that Davis is proceeding *pro se.* Such litigants are held to the same standard as trained counsel and are required to follow procedural rules. *Evans v. State*, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004), *trans. denied*. *See also Zavodnik v. Harper*, 17 N.E.3d 259, 266 (Ind. 2014) ("Even if a court may take reasonable steps to prevent a good faith *pro se* litigant from being placed at an unfair disadvantage, an abusive litigant can expect no latitude."). To the extent Davis fails to cite to the record or develop an argument with respect to whether he received ineffective assistance of appellate counsel under Cause No. 185265 and other issues he attempts to raise on appeal, those arguments are waived. *See Cooper v. State*, 854 N.E.2d 831, 834 n.1 (Ind. 2006) (holding that the defendant's contention was waived because it was "supported neither by cogent argument nor citation to authority"); *Shane v. State*, 716 N.E.2d 391, 398 n.3 (Ind. 1999) (holding that the defendant waived argument on appeal by failing to develop a cogent argument).

[10] We note the general standard under which we review a post-conviction court's denial of a petition for post-conviction relief. The petitioner in a post-conviction proceeding bears the burden of establishing grounds for relief by a preponderance of the evidence. *Fisher v. State*, 810 N.E.2d 674, 679 (Ind. 2004); Ind. Post-Conviction Rule 1(5). When appealing from the denial of post-conviction relief, the petitioner stands in the position of one appealing from a negative judgment. *Fisher*, 810 N.E.2d at 679. On review, we will not reverse the judgment unless the evidence as a whole unerringly and unmistakably leads to a conclusion opposite that reached by the post-conviction court. *Id.* "A post-

conviction court's findings and judgment will be reversed only upon a showing of clear error—that which leaves us with a definite and firm conviction that a mistake has been made." *Id.* In this review, we accept findings of fact unless clearly erroneous, but we accord no deference to conclusions of law. *Id.* The post-conviction court is the sole judge of the weight of the evidence and the credibility of witnesses. *Id.*

[11] To the extent Davis claims that the trial court adopted the State's proposed findings verbatim, we note:

> It is not uncommon for a trial court to enter findings that are verbatim reproductions of submissions by the prevailing party. The trial courts of this state are faced with an enormous volume of cases and few have the law clerks and other resources that would be available in a more perfect world to help craft more elegant trial court findings and legal reasoning. We recognize that the need to keep the docket moving is properly a high priority of our trial bench. For this reason, we do not prohibit the practice of adopting a party's proposed findings. But when this occurs, there is an inevitable erosion of the confidence of an appellate court that the findings reflect the considered judgment of the trial court.

Prowell v. State, 741 N.E.2d 704, 708-709 (Ind. 2001)). It appears the trial court adopted the State's proposed findings and conclusions verbatim.

[12] To the extent Davis argues that the post-conviction court's findings need "to be addressed and corrected," Appellant's Brief at 13, we note that "[w]e have held that even where findings and conclusions of the post-conviction court are inadequate, where the claims presented by the defendant are not claims which

would entitle him to relief, the inadequacies are harmless." *Berry v. State*, 483 N.E.2d 1369, 1373 (Ind. 1985). With respect to Davis's arguments that he was not represented by counsel at his probation revocation hearing under Cause No. 185265 and that the court incorrectly calculated his credit time, we note that "post-conviction proceedings are not super-appeals and provide only a narrow remedy for subsequent collateral challenges." *State v. Oney*, 993 N.E.2d 157, 161 (Ind. 2013) (quoting *State v. Cooper*, 935 N.E.2d 146, 148 (Ind. 2010)). Generally, freestanding claims are unavailable in post-conviction proceedings. *See Reed v. State*, 866 N.E.2d 767, 768 (Ind. 2007) (holding that only issues not known at the time of the original trial or issues not available on direct appeal may be properly raised through post-conviction proceedings); *Hamilton v. State*, 159 N.E.3d 998, 1000 n.3 (Ind. Ct. App. 2020) ("We do not address his freestanding claim that his sentence is illegal because the designation as a credit restricted felon is erroneous"). "A petitioner for post-conviction relief cannot avoid the application of the waiver doctrine by arguing that it does not apply because the challenge raises fundamental error." *State v. Hernandez*, 910 N.E.2d 213, 216 (Ind. 2009). "In post-conviction proceedings, complaints that something went awry at trial are generally cognizable only when they show deprivation of the right to effective counsel or issues demonstrably unavailable at the time of trial or direct appeal." *Id.* (quoting *Sanders v. State*, 765 N.E.2d 591, 592 (Ind. 2002)). Davis did not present these arguments on direct appeal and has waived them.

[13] With respect to Davis's claim that the post-conviction court committed fundamental error by demonstrating bias, we note that Rule 2.2 of the Code of Judicial Conduct of Indiana provides: "A judge shall uphold and apply the law and shall perform all duties of judicial office fairly and impartially. A judge may make reasonable efforts, consistent with the law and court rules, to facilitate the ability of all litigants, including self-represented litigants, to be fairly heard." Judges are presumed impartial and unbiased. *Mathews v. State*, 64 N.E.3d 1250, 1253 (Ind. Ct. App. 2016). "'[T]he law will not suppose a possibility of bias or favor in a judge, who is already sworn to administer impartial justice, and whose authority greatly depends upon that presumption and idea.'" *Id.* (quoting 3 William Blackstone, *Commentaries* *361).

[14] We cannot say the record demonstrates the post-conviction judge was biased. The record reveals that, at the post-conviction hearing, while clarifying a stipulation, the judge stated: "Here's the stipulation. Goldie, I'm going to need your help," and "[s]o, we no longer have to re-issue a subpoena to [Lopes]. Thank you so much, Goldie." Transcript Volume II at 49-50. The record does not reveal the person the judge was addressing in referring to Goldie, and regardless, we cannot say the record reveals the court demonstrated racial bias.

[15] For the foregoing reasons, we affirm the post-conviction court.

[16] Affirmed.

Vaidik, J., and Bradford, J., concur.