MEMORANDUM DECISION

IN THE

Court of Appeals of Indiana

Eric A. Cobb,

Appellant-Defendant

v.

State of Indiana,

Appellee-Plaintiff

February 23, 2024

Court of Appeals Case No.
23A-PC-1114

Appeal from the Marion Superior Court

The Honorable Mark D. Stoner, Judge

Trial Court Cause No.
49D32-2301-PC-2890

Memorandum Decision by Chief Judge Altice
Judges Weissmann and Kenworthy concur.

Altice, Chief Judge.

Case Summary

[1] Eric Cobb, pro se, filed a petition for post-conviction relief, which the trial court dismissed on the State's motion. Finding that Cobb has not demonstrated error in the dismissal of his petition and that the pleadings demonstrate that he is not entitled to post-conviction relief, we affirm.

Facts & Procedural History

[2] In August 2005, the State charged Cobb with: Count I, Class A felony burglary; Count II, Class B felony robbery; and Count III, Class D felony criminal confinement. Later, the State added Count IV, alleging that Cobb was a habitual offender, and Count V, Class B felony criminal confinement. Pursuant to a plea agreement, Cobb pleaded guilty to Counts I and V, and admitted to being a habitual offender. The State dismissed Counts II and III.

[3] A sentencing hearing was held in February 2006 but, for reasons not clear in the record, Cobb was resentenced on March 3, 2006. The court imposed thirty years on Count I and twenty years on Count V, with no part suspended, and enhanced Count V by ten years for the habitual offender adjudication. Counts I and V were ordered to be served concurrently. Cobb appealed, pro se, and this court affirmed his sentence by memorandum decision. *See Cobb v. State*, No. 49A02-0804-CR-373 (Ind. Ct. App. Dec. 23, 2008), *trans. denied*. As is relevant here, the *Cobb* court observed that "no part of the sentence [was] suspended." *Id*. at *1.

[4] On January 31, 2023, Cobb, pro se, filed a petition for post-conviction relief, claiming "an unlawful revocation of [his] conditional liberty." *Appellee's Appendix* at 13. More specifically, Cobb asserted that a verbal "promise of probation" was made to him "at first sentencing" in February 2006 and that, years later when he was later arrested on parole violations and returned to prison, parole "infringed on the probation department's imposed supervision of [him]." *Id*. at 14, 16. Cobb further asserted that he had come before the parole board three times, and each time was denied reinstatement, arguing that the parole board's decisions "overlooked [his] completion of [Recovery While Incarcerated program" and were "inconsistent with" the trial court's "expressed promise of probation during his initial sentencing date[.]" *Id*. at 17.

[5] The State filed a motion to dismiss, asserting that Cobb's petition for post-conviction relief was seeking relief from the parole board's discretionary decisions to deny reinstatement of parole and that the trial court did not have subject matter jurisdiction to review such. On April 18, 2023, the post-conviction court granted the State's motion without a hearing, dismissing Cobb's petition.

[6] Cobb now appeals. Additional facts will be supplied as necessary.

Discussion & Decision

[7] Although Cobb is proceeding pro se, he is held to the same standards as trained counsel. *See Evans v. State*, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004), *trans. denied*. "We will not become a party's advocate, nor will we address arguments

that are inappropriate, improperly expressed, or too poorly developed to be understood." *Barrett v. State*, 837 N.E.2d 1022, 1030 (Ind. Ct. App. 2005), *trans. denied*. Cobb's appeal fails to comply with our Appellate Rules in multiple respects. He failed to file an appendix as required by Ind. Appellate Rules 49(A) and 50(B).[1] His statement of facts is not supported by page references to the record on appeal or appendix. *See* Ind. App. R. 46(A)(6). Further, his brief does not provide cogent argument. *See* Ind. App. R. 46(A)(8). We find that these combined failures result in waiver of Cobb's appeal.

[8] Even if his appeal is not waived, Cobb has not shown error in the trial court's dismissal of his petition. The State's Ind. Trial Rule 12(B)(1) motion to dismiss asserted that the trial court lacked subject matter jurisdiction to review Cobb's post-conviction claims, which the State viewed as challenging the parole board's decisions to deny reinstatement to parole. As to a parole board's decisions, we have explained:

> The parole board has almost absolute discretion in carrying out its duties, and it is not subject to the supervision or control of the courts. There is no constitutional or inherent right to parole release, so our review of a decision from the parole board is limited to a determination whether the requirements of due

[1] The State filed an *Appellee's Appendix*, which helped to fill the void of information and provided us with, among other things, Cobb's petition and exhibits thereto, which Cobb asked be "incorporated by reference" into his petition. *Appellee's Appendix* at 14. Even so, we do not have all the documentation that Cobb refers to and relies on, and thus we do not have a complete record before us. *See* Ind. App. R. 22(C) ("Any record material cited in an appellate brief must be reproduced in an Appendix or the Transcript or exhibits.")

> process have been met and the parole board has acted within the scope of its powers as defined by statute.

Holleman v. State, 27 N.E.3d 344, 346 (Ind. Ct. App. 2015) (internal citations omitted), *trans. denied*. In his petition, Cobb does not assert either that his due process rights were violated or that the parole board acted outside of its powers. We find that, under these circumstances, the trial court properly determined that the parole board's decisions were not reviewable and dismissed Cobb's petition.

[9] On appeal, Cobb argues that the State's motion to dismiss was "bogus" and "totally mischaracterized" his post-conviction claims. *Appellant's Brief* at 7. In that regard, he maintains that his post-conviction petition does not challenge the denial of reinstatement to parole, as was asserted in the State's motion, but rather, presents the claim that parole improperly infringed on probation that was "promised" to him at his first sentencing hearing in February 2006.[2] Even

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[2] Given Cobb's probation versus parole claims, we note our Supreme Court's explanation of the differences between the two:

> Probation . . . is a matter of judicial grace and discretion as a deliberate sentencing alternative to be imposed in lieu of incarceration -- a probationer is not under the control of the DOC. His or her compliance is controlled by the sentencing court, with enforcement through its own probation officers.
>
> But the DOC and the Parole Board placing an offender on parole is not an action of judicial discretion. A parole is not a suspension of a sentence. Rather, it is a substitution . . . of a lower grade of punishment, by confinement in the legal custody and under the control of the warden within the specified prison bounds outside the prison, for the confinement within the prison adjudged by the court. So while a parole is an amelioration of punishment, it is, in legal effect, still imprisonment. While on parole the prisoner remains in the legal custody of the parole agent and warden of the prison from which he is paroled until the expiration of the maximum term specified in his sentence or until discharged as provided by law.

if we accept Cobb's characterization of his post-conviction claim, he is not entitled to relief.

[10] A post-conviction petitioner has the burden of establishing his grounds for relief by a preponderance of the evidence. Ind. Post-Conviction Rule 1(5); *Baldi v. State*, 908 N.E.2d 639, 641 (Ind. Ct. App. 2009). Post-conviction proceedings do not afford the petitioner an opportunity for a super appeal, but rather, provide the opportunity to raise issues that were unknown or unavailable at the time of the original trial or the direct appeal. *Laboa v. State*, 131 N.E.3d 660, 663 (Ind. Ct. App. 2019). Cobb acknowledges in his petition that at the second sentencing hearing held in March 2006, a thirty-year sentence was imposed with no portion suspended. This court confirmed such on direct appeal, noting that "no part of the sentence [was] suspended." *Cobb*, 2008 WL 5340672 at *1. Even Cobb's own exhibit to his petition for post-conviction relief establishes that he was not on probation.[3] What may or may not have been previously discussed, or even "promised" to him, at the prior sentencing hearing is of no moment. Thus, his claim that parole improperly interfered with probation –

Bleeke v. Lemmon, 6 N.E.3d 907, 937-38 (Ind. 2014) (internal citations and quotations omitted). Our court observed that "the only practical difference between the two is that probation relates to judicial action taken before the prison door is closed, whereas parole relates to executive action taken after the door has closed on a convict." *Gaither v. Ind. Dep't of Corr.*, 971 N.E.2d 690, 694 (Ind. Ct. App. 2012) (quotations omitted).

[3] Exhibit 3 to Cobb's petition, which he expressly asked be incorporated by reference into his petition, is a May 2017 order from the trial court, issued in response to an inquiry from probation department asking the court whether Cobb's March 2006 sentence included probation. The court's order stated that Cobb was resentenced in March 2006 to thirty years executed and "[t]here was no suspended sentence and no probation ordered." *Appellee's Appendix* at 28. We further note that there was no mention of probation or suspension of any part of his sentence in the plea agreement, which Cobb attached as Exhibit 1 to his petition. *Id*. at 25.

i.e., he "never should have been under the supervision of [parole]" because probation had been promised to him at the initial sentencing hearing – is without merit. *Appellant's Brief* at 4.

[11] Cobb also contends on appeal that the trial court erred by summarily denying his petition for post-conviction relief without holding an evidentiary hearing. He argues that "[a]n evidentiary hearing was the only way to develop and substantiate his claims he was seeking relief from." *Id*. at 6. We disagree.

[12] Ind. Post-Conviction Rule 1(4)(f) provides, in part, "If the pleadings conclusively show that petitioner is entitled to no relief, the court may deny the petition without further proceedings." Here, the pleadings demonstrate that no part of Cobb's March 2006 sentence was suspended to probation. His claim for relief is based on a purported promise of probation made to him at the prior sentencing hearing. On the specific facts and posture of this case, we agree with the State that "[b]ecause the sentence imposed is clear and undisputed, [Cobb] is not entitled to a hearing on whether there was discussion of probation" at the first sentencing hearing. *Appellee's Brief* at 8-9. Stated differently, the facts pled do not raise an issue of possible merit, and thus a hearing was not required for a determination of the purported promised probation issues raised by Cobb in his petition for post-conviction relief.[4]

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[4] To the extent that Cobb argues that an evidentiary hearing was required "because neither party moved for summary disposition," he is misguided. *Appellant's Brief* at 8. P-C R. 1(4)(f) allows the trial court to deny a petition without hearing "if the pleadings conclusively show that the petitioner is entitled to no relief"; it does

[13] Lastly, in asserting that he is entitled to post-conviction relief, Cobb states that he filed, and the trial court granted, a motion requesting documents but that he never received them "due to the Clerk's negligence." *Appellant's Brief* at 7. Cobb does not further explain or develop his argument, and therefore his argument is waived. *See* Ind. Appellate Rule 46(A)(8). Even if not waived, the record reflects that, simultaneously with the filing of his petition, Cobb submitted a Motion for Transcripts of Guilty Plea and Sentencing Hearing, asking for the February and March 2006 hearings. *See Appellee's Appendix* at 34. As discussed above, even if those transcripts showed he was verbally promised probation at the first sentencing hearing in February 2006, as he claims, the sentence imposed in March 2006 following the resentencing hearing – the only one that matters – did not suspend any part of Cobb's sentence or otherwise include a probation component. Cobb has suffered no prejudice from any lack of receipt of the requested transcripts.

[14] In sum, we find no error with the court's dismissal of his petition and further find that the pleadings establish that Cobb was not entitled to post-conviction relief.

[15] Judgment affirmed.

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not require a party to move for summary disposition. *See Laboa*, 131 N.E.3d at 664 (quoting *Allen v. State*, 791 N.E.2d 748, 753 (Ind. Ct. App. 2003), *trans. denied*).

Weissmann, J. and Kenworthy, J., concur.

APPELLANT PRO SE

Eric Cobb
Putnamville, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Indiana Attorney General

David A. Arthur
Deputy Attorney General
Indianapolis, Indiana