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IN THE
COURT OF APPEALS OF INDIANA

MICHAEL J. HUFFMAN,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 48A02-1003-PC-421
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Dennis D. Carroll, Judge
Cause No. 48D01-0711-PC-241

February 11, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Michael J. Huffman ("Huffman") pled guilty to and judgment was entered against him for Aggravated Battery, as a Class B felony, and Invasion of Privacy, as a Class A misdemeanor. Huffman petitioned for post-conviction relief, which was denied. He now appeals.

We affirm.

Issue

Huffman asserts that the post-conviction court erred when it denied his petition for post-conviction relief for ineffective assistance of counsel in advising him on his guilty plea because he contends that:

A. His conviction for invasion of privacy was based upon a deficient charging information, which constituted fundamental error about which trial counsel should have alerted him; and

B. Trial counsel failed to investigate the source of his victim's subdural hematoma, which failure would have prevented him from pleading guilty to a Class B felony.

Facts and Procedural History

Huffman committed aggravated battery upon his former girlfriend, Lorene Peterson ("Peterson"), by throwing her across a room of his home and inflicting a head injury upon her. Huffman's contact with Peterson at this time was in violation of a no-contact order issued as a condition of probation following his December 15, 2005, guilty plea to a prior battery upon Peterson. After entering a guilty plea, on April 3, 2007, Huffman was sentenced to eighteen years imprisonment for aggravated battery and one year imprisonment for

invasion of privacy.

On November 16, 2007, Huffman filed his petition for post-conviction relief. After a hearing on September 14, 2009, and the submission of additional evidence and argument to the post-conviction court, Huffman's petition was denied on January 7, 2010. Huffman filed a motion to correct error on January 19, 2010; the motion was denied on February 19, 2010.

This appeal followed.

Discussion and Decision

Standard of Review

The petitioner in a post-conviction proceeding bears the burden of establishing the grounds for relief by a preponderance of the evidence. Ind. Post-Conviction Rule 1(5); Fisher v. State, 810 N.E.2d 674, 679 (Ind. 2004). When appealing from the denial of post-conviction relief, the petitioner stands in the position of one appealing from a negative judgment. Id. On review, we will not reverse the judgment of the post-conviction court 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, findings of fact are accepted unless they are clearly erroneous and no deference is accorded to conclusions of law. Id. The post-conviction court is the sole judge of the weight of the evidence and the credibility of the witnesses. Id.

Generally, to establish a post-conviction claim alleging the violation of the Sixth

Amendment right to effective assistance of counsel, a defendant must establish the two components set forth in Strickland v. Washington, 466 U.S. 668 (1984). "First, a defendant must show that counsel's performance was deficient." Id. at 687. This requires a showing that counsel's representation fell below an objective standard of reasonableness and that "counsel made errors so serious that counsel was not functioning as 'counsel' guaranteed to the defendant by the Sixth Amendment." Id. "Second, a defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial," that is, a trial where the result is reliable. Id. To establish prejudice, a "defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694. A reasonable probability is one that is sufficient to undermine confidence in the outcome. Id. Further, counsel's performance is presumed effective, and a defendant must offer strong and convincing evidence to overcome this presumption. Ben-Yisrayl v. State, 729 N.E.2d 102, 106 (Ind. 2000).

To prevail on a claim of ineffective assistance of counsel after a guilty plea, the petitioner must establish that trial counsel's performance was deficient and a reasonable probability that, but for counsel's errors, the petitioner would not have pled guilty and would instead have insisted on going to trial. Oliver v. State, 843 N.E.2d 581, 591 (Ind. Ct. App. 2006), trans. denied. Where, as here, the petitioner claims that counsel overlooked or impaired a defense, the petitioner must show both that the defense was overlooked or impaired and that the defense would likely have changed the outcome of the proceeding. Id.

Charging Information for Invasion of Privacy

Huffman first contends that he would not have pled guilty as charged to invasion of privacy because the State's charging information was defective.

Huffman was charged with violation of a no-contact order issued as a condition of pre-trial release under Cause Number 48H02-0512-CM-6141, pursuant to Indiana Code section 35-46-1-15.1(1). Huffman notes, however, that the pre-trial no-contact order was discharged before July 27, 2006, the date of Huffman's offenses, and thus he could not have violated the order. Huffman also points out that the statutory provision establishing violation of a pre-trial no-contact order as an invasion of privacy offense is Indiana Code section 35-46-1-15.1(5), not 35-46-1-15.1(1). Huffman thus argues that trial counsel's failure to seek dismissal of this charge after the October 1, 2006, omnibus date resulted in a guilty plea to an offense that could not properly be prosecuted.

We disagree. There is no dispute that the charging information points to a pre-trial no-contact order and a statutory subsection that relates not to pre-trial orders but to specific civil no-contact orders. However, Huffman fails to show that he was prejudiced as a result of these errors. Huffman admits that he pled guilty to the charge that gave rise to the pre-trial no-contact order, and that one of the conditions of probation in that case was compliance with a no-contact order. That no-contact order went into effect on December 15, 2005—the date on which the pre-trial no-contact order was terminated—and was to run for the one-year term of his probation. The probation term had not yet ended on July 27, 2006, when Huffman committed the offenses at issue here. Thus, at the time of his guilty plea in this

case, a valid no-contact order under which Huffman could have been charged pursuant to section 35-46-1-15.1 was in effect, and Huffman suffered no prejudice in pleading guilty to an information defective in form but not in substance.

We also find Huffman's reliance on the charging information's use of subsection (1) of section 35-46-1-15.1 instead of subsection (5) unpersuasive. Each of the subsections indicates a type of no-contact order which subjects one who knowingly or intentionally violates that order to misdemeanor or felony jeopardy. Huffman admits that he was subject to a no-contact order as a condition of his probation, and admitted at the plea agreement hearing to having committed a battery upon Peterson. Such conduct is inherently a violation of the no-contact order.

Huffman admitted to violating an existing no-contact order that would expose him to the same form of criminal liability as if he had violated the contact order as charged. That charge related to the same behavior during the same incident as would have been charged on an otherwise non-defective charging information. He has not demonstrated that the post-conviction court clearly erred in denying relief from his guilty plea for invasion of privacy as charged.

Failure to Investigate

Huffman also claims that he would not have pled guilty had trial counsel made adequate investigation into medical evidence related to injuries allegedly suffered by Peterson during Huffman's battery upon her. Specifically, Huffman argues that in failing to investigate whether Peterson's subdural hematoma was chronic or acute, trial counsel failed

to determine whether this specific injury was the result of Huffman's battering or Peterson's heavy consumption of alcohol. Huffman asserts that had counsel done so, he might have uncovered evidence that showed Huffman's battery of Peterson did not create a substantial risk of death or cause protracted impairment of one of Peterson's bodily organs. According to Huffman, this in turn would have defeated the aggravated battery count as charged in favor of battery as a Class D felony. Thus, Huffman claims that had his attorney investigated and uncovered such evidence, he would not have accepted the plea agreement for aggravated battery as charged.

We again do not find that the post-conviction court erred when it denied Huffman's petition for relief. Huffman directs our attention to a radiologist's report on a CAT scan performed upon Peterson indicating that she had suffered a prior ischemic event and that the subdural hematoma she suffered was consistent with such an occurrence. But Huffman ignores evidence from medical and law enforcement personnel indicating that Peterson was severely harmed by his attack. This evidence includes a note from Patrick J. Connolly, M.D., stating that Peterson "was reportedly involved in a domestic violence dispute" and that, "[b]ecause of this, she suffered a subdural hematoma." (Green App. 17.) Huffman's argument also ignores Peterson's extensive hospitalization during which she required brain surgery and use of a ventilator and her continued neurological problems months after the attack. During his guilty plea hearing, Huffman himself acknowledged that Peterson suffered "pretty serious" head injuries from his attack. (App. 314-15.)

At bottom, Huffman asks that we reweigh the evidence before the post-conviction

court. This we cannot do. With this evidence before it, the post-conviction court did not err when it denied Huffman's petition for relief as a result of ineffective assistance of counsel for failure to adequately investigate evidence of a defense before advising him to enter into a plea agreement.

Conclusion

The post-conviction court did not err when it held that the charging information for invasion of privacy was not fatally deficient. Nor did the post-conviction court err in finding no ineffective assistance of counsel for failure to investigate further the source of the injury that caused Peterson's subdural hematoma.

Affirmed.

NAJAM, J., and DARDEN, J., concur.