

Case Summary

Timothy Huffman appeals the post-conviction court's denial of his petition for post-conviction relief. We affirm.

Issues

Huffman raises two issues, which we restate as:

- I. whether the State failed to abide by an agreement to make no sentencing recommendation at his sentencing hearing; and
- II. whether he was denied the effective assistance of trial counsel.

Facts

In October 2006, the State charged Huffman with conspiracy to manufacture methamphetamine as a Class A felony. In June 2007, the State filed an amended information charging Huffman with manufacturing methamphetamine as a Class B felony and possession of methamphetamine as a Class D felony. In August 2007, on the first day of his trial, Huffman pled guilty to the charges set forth in the amended information. At the guilty plea hearing, the trial court stated, "I understand [Huffman] wants to plead guilty as charged without any recommendations." App. p. 17. The chronological case summary ("CCS") for the day of the guilty plea hearing indicates: "This being the date for jury trial, outside of the presence of the jury panel the Deft. withdraws his plea of not guilty and enters a plea of guilty without recommendation from the State." Id. at 10. The CCS also indicates that the trial court found Huffman's guilty plea was "made knowingly, voluntarily and intelligently." Id.

At the sentencing hearing, the deputy prosecutor stated: “[T]he State believes that his prior criminal record is a[n] overwhelming aggravating circumstance that the Court has to . . . has to start at ten years and agrees with the probation department’s recommendation of fifteen years executed at the Department of Correction.” Id. at 18. The trial court found Huffman’s guilty plea to be a mitigating circumstance and his extensive criminal history to be an aggravating circumstance. The trial court agreed with the probation department’s sentencing recommendation and sentenced Huffman to fifteen years in the Department of Correction.

Huffman appealed his sentence, arguing that it was inappropriate in light of the nature of the offense and the character of the offender. We noted that Huffman’s prior criminal history included convictions for class C felony battery, possession of a schedule II controlled substance, and forgery, that Huffman was buying methamphetamine while on bond, and that, when he was being sentenced in this case, Huffman was also being sentenced in another felony case for unlawful possession of a handgun by a serious violent felon. Given Huffman’s “lengthy and significant criminal history,” we concluded that his sentence was not inappropriate in light of the nature of the offense and the character of the offender. Huffman v. State, No. 82A05-0711-CR-645 (Ind. Ct. App. May 7, 2008), trans. denied.

In April 2009, Huffman requested a copy of his plea agreement, and the trial court responded that no plea agreement was found in the court’s file. In December 2009,

Huffman filed a petition for post-conviction relief.¹ The State filed an answer and a motion to proceed by affidavit, which the post-conviction court granted. Huffman then filed a motion for summary disposition and a statement of undisputed facts. Huffman apparently sent interrogatories to the deputy prosecutor, and those responses were filed with the court. In the interrogatories, Huffman asked, “Did you agree to make no sentencing recommendation . . . if Timothy Huffman agreed to plead guilty.” App. p. 19. The deputy prosecutor responded, “The Defendant plead guilty on the morning of his trial. I did not file a written sentencing recommendation.” Id. After each party submitted proposed findings of fact and conclusions thereon, the post-conviction court entered findings of fact and conclusions thereon denying Huffman’s petition. The post-conviction court found:

1. On October 4, 2006, [Huffman] was charged with Count I, Dealing in Methamphetamine, a Class B felony, and Count II, Possession of Methamphetamine, a Class D felony.
2. The case was set for trial by jury on August 15, 2007. On that date, [Huffman] withdrew his plea of not guilty, and entered pleas of guilty as charged to both Counts, without recommendation from the State of Indiana.
3. There is no evidence in the record that the State of Indiana agreed that it would not make an argument at

¹ Huffman did not include a copy of the petition for post-conviction relief in his appendix and, thus, we are unable to ascertain the issues raised by Huffman. Huffman also failed to provide us with other documents filed during the post-conviction proceedings. It is also difficult for us to ascertain which documents in the appendix were actually submitted to the post-conviction court for its consideration. We remind Huffman that Indiana Appellate Rule 50(A) requires an appellant’s appendix to contain “pleadings and other documents from the Clerk’s Record in chronological order that are necessary for resolution of the issues raised on appeal.”

the sentencing hearing with regard to the sentence that [Huffman] should receive.

4. The Court found on August 15, 2007, that [Huffman's] pleas were made knowingly, voluntarily, and intelligently. The Court also ordered that a Pre-Sentence Investigation should be conducted by the Probation Department.
5. On October 8, 2007, a sentencing hearing was held, at which time the Court noted that it had reviewed the Pre-Sentence Investigation Report, and specifically noted that it would not consider a letter from Karen Townsend. The Court also heard argument from defense counsel and from the State of Indiana.

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CONCLUSIONS OF LAW

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4. The evidence does not support the claim that the State agreed not to make an argument at sentencing with regard to [Huffman's] sentence.

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7. There is no showing that [Huffman's] attorney acted ineffectively by not objecting to the State's presentation of its position at the sentencing hearing. There was no agreement between the State and [Huffman] that it would not make an argument. The only statement in the record is that the parties were not filing a Plea Agreement in which the State is making a recommendation.
8. [Huffman's] attorney did not act ineffectively by allowing him to plead guilty prior to the time that the Motion to Suppress was ruled upon. There is no showing that the Motion to Suppress would have been granted and no showing [Huffman] was prejudiced in any way.

9. [Huffman's] claim that his attorney had a conflict of interest is not supported by the record and no prejudice has been demonstrated.

Appellant's Br.² Huffman now appeals.

Analysis

Huffman appeals the post-conviction court's denial of his petition for post-conviction relief. A court that hears a post-conviction claim must make findings of fact and conclusions of law on all issues presented in the petition. Pruitt v. State, 903 N.E.2d 899, 905 (Ind. 2009) (citing Ind. Post-Conviction Rule 1(6)). "The findings must be supported by facts and the conclusions must be supported by the law." Id. Our review on appeal is limited to these findings and conclusions. Id. Because the petitioner bears the burden of proof in the post-conviction court, an unsuccessful petitioner appeals from a negative judgment. Id. (citing P-C.R. 1(5)). "A petitioner appealing from a negative judgment must show that the evidence as a whole 'leads unerringly and unmistakably to a conclusion opposite to that reached by the trial court.'" Id. (quoting Allen, 749 N.E.2d at 1164). Under this standard of review, "[we] will disturb a post-conviction court's decision as being contrary to law only where the evidence is without conflict and leads to but one conclusion, and the post-conviction court has reached the opposite conclusion." Id.

I. Guilty Plea

² Huffman included the post-conviction court's order in his Appellant's Brief but failed to include it in his Appendix.

Huffman argues that the State failed to abide by an agreement to make no sentencing recommendation at his sentencing hearing. The post-conviction court rejected Huffman's claim, concluding that Huffman presented no evidence of such an agreement. We agree that Huffman has failed to meet his burden.

In general, a plea agreement is a contract between the state and the defendant. Wright v. State, 700 N.E.2d 1153, 1155 (Ind. Ct. App. 1998). In many cases, both the state and the defendant bargain for and receive substantial benefits from the agreement. Id. Once the parties have agreed and the trial court has accepted the agreement, the agreement binds the court and the parties. Id. When a plea agreement rests in any significant degree on a promise by the prosecutor, so that the promise can be said to be part of the inducement or consideration for the plea, such promise must be fulfilled. Id. Failure of a prosecutor to adhere to any promise he or she made that induced the guilty plea would constitute a breach of the plea agreement and would render the plea involuntary and violate the defendant's rights. Id.

Under Indiana Code Section 35-35-3-3(a), a plea agreement on a felony charge must be in writing and filed with the court. Huffman has not provided any evidence of a written plea agreement. Huffman pled guilty as charged on the day of his trial. At the guilty plea hearing, the trial court stated, "I understand [Huffman] wants to plead guilty as charged without any recommendations." App. p. 17. On appeal, we were provided with only one page of the guilty plea hearing. Consequently, we have no indication of any other discussions regarding Huffman's plea. The chronological case summary ("CCS") for the day of the guilty plea hearing indicates: "This being the date for jury

trial, outside of the presence of the jury panel the Deft. withdraws his plea of not guilty and enters a plea of guilty without recommendation from the State.” Id. at 10.

The term “recommendation” has a specific definition in the context of a guilty plea. Indiana Code Section 35-35-3-1 provides: “‘Recommendation’ means a proposal that is part of a plea agreement made to a court that: (1) a felony charge be dismissed; or (2) a defendant, if the defendant pleads guilty to a felony charge, receive less than the advisory sentence.” Thus, without more information in the record, we presume that the trial court merely stated the State was not making a proposal that any charges be dismissed or that Huffman receive less than the advisory sentence. There is no indication in the record provided to us that the State agreed to make no sentencing recommendation to the trial court. Consequently, the post-conviction court’s finding on this issue is not clearly erroneous.

II. Ineffective Assistance

The next issue is whether Huffman was denied the effective assistance of trial counsel. To prevail on a claim of ineffective assistance of counsel, a petitioner must demonstrate both that his counsel’s performance was deficient and that the petitioner was prejudiced by the deficient performance. Ben-Yisrayl v. State, 729 N.E.2d 102, 106 (Ind. 2000) (citing Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984)), cert. denied. Because Huffman was convicted pursuant to a guilty plea, we analyze his claims under Segura v. State, 749 N.E.2d 496, 499 (Ind. 2001).

Huffman argues that his trial counsel’s performance was deficient for three reasons: (1) his trial counsel failed to enforce the State’s agreement to make no

sentencing recommendation; (2) his trial counsel failed to file a timely motion to suppress and encouraged Huffman to plead guilty prior to the trial court rendering a decision on the motion to suppress; and (3) his trial counsel failed to withdraw based on a conflict of interest. The post-conviction court rejected each of these claims, finding that Huffman had failed to meet his burden.

We need not engage in an extensive Segura analysis because Huffman has completely failed to present any evidence to support his claims. As noted above, Huffman failed to present evidence that the State agreed to make no sentencing recommendation. Huffman also did not present any evidence whatsoever at the post-conviction proceeding or on appeal regarding his motion to suppress or his trial counsel's alleged conflict. Although he makes an argument in his Appellant's Brief regarding the facts surrounding the motion to suppress and the alleged conflict, he provides no citation to the record in support of those alleged facts. Huffman has failed to demonstrate that his trial counsel was deficient, and his claim of ineffective assistance of trial counsel fails.

Conclusion

Huffman failed to meet his post-conviction relief burden. The post-conviction court's denial of his petition for post-conviction relief is not clearly erroneous. We affirm.

Affirmed.

BAKER, J., and VAIDIK, J., concur.