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IN THE
COURT OF APPEALS OF INDIANA

JESSE A. MANSFIELD,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 18A02-0909-CR-879
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Marianne L. Vorhees, Judge
Cause No. 18C01-0809-FB-43

March 31, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Jesse A. Mansfield appeals the denial of his motion to file a belated appeal. Mansfield raises one issue, which we restate as whether the trial court abused its discretion in denying Mansfield's motion to file a belated notice of appeal. We affirm.

The relevant facts follow. Between June 1, 2008 and August 31, 2008, Mansfield, who was twenty-six or twenty-seven years of age, had sexual intercourse with C.B., who was a child at least fourteen years of age but less than sixteen years of age. On September 23, 2008, the State charged Mansfield with two counts of sexual misconduct with a minor as class B felonies and one count of stalking as a class D felony.

On February 9, 2009, upon request by Mansfield's counsel, the trial court ordered an evaluation to determine whether Mansfield was mentally ill, a sexually violent predator, competent to stand trial, and able to appreciate the wrongfulness of his conduct at the time of the alleged offense. Two evaluations were performed and submitted to the trial court.[1] One of the evaluations, performed on February 22, 2009, indicated that Mansfield had "some symptoms of depression, obsessive compulsive disorder (OCD), ADHD, substance abuse, and possibly post-traumatic stress disorder (PTSD) and antisocial personality disorder." Appellant's Appendix at 187. The evaluation also indicated that "I do not believe [Mansfield] has a mental disease that would increase his risk of reoffending," that Mansfield was "competent to stand trial," and that Mansfield

[1] The first psychological evaluation was performed on February 20, 2009, and a report was prepared dated February 23, 2009. However, "Page 7 of 7" of the report, which appears to have set forth the majority of the "Synthesis and Recommendations" section of the report, was not included in the appellant's appendix.

"understood the wrongfulness at the time it occurred, but thought since he had parental consent that [it] was legal to have sex with a 15 year old girl." Id.

On March 4, 2009, Mansfield pled guilty but mentally ill to one count of sexual misconduct with a minor as a class B felony. Mansfield and the State entered into a plea agreement, which stated in part that "[t]he parties agree that the Defendant shall receive the following sentence: -CAP OF 10 YEARS." Id. at 116. The trial court took the offered plea and plea agreement under advisement and ordered the preparation of a presentence investigation report.

Following a sentencing hearing on April 1, 2009, the trial court sentenced Mansfield to a term of ten years, six years of which were to be served in the Indiana Department of Correction and four years of which were to be suspended to probation.[2] Mansfield was advised of his right to appeal at the sentencing hearing. Mansfield sent a letter to the trial court which was dated July 11, 2009, and filed-stamped July 14, 2009, indicating that he planned to appeal his sentence because he "felt as if it was not a fair sentence." Id. at 145. On July 27, 2009, Mansfield filed a motion for reduction of sentence in which he argued that his executed prison term of six years was not appropriate "for a first-time felon" and that "it should have been a 4 do 2," that the court should take into account the fact that he "cooperated," that he was "rehabilitated and will not offend again," and the court should consider the fact that "besides my stepfather I am the soul [sic] provider and I am not going to mess up again, and I am asking 4 [sic] the

[2] The record does not contain a copy of the sentencing transcript.

remainder of any sentence on probation." Id. at 146-147. The trial court denied Mansfield's motion.

On August 3, 2009, Mansfield filed a motion for permission to file a belated notice of appeal. According to the motion, Mansfield's "thirty-day time limit to file his Notice of Appeal expired on May 1, 2009." Id. at 152. The motion also indicated that Mansfield sent a letter dated July 11, 2009 to his court-appointed counsel informing his counsel "that he wish[ed] to appeal his sentence." Id.

On August 17, 2009, the trial court held a hearing regarding Mansfield's motion. At the hearing, Mansfield testified that he suffered from severe depression and anxiety. Mansfield further testified that his right to appeal was explained at his sentencing hearing. When asked if he understood those rights, Mansfield testified: "No, I thought I was doing two (2) years" and "I swear the Judge said she sentenced me to two (2) years to the Department of Corrections." Hearing Transcript at 3. Mansfield testified that when he "learned otherwise," he sent a letter to his counsel requesting an appeal. Id. at 4. When asked again on redirect examination whether he understood his right to appeal, Mansfield testified: "Vaguely. Not really though. I mean– . . . It was basically like this – at the time, I was just down and depressed." Id. at 5. Mansfield also testified that he was taking medications at the time.

After taking the matter under advisement, the trial court denied Mansfield's motion on August 18, 2009 and determined that, based upon the evidence presented at the hearing, Mansfield did not meet his burden. Specifically, the trial court found that

Mansfield's "failure to file a timely notice of appeal was due to his fault," that Mansfield "was advised of his right to appeal after the Court stated the sentence in open court," that Mansfield "did not diligently request permission to file this Notice of Appeal," and that "the [psychological] reports . . . do not establish that [Mansfield] had any competency issues." Appellant's Appendix at 157.

The sole issue is whether the trial court abused its discretion in denying Mansfield's motion to file a belated notice of appeal. Indiana Post-Conviction Rule 2(1)(a) provides:

> An eligible defendant[3] convicted after a trial or plea of guilty may petition the trial court for permission to file a belated notice of appeal of the conviction or sentence if;
>
> (1) the defendant failed to file a timely notice of appeal;
>
> (2) the failure to file a timely notice of appeal was not due to the fault of the defendant; and
>
> (3) the defendant has been diligent in requesting permission to file a belated notice of appeal under this rule.

The decision whether to grant permission to file a belated notice of appeal is within the sound discretion of the trial court. Johnson v. State, 903 N.E.2d 472, 474 (Ind. Ct. App. 2009) (citing Moshenek v. State, 868 N.E.2d 419, 422 (Ind. 2007), reh'g denied). The defendant bears the burden of proving by a preponderance of the evidence that he was without fault in the delay of filing and was diligent in pursuing permission to

[3] An "eligible defendant" is defined under the rule as "a defendant who, but for the defendant's failure to do so timely, would have the right to challenge on direct appeal a conviction or sentence after a trial or plea of guilty by filing a notice of appeal, filing a motion to correct error, or pursuing an appeal." See Johnson v. State, 903 N.E.2d 472, 474 n.1 (Ind. Ct. App. 2009) (citing P-C.R. 2).

file a belated motion to appeal. Id. (citing Moshenek, 868 N.E.2d at 423). There are no set standards of fault or diligence, and each case turns on its own facts. Id. Several factors are relevant to the defendant's diligence and lack of fault in the delay of filing. Id. These include "the defendant's level of awareness of his procedural remedy, age, education, familiarity with the legal system, whether the defendant was informed of his appellate rights, and whether he committed an act or omission which contributed to the delay." Id.

Because diligence and relative fault are fact sensitive, we give substantial deference to the trial court's ruling. Id. A trial court's ruling on a petition for permission to file a belated notice of appeal under Post-Conviction Rule 2 will be affirmed unless it was based on an error of law or a clearly erroneous factual determination (often described as "abuse of discretion"). Id. at 423-424. The trial court is in a better position to weigh evidence, assess the credibility of witnesses, and draw inferences. Id. (citing Fisher v. State, 810 N.E.2d 674, 679 (Ind. 2004)).[4]

Mansfield argues that "[i]n the present case, [Mansfield] plead [sic] guilty but mentally ill," that he "believed he was given a two year sentence," and that "[a]fter he was sent to the Indiana Department of Corrections he realized his mistake and asked for an appeal." Appellant's Brief at 6-7. Mansfield argues that "[t]his clearly indicates that [he] did not understand the sentence given or the rights to appeal that he gave up." Id. at

[4] We note that where a trial court does not hold a hearing before ruling on a defendant's petition to file a belated appeal, we owe no deference to the trial court's factual determinations and review a denial of a defendant's petition *de novo*. See Moshenek, 868 N.E.2d at 422; Bosley v. State, 871 N.E.2d 999, 1002 (Ind. Ct. App. 2007). Here, however, the trial court did hold a hearing on Mansfield's motion to file a belated notice of appeal.

7. Mansfield further argues that "[t]his is not a situation where months or years had passed before his request" and that he "has no prior experience with appeals and the short time frame shows this was in fact a legitimate diligent request." Id. Mansfield also argues that "[h]is delay in filing for said appeal was not done in a malicious or deliberate manner, but rather because of his mental condition." Id.

The State argues that Mansfield "is not a first time offender—he has had three misdemeanor convictions, one involving battery resulting in bodily injury" and that he "has familiarity with the court system." Appellee's Brief at 5-6. The State also argues that "there was no evidence of mental illness that impaired [Mansfield's] understanding of his sentence or of the existence of an appeal as a procedural remedy." Id. at 6.

Here, at the August 17, 2009 hearing on his motion to file a belated notice of appeal, Mansfield acknowledged that he had been advised at his April 1, 2009 sentencing hearing of his right to appeal his sentence. Indeed, according to the chronological case summary and the trial court's order after the sentencing hearing, Mansfield was advised of his right to appeal at the sentencing hearing. Mansfield testified at the August 17, 2009 hearing that he suffered from severe depression and anxiety. When asked during redirect examination whether he understood his rights, Mansfield testified: "Vaguely. Not really though. I mean– . . . . It was basically like this – at the time, I was just down and depressed." Hearing Transcript at 5. Mansfield does not explain how his depression or anxiety prevented him from understanding his sentence. Mansfield also testified that

he was taking medications at the time, but the record does not reveal and Mansfield does not argue how the medications impacted his ability to understand his sentence.

In addition, we note that the record shows that Mansfield was twenty-seven years old at the time he pled guilty and was sentenced for the offenses in this case. The record further shows that Mansfield attended school "through the first semester of his senior year" in high school and made "C" grades. Appellant's Appendix at 194. Mansfield stated that he could read and write at the high school level. Mansfield was employed periodically from 1997 through 2008, including at several restaurants, a laundromat, and a landscaping company, where he supervised a four-man work crew.

Further, we note that Mansfield had some familiarity with the legal system, including several juvenile proceedings prior to June 1999, two proceedings of which related to being incorrigible, and three adult misdemeanor convictions, which included operating a motor vehicle without ever receiving a license as a class C misdemeanor in 2001, illegal consumption of alcohol as a class C misdemeanor in 2001, and battery resulting in bodily injury as a class A misdemeanor in 2004.

Under the circumstances and after reviewing the record in this case in light of the factors set forth in Moshenek, we cannot say that the trial court erred when it found that Mansfield was at fault and was not diligent in pursuing permission to file a belated notice of appeal. As a result, we cannot say that the trial court abused its discretion in denying Mansfield's motion to file a belated notice of appeal. See Clark v. State, 506 N.E.2d 819, 821-822 (Ind. 1987) (holding that the evidence was insufficient to show either absence of

defendant's fault or the existence of diligence on his part where the defendant was fully informed by the court of his rights to appeal and four months elapsed following defendant's sentencing before the defendant manifested a desire to initiate an appeal); Prater v. State, 459 N.E.2d 39, 41 (Ind. 1984) (observing that "extensions of time and belated appeals are provided for under appropriate circumstances, which do not include the revival of rights lost by voluntary acts" and that "ignorance of this Court's procedural rules is not a valid reason for being granted permission to file a belated appeal" where the defendant argued that he "did not know that if he escaped and remained a fugitive during the time designated for perfecting his appeal he would lose his appeal rights"); Land v. State, 640 N.E.2d 106, 108 (Ind. Ct. App. 1994) (holding that the trial court did not abuse its discretion in finding that the defendant was not diligent in requesting permission to file a belated praecipe under Post-Conviction Rule 2 where the court found the defendant was familiar with the criminal justice system and did not exercise diligence in pursuing an appeal), reh'g denied, trans. denied.

For the foregoing reasons, we affirm the trial court's denial of Mansfield's motion to file a belated appeal.

Affirmed.

MATHIAS, J., and BARNES, J., concur.