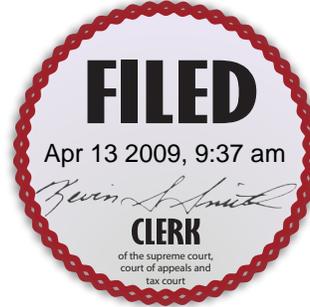


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEYS FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

SUSAN K. CARPENTER
Public Defender of Indiana

GREGORY F. ZOELLER
Attorney General of Indiana

C. BRENT MARTIN
Deputy Public Defender
Indianapolis, Indiana

JODI KATHRYN STEIN
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

MEVESTER LYLES,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 49A02-0811-PC-981

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Robert R. Altice, Jr., Judge
The Honorable Amy J. Barbar, Magistrate
Cause No. CR81-231B

April 13, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Petitioner Mevester Lyles (“Lyles”) appeals the post-conviction court’s denial of his petition for post-conviction relief. We affirm.

Issue

Lyles raises one issue on appeal, which we restate as whether the State met its burden to prove, by a preponderance of the evidence, that Lyles’ post-conviction claim was barred by the doctrine of laches.

Facts and Procedural History

On September 4, 1981, Lyles pleaded guilty to burglary. He received a six-year suspended sentence, with three years probation. On November 2, 2006, Lyles filed a pro-se petition for post-conviction relief. With leave of court, the petition was amended on November 22, 2008 to allege that Lyles’ guilty plea was involuntary because he had not received a Boykin advisement at his guilty plea hearing regarding his right against self-incrimination.¹ The State answered and asserted, as an affirmative defense, that the petition was barred by the doctrine of laches. The post-conviction court conducted evidentiary hearings on June 18, 2008 and July 16, 2008. On September 25, 2008, the post-conviction court entered its findings of fact, conclusions of law, and order denying Lyles post-conviction relief on the basis of laches. He now appeals.

¹ In Boykin v. Alabama, 395 U.S. 238, 243 (1969), the United States Supreme Court held that, before accepting a guilty plea, a trial court must be satisfied that an accused is aware of his rights against self-incrimination, to trial by jury, and to confront his accusers.

Discussion and Decision

The equitable doctrine of laches operates to bar consideration of the merits of a claim or right of one who has neglected for an unreasonable time, under circumstances permitting due diligence, to do what in law should have been done. Armstrong v. State, 747 N.E.2d 1119, 1120 (Ind. 2001). To prevail on a claim of laches, the State must prove by a preponderance of the evidence that (1) the petitioner unreasonably delayed in seeking post-conviction relief and (2) the State has been prejudiced by the delay. Williams v. State, 716 N.E.2d 897, 901 (Ind. 1999).

Although a lapse of time does not by itself constitute laches, a long delay in filing for post-conviction relief may be sufficient to infer that the delay was unreasonable. Mahone v. State, 742 N.E.2d 982, 985 (Ind. Ct. App. 2001), trans. denied. Repeated contacts with the criminal justice system, consultation with attorneys, and incarceration in a penal institution with legal facilities are all facts from which the fact-finder may infer knowledge of defects in a conviction and which may support a finding of laches. Id.

For post-conviction laches purposes, prejudice exists when the unreasonable delay operates to materially diminish a reasonable likelihood of successful re-prosecution. Kirby v. State, 822 N.E.2d 1097, 1100 (Ind. Ct. App. 2005), trans. denied. The inability to reconstruct a case against a petitioner is demonstrated by the unavailability of evidence due to such things as destroyed records, deceased witnesses, or witnesses who have no independent recollection of the events. Id. Nevertheless, the State has an obligation to use due diligence

in its investigation of the availability of evidence and witnesses. Id.

We review a post-conviction court's determination of laches for sufficiency of the evidence. Id. In so doing, we do not reweigh the evidence nor judge the credibility of witnesses, but consider only the evidence most favorable to the judgment, together with all reasonable inferences to be drawn therefrom. Id.

With respect to unreasonable delay, the record reveals that Lyles waited twenty-five years after his guilty plea to file his post-conviction petition. Meanwhile, Lyles served two years in prison after a parole violation related to the burglary case, and was also convicted of battery in 1984, and two counts each of resisting law enforcement and theft in 1986. In 1991, he was convicted of armed robbery in the State of Illinois. In 2004, he was convicted in Indiana of robbery, burglary, and criminal confinement, and was adjudicated a habitual offender. He was arrested fifteen times in Marion County, Indiana between 1981 and 2004. Ultimately, Lyles spent over a decade in Illinois and Indiana prisons. From Lyles' repeated contacts with the criminal justice system, the post-conviction court could have reasonably inferred that Lyles had access to law libraries and could have learned about post-conviction relief remedies. The twenty-five-year delay, together with Lyles' presumed knowledge of the criminal justice system, is sufficient to support the post-conviction court's finding of unreasonable delay.

With regard to the prejudice prong of laches, the evidence reveals that each of the three officers who initially responded to the 1981 burglary or conducted further investigation

lacked recollection of the events in question. The victim remembered that she had been burglarized, but did not recognize the names of Lyles or his co-defendants. Witness Mariann Davis, who had suffered a stroke and was residing in a nursing home, had no recollection of the burglary at her former neighbor's residence. Addresses were not found for co-defendants who had implicated Lyles in the burglary. As such, the post-conviction court had an ample evidentiary basis from which to conclude that the State had been prejudiced by the lengthy delay in the initiation of post-conviction proceedings.

The post-conviction court did not err by denying Lyles' petition on the basis of laches.

Affirmed.

DARDEN, J., and ROBB, J., concur.