

Amy Whitaker (“Whitaker”) filed a petition for post-conviction relief in Madison Circuit Court. The post-conviction court denied Whitaker’s petition. Whitaker appeals raising one issue, whether the post-conviction court erred in concluding that Whitaker’s guilty plea was knowingly, intelligently, and voluntarily entered.

We affirm.

Facts and Procedural History

In the early morning of January 18, 2002, Amy Whitaker and three others lured the victim, John Miller (“Miller”), from a bar where he had been buying them drinks with the promise of continuing the party at a private residence. Instead, they took Miller behind a house where one member of the group hit him in the face, knocking him to the ground. Whitaker and another woman joined in, repeatedly kicking Miller about the head and face. The three then took Miller’s wallet and checkbook, netting approximately \$140.00, which they used to buy breakfast at a local diner. Miller suffered serious head injury and died at the scene.

On January 25, 2002, Whitaker, along with the three others who participated in the beating, was charged with: Count I, aiding, inducing or causing murder; Count II, aiding, inducing, or causing felony murder; Count III, Class A felony aiding, inducing or causing robbery resulting in serious bodily injury; and Count IV, Class B felony conspiracy to commit robbery resulting in bodily injury. Whitaker testified against her co-defendants prior to her trial.

On September 26, 2003, Whitaker pleaded guilty as charged. The trial court asked Whitaker if she understood the charges to which she was pleading guilty. Whitaker

indicated that she understood. The trial court then explained that she was facing a sentence between forty-five and sixty-five years. Whitaker again indicated that she understood. Whitaker also stated that she was satisfied with her attorney's representation, could understand the English language, and was not under the influence of drugs or alcohol.

On November 21, 2003, the trial court merged Count II into Count I and reduced Counts III and IV to Class C felonies. The trial court sentenced Whitaker to concurrent, executed terms of fifty years for Count I and eight years each for Counts III and IV.

On September 30, 2005, Whitaker filed a pro se petition for post-conviction relief, which was amended by counsel on April 30, 2010. Whitaker's petition claimed that her guilty plea was not made knowingly, intelligently, or voluntarily because she was misled into thinking that she would be sentenced to only twenty years in exchange for her testimony against her co-defendants.

A hearing was held on August 5, 2010 during which the prosecutor testified that there was no specific agreement with Whitaker regarding her guilty plea. Whitaker's trial counsel also testified that there was a threat from the prosecutor to pursue a sentence of life without the possibility of parole if Whitaker did not plead guilty, but that he thought the State would give Whitaker consideration for her testimony. Finally, Whitaker testified that she believed she was pleading guilty to voluntary manslaughter or criminal recklessness and that she was to receive a sentence of twenty years. Whitaker testified that she would not have pleaded guilty had she known she would receive a sentence greater than twenty years. However, during cross examination, Whitaker acknowledged

the following: (1) there was no written agreement with the prosecutor; (2) she never heard the prosecutor promise what she asserted in her petition for post-conviction relief; and (3) she had been advised of and understood her rights, the charges to which she was pleading guilty, and the possible range of penalties.

On September 28, 2010, the post-conviction court entered findings of fact and conclusions of law denying Whitaker's petition for post-conviction relief. Whitaker now appeals.

Discussion and Decision

Whitaker argues that the post-conviction court erred in denying her petition because her guilty plea was not knowingly, intelligently, and voluntarily entered. Specifically, Whitaker alleges that she was misled into thinking that her charges would be reduced to a lesser offense, for which she would be sentenced to no more than twenty years in exchange for her testimony against her co-defendants. Whitaker claims that had she known she would be sentenced to more than twenty years, she would not have pleaded guilty "open," but would have gone to trial.

Post-conviction proceedings are not "super appeals" through which convicted persons can raise issues they failed to raise at trial or on direct appeal. McCary v. State, 761 N.E.2d 389, 391 (Ind. 2002). Rather, post-conviction proceedings afford petitioners a limited opportunity to raise issues that were unavailable or unknown at trial and on direct appeal. Davidson v. State, 763 N.E.2d 441, 443 (Ind. 2002). The petitioner in a post-conviction proceeding bears the burden of establishing grounds for relief by a preponderance of the evidence. Ind. Post-Conviction Rule 1(5) (2006); 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. Fisher, 810 N.E.2d at 679. On review, we will not reverse the judgment unless the evidence as a whole unerringly and unmistakably leads to a conclusion opposite that reached by the post-conviction court. Id. Although we accept findings of fact unless they are clearly erroneous, we give conclusions of law no deference and review them *de novo*. Id.

A guilty plea must be knowingly, intelligently, and voluntarily entered into by a defendant. Ind. Code § 35-35-1-3 (2004). Whitaker claims that she believed she would receive a lighter sentence in exchange for her guilty plea and prior testimony against her co-defendants. However, Whitaker's claim completely ignores the discussion between the State, Whitaker's counsel, and the trial court, as well as Whitaker's own responses to the judge when accepting her plea of guilty in open court.

Here, the trial court asked Whitaker if she understood the charges to which she was pleading guilty. Whitaker indicated that she understood. The trial court then explained that she was facing a sentence between forty-five and sixty-five years. Whitaker again indicated that she understood. Whitaker also stated that she was satisfied with her attorney's representation, could understand the English language, and was not under the influence of drugs or alcohol. The trial court also clarified that Whitaker was pleading guilty as charged in exchange for the prosecutor agreeing to not seek life without parole should she go to trial.

A “plea entered after the trial judge has reviewed the various rights which a defendant is waiving and made the inquiries called for in the statute is unlikely to be found wanting in a collateral attack.” State v. Moore, 678 N.E.2d 1258, 1265 (Ind. 1997) (quoting White v. State, 497 N.E.2d 893, 905-06 (Ind. 1986)). Additionally, a “mere hope for a certain outcome at sentencing, without more, does not suffice to set aside a guilty plea for lack of voluntariness.” Id. at 1267. Moreover, “mere fear of conviction of a greater offense than the one a defendant is pleading guilty to is not such coercion or intimidation as to render a guilty plea involuntary.” Pettyjohn v. State, 161 Ind. App. 418, 422, 315 N.E.2d 729, 731 (1974).

Under these facts and circumstances, we conclude that Whitaker failed to meet her burden of establishing that her guilty plea was not entered into knowingly, intelligently and voluntarily. Thus, the post-conviction court did not err in denying Whitaker’s petition.

Affirmed.

KIRSCH, J., and VAIDIK, J., concur.