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**IN THE
COURT OF APPEALS OF INDIANA**

CURTIS W. CRAFT,)
)
Appellant-Petitioner,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Respondent.)

No. 84A04-0810-PC-598

APPEAL FROM THE VIGO SUPERIOR COURT
The Honorable Michael J. Lewis, Judge
Cause No. 84D06-0801-PC-256

May 13, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-petitioner Curtis W. Craft appeals the denial of his petition for post-conviction relief. Craft argues that he was sentenced in violation of the rule announced by the United States Supreme Court in Blakely v. Washington.¹ Finding no error, we affirm.

FACTS

On February 26, 2004, the State charged Craft with class B felony rape and class C felony sexual battery. On June 24, 2004, Blakely was decided, and on March 9, 2005, our Supreme Court found Blakely applicable to Indiana's sentencing scheme, Smylie v. State, 823 N.E.2d 679, 690 (Ind. 2005). In June 2005, Craft was convicted of rape following a jury trial. In July 2005—over one year after Blakely was decided and four months after Smylie was decided—the trial court sentenced Craft to twenty years imprisonment.

Craft directly appealed his conviction, and his sole argument on appeal related to jury instructions. Craft v. State, No. 84A05-0508-CR-436 (Ind. Ct. App. Mar. 24, 2006). This court affirmed. Id., slip op. p. 6. On January 11, 2008, Craft filed a petition for post-conviction relief, and, following a hearing, the post-conviction court summarily denied the petition on August 11, 2008. Craft now appeals.

DISCUSSION AND DECISION

Post-conviction relief is not a substitute for a direct appeal; rather, the post-conviction rules create a narrow remedy for subsequent collateral challenges to convictions. Martin v. State, 760 N.E.2d 597, 599 (Ind. 2002). Thus, the scope of the

¹ 542 U.S. 296 (2004).

post-conviction remedy is limited to issues not known at the time of the original trial or that were unavailable on direct appeal. Bahm v. State, 789 N.E.2d 50, 57 (Ind. Ct. App. 2003), clarified on reh'g 794 N.E.2d 444.

Blakely and Smylie had both been decided when Craft was sentenced. Despite the availability of such a claim, however, Craft failed to raise a Blakely argument at his sentencing hearing. Therefore, he has waived the issue. Smith v. State, 829 N.E.2d 1021, 1024 n.5 (Ind. Ct. App. 2005) (holding that “to rely on Blakely in a case not on direct appeal when Blakely was issued, a defendant was obliged to object at the sentencing hearing”).

Furthermore, Craft failed to raise a Blakely sentencing claim or any other sentencing argument in his direct appeal. Given the well-established rule that issues that could have been raised on direct appeal but were not are unavailable in post-conviction proceedings, Woods v. State, 701 N.E.2d 1208, 1213 (Ind. 1998), Craft has waived the argument on this basis as well. See Smylie, 823 N.E.2d at 690 (holding that defendants “who have appealed without raising any complaint at all about the propriety of their sentence . . . should be deemed to have at least forfeited, and likely waived, the issue for review”). Finally, we observe that Craft is not entitled to raise a claim of fundamental error on post-conviction review. See id. at 689 n.16 (holding that “[t]he fundamental error doctrine will not, as caselaw holds, be available to attempt retroactive application of Blakely through post-conviction relief”).

Waiver notwithstanding, we observe that the trial court found no mitigators and one aggravator—Craft’s criminal history. A defendant’s criminal history is explicitly

excluded from the Blakely rule and need not be evaluated by a jury to constitute a proper aggravator. Bryant v. State, 841 N.E.2d 1154, 1156 (Ind. 2006). A single aggravator can support an enhanced sentence, though “whether and to what extent a sentence should be enhanced [based solely on the defendant’s criminal history] turns on the weight of an individual’s criminal history.” Id. Here, the trial court described Craft’s criminal history, with no objections, as follows:

. . . Craft’s criminal history is extensive, going back to the arson charge as a juvenile, back in Nineteen Eighty-Three, through the various felony convictions that he has, five prior felony convictions, numerous misdemeanors, which I don’t give much weight to misdemeanors, but, and then also in addition to, or included in those five felony convictions is the one I find the most serious, that being an intimidation charge involving the same victim [as the victim in the rape case]. That while he’s on parole . . . , he commits this rape. Same victim. . . . He was on parole at the time of this crime. He has been on probation and parole and committed crimes on numerous occasions as pointed out by the State.

Appellant’s App. p. 15-16. In our view, even if Craft had raised a sentencing argument on direct appeal, he would not have succeeded, inasmuch as Blakely does not apply to criminal history and Craft’s extensive criminal history, alone, warrants the trial court’s decision to impose the maximum sentence. For all these reasons, the post-conviction court properly denied Craft’s petition for post-conviction relief.

The judgment of the post-conviction court is affirmed.

CRONE, J., and BROWN, J., concur.