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IN THE
COURT OF APPEALS OF INDIANA

FLOYD E. MARSH,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A04-1006-CR-412
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Thomas Newman, Jr., Judge
Cause No. 48D03-0210-FB-344

May 31, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Floyd Marsh appeals the trial court's denial of his motion for relief from judgment. We affirm.

Issue

The dispositive issue before us is whether Marsh's motion for relief from judgment was a proper method of challenging his convictions for Class B felony criminal deviate conduct, Class D felony criminal confinement, and Class A misdemeanor battery.

Facts

On October 28, 2002, the State charged Marsh with Class B felony criminal deviate conduct, Class D felony criminal confinement, and Class A misdemeanor battery. On February 10, 2003, Marsh pled guilty as charged. Marsh failed to appear at his sentencing scheduled for March 11, 2003, and the trial court continued the sentencing to March 31, 2003. Marsh also failed to appear for this hearing, and the trial court issued a warrant for his arrest.

Marsh was not located and taken into custody until March 8, 2009. At Marsh's sentencing hearing on April 20, 2009, he moved to withdraw his guilty plea, which the trial court denied. After sentencing, Marsh directly appealed the denial of his motion to withdraw his guilty plea and the trial court's sentencing decision. We affirmed. Marsh v. State, No. 48A05-0905-CR-299 (Ind. Ct. App. Feb. 17, 2010).

On March 19, 2010, Marsh filed a pro se motion for relief from judgment. The motion made a number of allegations, including that the original probable cause affidavit was defective, that he was unrepresented by counsel at critical stages of the proceedings, and that his guilty plea was not entered into intelligently and voluntarily. The trial court conducted a hearing on the motion on May 24, 2010, immediately after which it denied the motion.

Marsh initiated the present appeal. On September 17, 2010, this court sua sponte ordered Marsh to show cause why the appeal should not be dismissed, as it appeared he was required to challenge his criminal convictions via post-conviction relief proceedings, if at all. On October 21, 2010, after a filing by Marsh responding to our order to show cause, we discharged the order and allowed this appeal to proceed.

Analysis

In its brief, the State re-raises the question of whether it was permissible for Marsh to challenge his criminal convictions via a motion for relief from judgment, pursuant to Indiana Trial Rule 60(B), as opposed to a petition for post-conviction relief, pursuant to Indiana Rules of Procedures for Post-Conviction Remedies Rule 1. Although this court has allowed this appeal to proceed and we generally are reluctant to overrule prior orders of this court, we may do so if there is clear authority establishing that the previous order was erroneous as a matter of law. Dawson v. State, 938 N.E.2d 841, 842 n.1 (Ind. Ct. App. 2010), adopted, 943 N.E.2d 1281 (Ind. 2011).

We conclude that the State is correct and that Marsh was required to challenge the validity of his convictions in a post-conviction relief proceeding, if at all. Our supreme court addressed this issue in Van Meter v. State, 650 N.E.2d 1138 (Ind. 1995), wherein a criminal defendant attempted to challenge his conviction through a Rule 60(B) motion for relief from judgment. The court noted that the Indiana Trial Rules, including Rule 60(B), generally apply only to civil cases. Van Meter, 650 N.E.2d at 1138. Additionally, the court stated that criminal defendants may not circumvent the rules governing post-conviction relief proceedings "by seeking remedies under the civil law." Id. Ultimately, the court held that the defendant was "required" to raise any collateral challenges to his convictions through post-conviction procedures. Id. at 1139.

The same result must apply to Marsh: he was required to file a post-conviction relief petition in order to challenge his convictions, rather than a civil motion for relief from judgment. The proper resolution of this case, however, is to affirm the trial court's denial of Marsh's motion for relief from judgment, rather than dismissing the appeal. See Van Meter, 650 N.E.2d at 1139 (affirming trial court's denial of motion for relief from judgment rather than dismissing appeal).

Conclusion

We affirm the trial court's denial of Marsh's motion for relief from judgment, without prejudice to his ability to file a petition for post-conviction relief if he wishes to do so.

Affirmed.

RILEY, J., and DARDEN, J., concur.