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IN THE
COURT OF APPEALS OF INDIANA

MYRON PRYOR,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-1009-CR-1176
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Steven R. Eichholtz, Judge
Cause No. 49G20-0205-FA-124879

July 15, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Myron Pryor appeals the denial of his petition for permission to file a belated notice of appeal. We affirm.

Issue

Pryor raises one issue, which we restate as whether the trial court properly denied his petition for permission to file a belated notice of appeal.

Facts

In May 2002, Pryor was charged with Class A felony dealing in cocaine or a narcotic, two counts of Class C felony possession of cocaine or a narcotic, and Class A misdemeanor possession of marijuana or hash. In August 2002, Pryor pled guilty to the charges. The trial court sentenced Pryor to forty years on the Class A felony, with thirty years suspended, to eight years on one of the Class C felonies, and to one year on the Class A misdemeanor. The trial court did not sentence Pryor on the remaining Class C felony. The sentences were to be served concurrently for an aggregate sentence of forty years. On August 17, 2010, Pryor filed a petition for permission to file a belated appeal, which was denied the same day without a hearing. Pryor now appeals.

Analysis

Pryor contends that the trial court improperly denied his petition for permission to file a belated appeal without holding an evidentiary hearing. Pursuant to Indiana Post-Conviction Rule 2(a), a defendant may seek permission to file a belated notice of appeal 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 or belated motion to correct error is within the sound discretion of the trial court." Moshenek v. State, 868 N.E.2d 419, 422 (Ind. 2007). The defendant bears the burden of proving by a preponderance of the evidence that he or she was without fault in the delay of filing and was diligent in pursuing permission to file a belated notice of appeal. Id. at 422-23. There are no set standards of fault or diligence. Id. at 423. Several factors are relevant to the defendant's diligence and lack of fault in the delay of filing, including 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 that contributed to the delay. Id. Where a trial court does not conduct a hearing, we owe no deference to its factual determinations because they were based on a paper record. Id. at 424.

Even if Pryor was without fault in not pursuing a timely direct appeal, he has not established that he was diligent. Pryor contends that neither the trial court nor the attorney who represented him at sentencing informed him of his right to appeal his sentence. He also claims that he was not made aware of Collins v. State, 817 N.E.2d 230 (Ind. 2004), which clarified that the proper vehicle for raising a sentencing issue was a direct appeal and not a post-conviction proceeding, until June 1, 2010, when another offender gave him the Collins decision. Finally, he explains that, shortly after the Collins decision, the law library faculty removed all law books and placed all relevant materials

onto computers, which he is unable to adequately use for legal research. Pryor submitted only his own affidavit to support his assertions.

Without a transcript of the guilty plea and sentencing hearing, we are left with only Pryor's self-serving assertion that he was not informed of his right to appeal. Even if we were to assume he is correct, Pryor's reliance on Collins appears to be misplaced. First, it does not appear that Pryor mistakenly sought to challenge his sentence in a post-conviction relief proceeding or was otherwise confused about the proper procedure for challenging his sentence. Moreover, Collins was decided in 2004, and Pryor did not file his petition until 2010. Regardless of how Pryor learned of the Collins decision or his limited computer skills, the six-year-delay does not show he diligently pursued a direct appeal.

Without more, Pryor's self-serving affidavit did not establish by a preponderance of the evidence that he diligently pursued permission to file a belated notice of appeal from the time he was sentenced in 2002 until he filed the petition in 2010. Further, he has not established that the trial court should have conducted an evidentiary hearing to give him the opportunity to prove his allegations—a proposition for which he cites no legal authority.

Conclusion

Pryor has not established he was entitled to a hearing on his petition for permission to file a belated appeal. Moreover, he has not established that the trial court improperly denied his petition. We affirm.

Affirmed.

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