

Case Summary

Charles Christian, *pro se*, appeals the post-conviction court's denial of his petition for post-conviction relief. Specifically, he contends that his trial counsel was ineffective and that his guilty plea was not knowing and voluntary. Although Christian's plea agreement did not call for any probation, the trial court, before accepting the agreement, advised him that Indiana law required some probation because a portion of his fifty-one-year sentence was suspended. After advising Christian that it was inclined to impose a single day of non-reporting probation to satisfy the law, Christian said that he understood. The court then accepted the plea agreement and sentenced Christian accordingly. Based upon these facts, Christian cannot establish ineffective assistance of counsel or that his guilty plea was unknowing or involuntary. We therefore affirm the post-conviction court.

Facts and Procedural History

The underlying facts of this case, taken from this Court's opinion on Christian's direct appeal, are as follows:

On September 24, 2003, Defendant Charles Christian entered the home of John Stewart, located at 7047 West 10th Street. At Mr. Stewart's home was his eighteen-year-old son, Chad Stewart, and the victim, Angelique McBride, who is the ex-girlfriend of Charles Christian. While Mr. Christian was in the home, he went into the bedroom occupied by John Stewart and Angelique McBride. He then put handcuffs on John Stewart and bound his feet leaving him in the bedroom where he was unable to get out of the bedroom due to being confined with the handcuffs and the bindings on the leg. At the time that he bound Mr. Stewart he was armed with a handgun on his waistband and the defendant went upstairs and bound Chad Stewart with handcuffs and bindings on his feet thereby restricting his movement as well. And at the time he was once again armed with a handgun, which was on his waistband. The Defendant then proceeding downstairs where he went into the living room with the victim Angelique McBride and while he had the handgun still in his waistband and

then later within reach of him, he then had sexual intercourse with Angelique McBride against her will.

Christian v. State, No. 49A04-0408-CR-422 (Ind. Ct. App. Apr. 26, 2005), slip op. at 2.

The State charged Christian with Class A felony criminal deviate conduct, Class A felony rape, Class B felony burglary, three counts of Class B felony criminal confinement, and two counts of Class D felony pointing a firearm. In June 2004, Christian entered into a plea agreement under which he pled guilty to rape and two counts of criminal confinement and the State dismissed the remaining charges. The plea agreement called for an aggregate sentence of fifty-one years with ten years suspended. The agreement was silent regarding probation.

At the guilty plea hearing, an issue arose concerning whether Christian would have to be placed on probation because of the portion of his sentence that was suspended.

The following colloquy took place:

THE COURT: . . . The plea in and of itself does not contemplate, doesn't speak to probation.

MS. ABEL [defense counsel]: We've dealt with that. No probation. He's doing an extra year executed in lieu of any probation.

THE COURT: Okay.

M[S]. ERATO [the State]: Mr. Christian will be sixty-five years old approximately when he gets out. Ms. Korobov has agreed that he does not have to do probation.

THE COURT: Okay. It will be---I just want to make this clear for the record. I'll have to put him, the ten years will really be just be a ten-year insurance policy that he not commit any other crimes, correct?

MS. ABEL: Correct.

MS. ERATO: Right.

THE COURT: All right. I'll have to---you understand that's the point of that ten-year suspended sentence, Mr. Christian?

MR. CHRISTIAN: Yes.

THE COURT: I'm going to have to figure out how to effectuate that in terms of making that valid, and it may be a day of non-reporting probation

or something like that, but that will be probably how I do it, okay? Do you understand what I just said?

MR. CHRISTIAN: Yes, I do.

THE COURT: The law requires some probation if there's a suspended sentence and we understand, I understand what this is dealing with. Frankly it could also deal with the no-contact order, which the court has [the] authority to order that you can't have any contact with Ms. McBride while you're incarcerated and if you were to violate the order while incarcerated the court could impose that suspended sentence, and I wanted to get that on the record before we completed this hearing; do you understand that?

MR. CHRISTIAN: Yes.

THE COURT: All right. Then the court does find that the defendant understands the possible sentence and fines under the plea, that his plea was freely and voluntarily made and that there is a factual basis for it and the court will accept the plea and find the defendant guilty

Ex. p. 24-26.

Christian later sought to withdraw his guilty plea on grounds that the State had used the threat of filing a habitual offender count to coerce him into accepting it, but the trial court denied this motion. The trial court sentenced Christian to an aggregate term of fifty-one years with ten years suspended and placed him on a single day of non-reporting probation. Christian filed a direct appeal challenging the trial court's denial of his motion to withdraw his guilty plea as well as his sentence on *Blakely* grounds, and this Court affirmed. *Christian*, No. 49A04-0408-CR-422.

In August 2005, Christian filed a *pro se* petition for post-conviction relief alleging ineffective assistance of trial counsel and that his guilty plea was not knowing and voluntary.¹ Following a hearing, the trial court issued findings of fact and conclusions of law. The findings provide, in pertinent part:

¹ According to the post-conviction court's findings of fact and conclusions of law, the post-conviction court found that Christian raised only one issue in his petition for post-conviction relief,

5. . . . The Court finds that [Christian] was properly advised that [he] would have to be placed on probation for a period of time—even for just a single day. The Court finds [Christian] understood and agreed to this provision.

* * * * *

10. On August 2, 2007, an evidentiary hearing was held on the post-conviction relief petition. [Christian’s] trial counsel, Diane Abel, testified as did [Christian]. The Court finds attorney Abel’s testimony persuasive on the issue of what plea terms [Christian] agreed to. [Christian] advised his counsel that he was opposed to being on probation and told Abel that he did not want to undergo a lengthy period of probation. In fact, he rejected an earlier plea offer from the State and, at [Christian’s] request, attorney Abel negotiated a new plea agreement which called for an additional year in the Department of Correction in lieu of a standard probationary term. When advised by the trial court of the likelihood of a period of non-reporting probation, he did not object or express any concerns to counsel.

11. The reasons why [Christian] now objects to a one day period of non-reporting probation are not known to the Court nor does it appear such concerns were ever voiced to the trial court or to defense counsel. Moreover, in light of the trial court[’s] discussion of the necessity for some period of probation due to the suspended portion of the sentence, and [Christian’s] acquiescence to the same, [Christian] has failed to show that he either misunderstood or did not agree to such a term.

Appellant’s App. p. 315-17. As such, the court concluded:

It is clear from the record that the trial court recognized the parties did not wish for [Christian] [to] be placed on probation within the standard meaning of the term, i.e. regularly reporting to an officer, restrictions on personal freedoms, payment of probationary costs, etc. However, in order to give full effect to the terms of the plea while still adhering to the requirements of I.C. 35-50-2-2,^[2] the sentencing court was required to give some period of probation. The trial court chose the least restrictive option

ineffective assistance of counsel. However, it appears that Christian really raised two issues. We find that Christian raises two issues on appeal.

² Indiana Code § 35-50-2-2(c) provides, “Except as provided in subsection (e), whenever the court suspends a sentence for a felony, it shall place the person on probation under IC 35-38-2 for a fixed period to end not later than the date that the maximum sentence that may be imposed for the felony will expire.”

possible—a day of non-reporting probation. [Christian] was not obliged to do anything on that single day of probation. [Christian] was advised of the need for the trial court to impose some manner of a probationary term, even for just one day, and he agreed to it. The sentencing court’s imposition of probation in this manner did not violate the plea agreement.

As the imposition of non-reporting probation in this fashion complied with the stated purpose behind the plea agreement, Abel had no need to object or otherwise seek leave to withdraw from the agreement. Counsel’s failure to attempt to do so does not constitute ineffective assistance of counsel. Further, [Christian] has failed to show that he was prejudiced by the imposition of his probationary sentence. [Christian] is entitled to no relief here.

Id. at 320. Christian, *pro se*, now appeals.

Discussion and Decision

Christian contends that the post-conviction court erred in denying his petition for post-conviction relief. The petitioner in a post-conviction proceeding bears the burden of establishing grounds for relief by a preponderance of the evidence. *Henley v. State*, 881 N.E.2d 639, 643 (Ind. 2008). When appealing the denial of post-conviction relief, the petitioner stands in the position of one appealing from a negative judgment. *Id.* To prevail on appeal from the denial of post-conviction relief, a petitioner must show that the evidence as a whole leads unerringly and unmistakably to a conclusion opposite that reached by the post-conviction court. *Id.* at 643-44. Further, the post-conviction court in this case made findings of fact and conclusions of law in accordance with Indiana Post-Conviction Rule 1(6). Although we do not defer to the post-conviction court’s legal conclusions, “[a] post-conviction court’s findings and judgment will be reversed only upon a showing of clear error—that which leaves us with a definite and firm conviction that a mistake has been made.” *Id.* (quoting *Ben-Yisrayl v. State*, 729 N.E.2d 102, 106 (Ind. 2000), *reh’g denied*).

Christian makes several arguments on appeal, which we condense into two. First, he contends that his trial counsel was ineffective. Second, he contends that his guilty plea was not knowing and voluntary.

I. Ineffective Assistance of Counsel

Though Christian makes several arguments regarding why his trial counsel was ineffective, he essentially contends that his trial counsel was ineffective because she did not inform him that Indiana law required some probation because of his suspended sentence. To prevail on a claim of ineffective assistance of counsel, a petitioner must demonstrate both that his counsel's performance was deficient and that he was prejudiced by that deficient performance. *Ben-Yisrayl v. State*, 729 N.E.2d at 106 (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). Failure to satisfy either prong will cause the claim to fail. *Grinstead v. State*, 845 N.E.2d 1027, 1031 (Ind. 2006). Most ineffective assistance of counsel claims can be resolved by a prejudice inquiry alone. *Id.*

Because Christian was convicted pursuant to a guilty plea, we must analyze his claim under *Segura v. State*, 749 N.E.2d 496, 499 (Ind. 2001). *Segura* categorizes two main types of ineffective assistance of counsel cases. *Smith v. State*, 770 N.E.2d 290, 295 (Ind. 2002). The first category relates to “an unutilized defense or failure to mitigate a penalty.” *Willoughby v. State*, 792 N.E.2d 560, 563 (Ind. Ct. App. 2003), *trans. denied*. The second category relates to “an improper advisement of penal consequences,” and this category has two subcategories: (1) “claims of intimidation by exaggerated penalty or enticement by an understated maximum exposure” and (2) “claims of incorrect advice as to the law.” *Id.*

Christian asserts that had attorney Abel advised him that probation (even a single day of non-reporting probation) was required because of the suspended portion of his sentence, he never would have pled guilty. His challenge therefore qualifies under subsection (2) of the second category, specifically, an improper advisement of penal consequences relating to incorrect advice as to the law. In order to state a claim for post-conviction relief under this subcategory, a petitioner may not simply allege that a plea would not have been entered, nor is the petitioner's conclusory testimony to that effect sufficient to prove prejudice. *Segura*, 749 N.E.2d at 507. The petitioner must instead "establish, by objective facts, circumstances that support the conclusion that [trial] counsel's errors in advice as to penal consequences were material to the decision to plead." *Id.* "Rather, specific facts, in addition to the petitioner's conclusory allegation, must establish an objective reasonable probability that competent representation would have caused the petitioner not to enter a plea." *Id.* Under this analysis, the focus must be on whether the petitioner proffered specific facts indicating that a reasonable defendant would have rejected the petitioner's plea had the petitioner's trial counsel performed adequately. *See Willoughby*, 792 N.E.2d at 564.

As detailed above, although Christian did not want any probation and, in fact, agreed to an additional year of imprisonment in lieu of any probation, the trial court, before accepting the plea agreement, explained that at least one day of probation was required by statute because of the suspended portion of his sentence. The court indicated that it was inclined to impose a single day of non-reporting probation to effectuate this, and Christian said that he understood. Christian acknowledged that he

would receive a single day of non-reporting probation yet still pled guilty. These objective facts show that a reasonable defendant would not have rejected the plea had attorney Abel initially advised Christian that some probation was required. Given the minimal nature of the misinformation that was readily corrected by a single day of non-reporting probation and the highly favorable nature of the plea, we conclude that Christian has failed to satisfy his high burden to show that the post-conviction court erred in determining that trial counsel's misinformation was material to his decision to plead guilty and that a reasonable defendant in his situation would have rejected the ultimate plea agreement.

II. Plea was Knowing and Voluntary

Christian next contends that his plea was not knowing and voluntary because he did not agree to the provision in his plea agreement calling for a single day of non-reporting probation. A guilty plea constitutes a waiver of constitutional rights, and, therefore, the trial court must evaluate the validity of every plea before accepting it. *Davis v. State*, 675 N.E.2d 1097, 1102 (Ind. 1996). A defendant's guilty plea is not valid unless it is knowing, voluntary, and intelligent. *Id.*

The guilty plea hearing transcript shows that Christian pled guilty without any threats or coercion and while stating that he was satisfied with his trial attorney. The trial court advised Christian of his constitutional rights and followed the statutory requirements. The court explained each of the counts to which Christian pled guilty as well as the penal consequences. As detailed above, the court clarified to Christian that, contrary to the terms of his plea agreement, Indiana law required some probation

because a portion of his sentence was suspended. The court stated that it was inclined to impose a single day of non-reporting probation to satisfy this requirement, and Christian indicated his understanding. The court then concluded that “the defendant understands the possible sentence and fines under the plea, that his plea was freely and voluntarily made and that there is a factual basis for it and the court will accept the plea and find the defendant guilty” Ex. p. 26. It is clear from the record that Christian understood that he would receive a single day of non-reporting probation yet still pled guilty. His plea was therefore knowing and voluntary.

Affirmed.

MAY, J., and MATHIAS, J., concur.