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IN THE
COURT OF APPEALS OF INDIANA

AMIT PATEL	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 49A05-1101-CR-104
	)	
STATE OF INDIANA	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Steven R. Eichholtz, Judge
Cause No. 49G20-0609-FA-172269

August 12, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Petitioner, Amit Patel (Patel), appeals the post-conviction court's denial of his motion for dismissal.

We affirm.

ISSUE

Patel raises one issue on appeal, which we restate as follows: Whether the post-conviction court properly denied Patel's motion to dismiss for lack of jurisdiction because the State failed to file an appearance for trial.

FACTS AND PROCEDURAL HISTORY

On September 27, 2006, the State filed an Information charging Patel with two Counts of dealing in cocaine, as Class A felonies, and two Counts of possession of cocaine, as Class C felonies. Patel and his counsel appeared for various pre-trial hearings. On November 15, 2007, Patel entered into a plea agreement with the State, pleading guilty to a Class B felony dealing in cocaine in exchange for the dismissal of the other charges. On January 10, 2008, the trial court held a sentencing hearing and sentenced Patel to a term of six years. Several months later, Patel filed a petition for modification of his sentence. On February 13, 2009, the trial court modified his sentence to time served and placed Patel on probation for one year. Subsequently, Patel violated his probation, admitted to the violation during a hearing, and the trial court imposed the original six year sentence. In December of 2010, Patel filed an unverified motion for dismissal for lack of jurisdiction alleging that because the State never filed an appearance, the trial court's jurisdiction was void. On December 30, 2010, the

post-conviction court denied the motion without a hearing.

Patel now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Standard of Review*

Under the rules of post-conviction relief, the petitioner must establish the grounds for relief by a preponderance of the evidence. Ind. Post-Conviction Rule 1, § 5; *Strowmatt v. State*, 779 N.E.2d 971, 974-75 (Ind. Ct. App. 2002). To succeed on appeal from the denial of relief, the post-conviction petitioner must show that the evidence is without conflict and leads unerringly and unmistakably to a conclusion opposite that reached by the post-conviction court. *Id*. at 975. The purpose of post-conviction relief is not to provide a substitute for direct appeal, but to provide a means for raising issues not known or available to the defendant at the time of the original appeal. *Id*. If an issue was available on direct appeal but not litigated, it is waived. *Id*.

II. *Motion to Dismiss*

Patel contends that because the State failed to file an appearance at trial, the trial court never received jurisdiction and thus his conviction is void. Pursuant to Indiana Criminal Rule 2.1, "[a]t the time a criminal proceeding is commenced, the prosecuting attorney for the county where the action is pending shall file an appearance form[.]" Reviewing the chronological case summary, we cannot find an entry indicating that the State filed its appearance in Patel's case. Nevertheless, we still conclude that the trial court had jurisdiction to enter a judgment of conviction.

Subject matter jurisdiction concerns whether or not a particular court has jurisdiction over the general class of cases to which the particular case belongs. *Truax v. State*, 856 N.E.2d 116, 121-22 (Ind. Ct. App. 2006). Subject matter jurisdiction must be derived from the Constitution or statute and cannot be conferred by the consent or agreement of the parties. *Id*. at 122. An objection to subject matter jurisdiction cannot be waived. *Id*. Here, Patel was convicted by the Marion Superior Court. In accordance with Ind. Code § 33-33-49-9, Marion Superior Courts have concurrent and coextensive jurisdiction with the Marion Circuit Court in criminal matters. As such, the trial court had subject matter over Patel's criminal case.

Turning to personal jurisdiction, we have repeatedly held that jurisdiction of the person refers to the right of the court to exercise jurisdiction over the particular parties who are brought before the court. *Truax*, 856 N.E.2d at 122. Objections to jurisdiction of the person may be waived by failure to assert them in a timely manner. *Id*. We agree with the State that *if* the State's failure to file an appearance can implicate the trial court's personal jurisdiction, Patel did not object in a timely manner.[1] Patel appeared with his trial counsel at hearings, filed motions, attended hearings, and pled guilty. He was sentenced, sought and received a sentence modification, and then pled guilty to a probation violation. At no point

[1] It might be more appropriate to characterize the failure to file an appearance as a procedural error, which does not implicate personal or subject matter jurisdiction. *See K.S. v. State*, 849 N.E.2d 538, 541-42 (Ind. 2006) (a juvenile court's failure to comply with the statutory requirement to approve the filing of a delinquency petition was merely a procedural error that did not impact the court's jurisdiction).

during these proceedings did Patel raise a personal jurisdiction claim; rather, it was not until the post-conviction proceedings that Patel brought his allegation to the attention of the court. As such, we find that Patel waived his claim that the trial court lacked personal jurisdiction.

CONCLUSION

Based on the foregoing, we conclude that the post-conviction court properly denied Patel's motion for dismissal.

Affirmed.

NAJAM, J., and MAY, J., concur.