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**IN THE  
COURT OF APPEALS OF INDIANA**

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JOE M. MEYERS, )

Appellant-Petitioner, )

vs. )

No. 49A04-1103-PC-144

STATE OF INDIANA, )

Appellee-Respondent. )

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Lisa F. Borges, Judge  
Cause No. 49G04-0504-PC-71150

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**August 30, 2011**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**RILEY, Judge**

## STATEMENT OF THE CASE

Appellant-Petitioner, Joe M. Meyers (Meyers), appeals the post-conviction court's denial of his request for post conviction relief.

We affirm.

## ISSUE

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

## FACTS AND PROCEDURAL HISTORY

On April 29, 2005, the State filed an Information charging Meyers with one Count each of robbery and confinement, as Class B felonies, one Count of unlawful possession of a firearm by a serious violent felon, as a Class C felony, and one Count of resisting law enforcement, as a Class A misdemeanor. On October 29, 2007, Meyers pled guilty to the robbery and confinement charges in exchange for dismissal of the other charges, a guarantee of concurrent sentences, and a maximum sentence cap of eight years. On November 13, 2007, the trial court imposed concurrent sentences of seven years on each conviction. On July 1, 2010, Meyers filed a petition for post-conviction relief for lack of jurisdiction claiming that because the State had filed an appearance form with minor errors, the trial court's jurisdiction was void. On February 18, 2011, the post-conviction court issued findings and conclusions denying relief.

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

## DISCUSSION AND DECISION

### *I. Standard of Review*

Under the rules of post-conviction relief, a petitioner must establish his claims by a preponderance of the evidence. Ind. Post-Conviction Rule 1, §5; *Ben-Yisrayl v. State*, 738 N.E.2d 253, 258 (Ind. 2000). To succeed on appeal, the post-conviction petitioner must show that the evidence as a whole leads unerringly and unmistakably to a decision opposite that reached by the post-conviction court. *McCary v. State*, 761 N.E.2d 389, 391 (Ind. 2002).

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. *Strowmatt v. State*, 779 N.E.2d 971, 975 (Ind. Ct. App. 2002). If an issue was available on direct appeal but not litigated, it is waived. *Id.*

### *II. Petition for Post-Conviction Relief*

Meyers claims that the State's failure to file an appearance form implicates the jurisdiction of the trial court to hear the case, and thus, his conviction is void. We disagree. Indiana Criminal Rule 2.1 states, "[a]t the time a proceeding is commenced, the prosecuting attorney for the county where the action is pending shall file an appearance form," that contains all attorney contact information, the case type, fax information, the number of the arrest report, identification number for a fingerprint report, and any other information to conform with state and local rules. Our review of the record reveals that an appearance form was filed with the charging information, but the form was lacking both an arrest report number, a file stamp by the clerk's office, and a signature by the deputy prosecuting attorney.

However, despite these omissions, we conclude that the trial court had jurisdiction to enter a judgment of conviction.

Subject matter jurisdiction is the power to hear and determine cases of the general class to which any particular proceeding belongs. *K.S. v. State*, 849 N.E.2d 538, 542 (Ind. 2006). Subject matter jurisdiction must be conferred by Constitution or statute and cannot be conferred by the consent or agreement of the parties. *Truax v. State*, 856 N.E.2d 116, 122 (Ind. Ct. App. 2006). Further, an objection to subject matter jurisdiction cannot be waived. *Id.* Meyers was convicted by the Marion County Superior Court for a crime he committed in Marion County. The Marion County Superior Court has original jurisdiction over any violations of Indiana law that occur within the county. Ind. Code § 33-33-49-9(3). Therefore, the trial court had subject matter over Meyer's criminal case.

Personal jurisdiction 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. Unlike subject matter jurisdiction, a defendant can waive personal jurisdiction by failing to make a timely objection. *Id.* For over two years, Meyers attended hearings with and without counsel, filed motions, and pled guilty in exchange for dismissed charges and concurrent sentencing. At no point during these proceedings did Meyers raise a personal jurisdiction claim; rather, it was not until post-conviction proceedings that Meyers brought his allegation

to the attention of the court. As such, we find that Meyers waived his claim of personal jurisdiction.<sup>1</sup>

### CONCLUSION

Based on the foregoing, we conclude that the post-conviction court properly denied Meyer's petition for post-conviction relief.

Affirmed.

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

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<sup>1</sup> Insofar as Meyers makes arguments under the Fourth, Fifth, and Fourteenth Amendment of the United States Constitution, we find his claim waived for failure to make a cogent argument. *See* Ind. Appellate Rule 46(A)(8).