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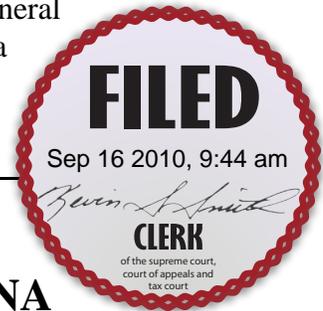
APPELLANT PRO SE:

TIMOTHY MANGES
Michigan City, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

ANN L. GOODWIN
Deputy Attorney General
Indianapolis, Indiana



**IN THE
COURT OF APPEALS OF INDIANA**

TIMOTHY MANGES,)
)
Appellant-Petitioner,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Respondent.)

No. 20A05-1003-PC-186

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry C. Shewmaker, Judge
Cause No. 20C01-0711-PC-25

September 16, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Petitioner, Timothy Manges (Manges), appeals the post-conviction court's denial of his petition for post-conviction relief.

We affirm.

ISSUES

Manges presents one issue for our review, which we restate as the following two:

- (1) Whether his due process rights were violated because of an inaccurate charging information; and
- (2) Whether the trial court lacked subject matter jurisdiction.

FACTS AND PROCEDURAL HISTORY

In our memorandum decision considering Manges' direct appeal, we stated the following facts:

A.M. was [Mother's] oldest child, who was born on July 22, 1987. [Mother] and Timothy Manges were married in 1994 and had two children, M.M. and T.M. They were divorced in 2000 with one of the reasons being that Manges and A.M. did not get along. During the marriage, [Mother] saw Manges doing what she thought were inappropriate things with A.M., such as taking baths with her and lying in bed with her while naked. [Mother] told Manges on numerous occasions to stop these activities. [Mother] also wondered if Manges had touched A.M., but she thought he was not capable of it. After the divorce, [Mother] lived in Goshen and maintained a friendly relationship with Manges.

Manges contacted [Mother] about spending the night at her house in order to see his children perform at a church program the next morning, and then take them on visitation. Manges' request to spend the night was not unusual. After arriving, Manges watched a movie with [Mother] and A.M. in [Mother]'s bedroom. When the movie was over Manges was to spend the night in his children's bedroom. [Mother] went to sleep watching the movie. After the movie was over, A.M. was not feeling well and went to bed in her bedroom.

Manges gave her Tylenol for her headache. Manges then pulled A.M. off the bed and rubbed his penis against her. [Mother,] by then had awakened and noticed that Manges and A.M. were not there. [Mother] went to check on A.M. and found her in her bedroom with the lights turned off. [Mother] turned the lights on and saw A.M. bending over the bed with her feet on the floor and Manges standing right behind her. Manges pushed A.M. onto the bed and quickly set [sic] down in a chair. [Mother] told Manges to stand up. At first he refused, but then did stand up. His penis was partially erect. Manges left the room, and [Mother] spoke with A.M. who was defensive. [Mother] then spoke with Manges. He admitted that over a period of a couple of years he had been rubbing A.M., and that he had touched her breast and vagina.

[Mother] contacted the police. A.M. told them that in 1999 Manges had put his mouth on her vagina. Detective Mackowiak took Manges' statement after giving him the Miranda warning. Manges said he had been touching A.M. in an inappropriate manner for a year and a half, that he had performed oral sex on her, and he had placed his finger in her vagina.

Manges v. State, Cause No. 20A05-0504-CR-181, slip op. 1-2 (Ind. Ct. App. Jan. 24, 2007).

On December 21, 2000, the State filed an Information charging Manges with child molesting, as a Class A felony, Ind. Code § 35-42-4-3(a)(1). On November 14, 2001, after a two-day trial, a jury found Manges guilty as charged. On January 17, 2002, Manges was sentenced to fifty years in the Department of Correction (DOC). Thereafter, Manges pursued a direct appeal in which he raised ten issues, one of which being that he was denied due process because the State failed to allege an essential element of the child molesting statute in its charging Information. On January 24, 2007, we affirmed Manges' conviction. Our supreme court denied transfer on March 22, 2007.

On October 18, 2007, Manges filed his petition for post-conviction relief. Manges again argued that he was deprived due process because the State's charging Information alleged that he had caused his victim to submit to deviate conduct instead of alleging that he

performed the deviate conduct himself, was defective. On December 7, 2007, the State filed its response to Manges' petition. On August 27, 2009, the post-conviction court conducted a hearing on the petition. On March 9, 2010, the post-conviction court issued an Order denying his petition, holding that because Manges had already raised this issue on direct appeal, the doctrine of *res judicata* barred relief.

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

DISCUSSION AND DECISION

I. *Standard of Review*

The petitioner has the burden of establishing the grounds for post-conviction relief by a preponderance of the evidence. Ind. Post-Conviction Rule 1(5). Because Manges is appealing from a negative judgment, to the extent his appeal turns on factual issues, he must provide evidence that as a whole unerringly and unmistakably leads us to believe there is no way within the law that a post-conviction court could have denied his post-conviction relief petition. *See Stevens v. State*, 770 N.E.2d 739, 745 (Ind. 2002), *reh'g denied, cert. denied*, 540 U.S. 830 (2003). It is only where the evidence is without conflict and leads to but one conclusion, and the post-conviction court has reached the opposite conclusion, that its decision will be disturbed as contrary to law. *Godby v. State*, 809 N.E.2d 480, 482 (Ind. Ct. App. 2004), *trans. denied*. Post-conviction hearings do not afford defendants the opportunity for a "super appeal." *Moffitt v. State*, 817 N.E.2d 239, 248 (Ind. Ct. App. 2004), *trans. denied*. Rather, post-conviction proceedings provide a narrow remedy for collateral

challenges to convictions that must be based on grounds enumerated in the post-conviction rules. *Ross v. State*, 877 N.E.2d 829, 832 (Ind. Ct. App. 2007), *trans. denied*.

II. Charging Information

Manges argues that the post-conviction court erred by denying his petition for post-conviction relief. Specifically, he contends that his due process rights were violated based on what he alleges to be an inaccurate charging Information, which failed to “set forth all the essential elements to qualify as a violation of any given criminal statute.” (Appellant’s Br. p. 4). This defect, Manges argues, failed to “establish the subject matter jurisdiction of the trial court to enter a final judgment and sentence against [him].” (Appellant’s Br. p. 4).

On direct appeal, Manges claimed that he was “denied due process of law because the State failed to allege an essential element of the child molesting statute.” *Manges*, Cause No. 20A05-0504-CR-181, slip op. at 6. Manges went on to argue that the failure constituted fundamental error. In our discussion, we stated:

[a]n information that enables an accused, the court, and the jury to determine the crime for which conviction is sought satisfies due process. Errors in the information are fatal only if they mislead the defendant or fail to give him notice of the charge filed against him. Although the State may choose to do so, it is not required to include detailed factual allegations in the charging instrument.

Id. (citations omitted). We held that the charging Information was sufficient and Manges had not demonstrated that he was misled or was not given notice of the charge filed against him. *Id.*

At the post-conviction hearing, Manges argued that “the charging information does not constitute a valid crime in Indiana.” (Post-Conviction Hearing, p. 8). The post-conviction court determined that Manges had already raised this precise claim in his direct appeal, as fundamental error, and, thus, his claim was barred by the doctrine of *res judicata* and unavailable on post-conviction relief.

The doctrine of *res judicata* bars a later suit when an earlier suit resulted in a final judgment on the merits, was based on proper jurisdiction, and involved the same cause of action and the same parties as the later suit. *Reed v. State*, 856 N.E.2d 1189, 1194 (Ind. 2006). As a general rule, when a reviewing court decides an issue on direct appeal, the doctrine of *res judicata* applies, thereby precluding its review in post-conviction proceedings. *Id.* The doctrine of *res judicata* prevents the repetitious litigation of that which is essentially the same dispute. *Id.*

Despite Manges’ argument that his claim on post-conviction relief “substantially differ[s] as to the fact or point argued,” Manges is simply rephrasing his initial claim. *Overstreet v. State*, 877 N.E.2d 144, 150 n.2 (Ind. 2007) (“Although differently designated, an issue previously considered and determined in a defendant’s direct appeal is barred for post-conviction review on grounds of prior adjudication – *res judicata*.”). Thus, because Manges already raised the issue on direct appeal, based on the doctrine of *res judicata*, the post-conviction court did not err when it denied his petition.

III. *Subject Matter Jurisdiction*

Manges also argues that because the charging Information was deficient the trial court lacked subject matter jurisdiction. When jurisdictional facts are not in dispute, the question of whether a trial court had jurisdiction is reviewed *de novo*. *State v. D.B.*, 819 N.E.2d 904, 906 (Ind. Ct. App. 2004). Subject matter jurisdiction concerns whether a particular court has jurisdiction over the general class of actions to which the particular case belongs. *Griffith v. State*, 791 N.E.2d 235, 237 (Ind. Ct. App. 2003). Subject matter jurisdiction must be derived from the Constitution or statute and cannot be conferred by the consent or agreement of the parties. *Id.* An objection to subject matter jurisdiction cannot be waived. *Id.*

An Indiana circuit court has original jurisdiction in a criminal case unless exclusive jurisdiction is conferred upon another court by law. Indiana Code section 33-28-1-2(a). Here, the State filed a charging Information alleging that Manges committed child molesting in the Elkhart County Superior Court, which derives its jurisdiction from Indiana Code section 33-33-20-6 (“The Elkhart superior court has the same jurisdiction as the Elkhart circuit court.”). Thus, the trial court had jurisdiction over Manges’ criminal case. Even if we were to accept that there was a minor defect in the wording of the charging Information as Manges claims, “[m]inor variances from the wording of a statute do not make an information defective.” *Powers v. State*, 499 N.E.2d 192, 195 (Ind. 1986). Additionally, our supreme court stated that subject matter jurisdiction is not dependent upon the existence of a good cause of action or the sufficiency of the bill or complaint. *Brown v. State*, 219 Ind. 251, 37 N.E.2d 73, 77 (Ind. 1941). Therefore, because the trial court possessed general subject

matter jurisdiction over criminal offenses, and Manges was charged with a criminal offense, the trial court properly exercised subject matter jurisdiction over Manges.

CONCLUSION

Based on the foregoing, we conclude that the post-conviction court did not err when it denied Manges' petition based on the doctrine of *res judicata* and the trial court had proper subject matter jurisdiction over Manges.

Affirmed.

KIRSCH, J., and BAILEY, J., concur.