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IN THE
COURT OF APPEALS OF INDIANA

DANIEL J. HOLLEN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 42A01-1105-MI-206
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE KNOX CIRCUIT COURT
The Honorable Sherry Gregg Gilmore, Judge
Cause No. 42C01-1005-MI-304

October 5, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Daniel J. Hollen *pro se* appeals the trial court's denial of his motion to correct error. Hollen raises a number of issues. We affirm.

The relevant facts follow.[1] In 1997, the State charged Hollen with four counts of child molesting as class A felonies in the Knox Circuit Court under cause number 42C01-9707-CF-008 ("Cause No. 8"). In 2000, a jury found Hollen guilty on two of the counts, and the court sentenced Hollen.[2] On May 6, 2010, Hollen filed a Petition for Writ of State Habeas Corpus Relief in the Henry Superior Court and included Cause No. 8 in the caption. On May 11, 2010, the Henry Superior Court found that Hollen was attacking the validity of his conviction and sentence and transferred the case to the Knox Circuit Court under Ind. Post-Conviction Rule 1(c).[3] The court's order included cause number 33D01-1005-MI-0018 in the caption.

A CCS entry under cause number 42C01-1005-MI-304 reveals that the Knox Circuit Court received the case on transfer from the Henry Superior Court. On May 27, 2010, the court granted Hollen's Petition to Withdraw Writ of State Habeas Corpus Relief Without Prejudice. That same day, Hollen filed a *pro se* Amended Petition for

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[1] As explained further below, Hollen's brief impeded our review of the facts.

[2] The State alleges that Hollen was sentenced to fifteen years each for two counts of class B felony child molesting. Appellee's Brief at 1 (citing Appellant's Appendix at 6 and www.in.gov/apps/indcorrection/ofs). Page six of the Appellant's Appendix reveals only that a jury returned a guilty verdict on "Count II" and "Count III" and that a sentencing order was entered. Appellant's Appendix at 6.

[3] Ind. Post-Conviction Rule 1(c) provides:

> This Rule does not suspend the writ of habeas corpus, but if a petitioner applies for a writ of habeas corpus, in the court having jurisdiction of his person, attacking the validity of his conviction or sentence, that court shall under this Rule transfer the cause to the court where the petitioner was convicted or sentenced, and the latter court shall treat it as a petition for relief under this Rule.

Writ of State Habeas Corpus Relief. Hollen alleged that he was entitled to relief pursuant to Ind. Code § 34-25.5-1-1 and alleged that "at no time has the 'STATE' taken JURISDICTION to prosecute anything as it pertains to" him, that the "Affidavit of Determination of Probable Cause is 'DEVECTIVE [sic],'" and that the trial court judge was not "in a position to issue such 'ORDERS', because the Clerk of Knox County has yet to provide petitioner with [his] QUALIFICATIONS, and the SWORN and ATTESTED documentation by the Indiana Supreme Court Chief Justice that 'allowed' Attorney Bryon Jewel to be a 'Judge Pro Tempore.'" Appellant's Appendix at 63-65. On July 7, Hollen supplemented his petition.

On July 28, 2010, the court ordered Hollen to comply with the Indiana Rules of Procedure for Post-Conviction Remedies. On August 4, and August 30, 2010, Hollen supplemented his petition. That same month, Hollen filed a letter, a motion to correct error, and a motion to transfer the case back to Henry County. On August 24, 2010, the court denied Hollen's motion to correct error and motion to transfer, and attached a copy of Post-Conviction Rule 1.

On February 24, 2011, the State filed a motion to dismiss Hollen's case and alleged that dismissing the action would cause no appreciable harm to Hollen because he could pursue his claims under the appropriate procedure, Post-Conviction Rule 1. On March 9, 2011, the court granted the motion. On March 30, 2011, Hollen filed a "Motion to Correct Errors, and to Strike Document 'Motion to Dismiss' for Failure to Serve Petitioner, and to Apply Sanctions to the Knox County Prosecutor's Office." Id. at 174. On May 4, 2011, the court denied Hollen's motion.

The State argues that Hollen's brief "wholly fails to comply with the Indiana Rules of Appellate Procedure" and argues that this appeal should be dismissed or his arguments deemed waived. Appellee's Brief at 6. "[N]on-compliance with the rules relating to the drafting of briefs can result in the waiver of errors on review." Guardiola v. State, 268 Ind. 404, 406, 375 N.E.2d 1105, 1107 (1978). "Whether or not failure to comply with the substance of the appellate rules . . . constitutes a waiver of error on review, depends on whether 'we find his non-compliance with the rule sufficiently substantial to impede our consideration of the issue raised.'" Id. (quoting Davis v. State, 265 Ind. 476, 355 N.E.2d 836, 838 (1976)). Further, generally, a party waives an issue on appeal where the party fails to develop a cogent argument or provide adequate citation to authority and portions of the record. Smith v. State, 822 N.E.2d 193, 202-203 (Ind. Ct. App. 2005), trans. denied; see also Ind. Appellate Rule 46(A)(8)(a) (providing that the argument section of appellant's brief must "contain the contentions of the appellant on the issues presented, supported by cogent reasoning" and that "[e]ach contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on, in accordance with Rule 22").

Although Hollen is proceeding *pro se*, such litigants are held to the same standard as trained counsel and are required to follow procedural rules. Evans v. State, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004), trans. denied. Hollen's brief violates numerous Indiana Appellate Rules. His statement of issues contains two numbered sections with the first section covering three lines and the second paragraph covering approximately four pages. This statement does not comply with Ind. Appellate Rule 46(A)(4) which

provides that the statement of issues "shall concisely and particularly describe each issue presented for review."

Hollen's statement of case covers twenty-one pages of his fifty page brief and the first sentence states: "Under *Pease* states: ('general jurisdiction being conferred by constitution or statutes, and particular jurisdiction by instituting as action in a lawful manner')." Appellant's Brief at 11. Hollen's statement of case contains eight different sections and appears to contain Hollen's arguments.[4] This does not comply with Ind. Appellate Rule 46(A)(5), which provides that the statement of case "shall briefly describe the nature of the case, the course of the proceedings relevant to the issues presented for review, and the disposition of these issues by the trial court or Administrative Agency. Page references to the Record on Appeal or Appendix are required in accordance with Rule 22(C)."

Hollen's statement of facts begins as follows: "Fact (1): State of Indiana did not acquire the mandatory jurisdiction over the defendant July 25, 1997. Indiana Legislature through the *Indiana Rules of Court* requires the State of Indiana through procedures listed in the sections of: *Indiana Rules of Criminal Procedures*, and in *Indiana Rules of Trial Procedures* that requires the State of Indiana through Prosecutors to follow the required

[4] Hollen's statement of case contains the following subheadings: (1) "State of Indiana did not acquire the mandatory jurisdiction over the defendant on July 25, 1997;" (2) "Petitioner Submits His Last (2) Attorneys Never Filed 'Notice of Appearance Forms;'" (3) "March 26th, 1999 Plea Deal Not Brought to Defendant;" (4) "(3) Judge Pro Tempores Used Prior to Trial;" (5) "Prosecutorial Misconduct/Ineffective Counsel Amended Information and Evidence Tampering;" (6) "Affidavit For Determination Of Probable Cause has violated the Fourth, Fifth, and Fourteenth Amendments violations in Due Process;" (7) Public Defender's Office Errors in NOT finding the PLAIN and OBVIOUS ERRORS;" and (8) "Biased and Prejudicial Judge The Honorable Sherry B. Gregg Gilmore." Appellant's Brief at 11, 16-17, 20, 24, 26-27.

rules for acquiring 'subject-matter' jurisdiction in all criminal proceedings." Appellant's Brief at 32-33. Hollen's brief does not comply with Ind. Appellate Rule 46(A)(6) which provides that the statement of facts "shall describe the facts relevant to the issues presented for review but need not repeat what is in the statement of the case."[5]

The argument section of Hollen's brief begins on page forty-six and concludes on page forty-eight. The only citation to the record within the argument section is to a handwritten letter marked State's Exhibit 1 and included in the Appellant's Appendix. Accordingly, Hollen's brief does not comply with Ind. Appellate Rule 46(A)(8), which provides:

> (a) The argument must contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on, in accordance with Rule 22.
>
> (b) The argument must include for each issue a concise statement of the applicable standard of review; this statement may appear in the discussion of each issue or under a separate heading placed before

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[5] Ind. Appellate Rule 46(A)(6) provides in its entirety:

> Statement of Facts. This statement shall describe the facts relevant to the issues presented for review but need not repeat what is in the statement of the case.
>
> (a) The facts shall be supported by page references to the Record on Appeal or Appendix in accordance with Rule 22(C).
>
> (b) The facts shall be stated in accordance with the standard of review appropriate to the judgment or order being appealed.
>
> (c) The statement shall be in narrative form and shall not be a witness by witness summary of the testimony.
>
> (d) In an appeal challenging a ruling on a post-conviction relief petition, the statement may focus on facts from the post-conviction relief proceeding rather than on facts relating to the criminal conviction.

> the discussion of the issues. In addition, the argument must include a brief statement of the procedural and substantive facts necessary for consideration of the issues presented on appeal, including a statement of how the issues relevant to the appeal were raised and resolved by any Administrative Agency or trial court.
>
> (c) Each argument shall have an argument heading. If substantially the same issue is raised by more than one asserted error, they may be grouped and supported by one argument.

Based upon Hollen's violation of a number of Ind. Appellate Rules and his failure to develop a cogent argument, we conclude that the issues raised by Hollen are waived. See Cooper v. State, 854 N.E.2d 831, 834 n.1 (Ind. 2006) (holding that the defendant's contention was waived because it was "supported neither by cogent argument nor citation to authority"); Shane v. State, 716 N.E.2d 391, 398 n.3 (Ind. 1999) (holding that the defendant waived argument on appeal by failing to develop a cogent argument).

For the foregoing reasons, we affirm the trial court's grant of the State's motion to dismiss.

Affirmed.

BAKER, J., and KIRSCH, J., concur.