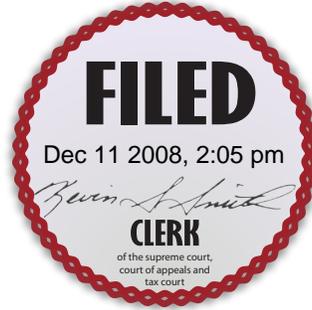


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

DONALD W. PAGOS
Michigan City, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

MICHAEL GENE WORDEN
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

MELVIN LONG,)

Appellant-Defendant,)

vs.)

No. 46A03-0803-PC-138

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE LAPORTE SUPERIOR COURT
The Honorable Kathleen B. Lang, Judge
Cause No. 46D01-8711-CF-77

December 11, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Melvin Long (“Long”) appeals the Laporte Superior Court’s denial of his petition for post-conviction relief. On appeal, Long argues whether the post-conviction court erred in finding that Long had waived the issue of improper sentencing.

We affirm.

Facts and Procedural History

On March 17, 1989, following a jury trial, Long was sentenced to sixty years. On December 10, 1991, our supreme court affirmed the trial court.¹ That appeal did not challenge Long’s sentence. On September 7, 2007, almost sixteen years after his conviction and sentence were affirmed by our supreme court, Long filed a Petition for post-conviction relief challenging his sentence for the first time. The State answered on October 2, 2007, arguing that Long waived the sentencing issue for failure to raise. On January 29, 2008, a post-conviction hearing was held. On February 27, 2008, the post-conviction court denied Long’s petition. Long appeals.

Discussion and Decision

Post-conviction proceedings are not “super appeals” through which convicted persons can raise issues they failed to raise at trial or on direct appeal. McCary v. State, 761 N.E.2d 389, 391 (Ind. 2002). Rather, post-conviction proceedings afford petitioners a limited opportunity to raise issues that were unavailable or unknown at trial and on direct appeal. Davidson v. State, 763 N.E.2d 441, 443 (Ind. 2002). The petitioner in a post-conviction proceeding bears the burden of establishing grounds for relief by a preponderance of the evidence. Ind. Post-Conviction Rule 1(5) (2006); Fisher v. State, 810 N.E.2d 674, 679 (Ind. 2004). When appealing from the denial of post-conviction

¹ Long v. State, 582 N.E.2d 361 (Ind. 1999).

relief, the petitioner stands in the position of one appealing from a negative judgment. Fisher, 810 N.E.2d at 679. On review, we will not reverse the judgment unless the evidence as a whole unerringly and unmistakably leads to a conclusion opposite that reached by the post-conviction court. Id.

Long failed to raise his claim of sentencing error during his direct appeal in 1989. “Issues which were or could have been raised on direct appeal are not available for review in post-conviction.” Weatherford v. State, 619 N.E.2d 915, 917 (Ind. 1993). This issue was known and available during Long’s direct appeal but not raised and is waived. See Bunch v. State, 778 N.E.2d 1285, 1289 (Ind. 2002).

Affirmed.

BAKER, C.J., and BROWN, J., concur.