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IN THE COURT OF APPEALS OF INDIANA

JAMES T. WILLIAMS,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 49A02-1002-PC-365
	)	
STATE OF INDIANA,	)	
	)	
Appellee.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Mark D. Stoner, Judge
The Honorable Jeffrey L. Marchal, Master Commissioner
Cause No. 49G06-0502-PC-020763

December 21, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

The Marion Superior Court denied a petition for post-conviction relief filed by James T. Williams ("Williams"). Williams appeals and raises the following issues:

> I. Whether the post-conviction court erred in concluding that his guilty plea was supported by a sufficient factual basis; and
>
> II. Whether the post-conviction court erred in denying his motion to correct error.

We affirm.

Facts and Procedural History

The facts underlying Williams's convictions were set forth in his direct appeal as follows:

> On February 7, 2005, for incidents alleged to have taken place at four separate businesses on February 3rd, 4th, and 5th of 2005, the State charged Williams under Cause Number 49G06-0502-FB-018316 (# "316") with one count of robbery resulting in bodily injury, a class B felony, and three counts of robbery as class C felonies. The State subsequently added to # 316 the allegation that Williams was an habitual offender. On February 10, 2005, for incidents alleged to have taken place on January 13th and 18th, 2005, at another business, the State charged Williams under Cause Number 49G06-0502-FB0920763 (# "763") with two counts of robbery while armed with a deadly weapon, a class B felony; one count of criminal confinement as a class C felony; two counts of possession of a firearm by a serious violent felon, a class B felony; and two counts of carrying a handgun without a license, a class A misdemeanor. An habitual offender allegation was subsequently added to this information as well.
>
> On November 14, 2005, the morning of Williams' scheduled trial, a plea agreement between Williams and the State as to both # 316 and # 763 was tendered to the trial court providing as follows. Williams would plead guilty to one count of class B felony for the robbery inflicting bodily injury; he would also plead guilty to the lesser offenses on the other five counts of robbery-as class C felonies not involving a gun, to criminal confinement as a class D felony, and to being an habitual offender. The State would reduce the five robbery charges to lesser offenses and would dismiss the other charges involving guns. Sentencing would be argued to the trial court.

> The trial court conducted a plea hearing on November 14, 2005, and advised Williams of the rights he waived by entering guilty pleas. The trial court also advised Williams that the sentencing range was from six to seventy-four years. After the State specified the facts that its evidence would show, and Williams averred that these facts were true, the trial court found "that for each count, with respect to each victim, a separate factual basis ha[d] been made" and that Williams "was in fact an habitual offender." The trial court accepted Williams' pleas, found him guilty on the seven counts and of being an habitual offender, and entered judgment.

Williams v. State, No. 49A02-0602-CR-143, Slip op. at 1 (Ind. Ct. App. January 31, 2007) (citation omitted). In his direct appeal, Williams claimed that the trial court abused its sentencing discretion by overlooking significant mitigating factors and ordering Williams to serve his sentences consecutively. Id. at 1-3. We disagreed and affirmed Williams's sentence. Id. at 3-4.

On November 2, 2007, Williams filed pro se petitions for post-conviction relief under both causes. On August 6, 2009, Williams withdrew his petition for post-conviction relief under cause 316. After holding an evidentiary hearing on October 15, 2009, the post-conviction court denied the remaining petition under cause 763. Williams now appeals.

Post-Conviction Standard of Review

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). A post-conviction

petitioner bears the burden of establishing grounds for relief by a preponderance of the evidence. Henley v. State, 881 N.E.2d 639, 643 (Ind. 2008). On appeal from the denial of post-conviction relief, the petitioner stands in the position of one appealing from a negative judgment. Id. To prevail on appeal from the denial of post-conviction relief, the petitioner must show that the evidence as a whole leads unerringly and unmistakably to a conclusion opposite that reached by the post-conviction court. Id. at 643-44.

Where, as here, the post-conviction court makes findings of fact and conclusions of law in accordance with Indiana Post-Conviction Rule 1(6), we do not defer to the court's legal conclusions, but "the findings and judgment will be reversed only upon a showing of clear error—that which leaves us with a definite and firm conviction that a mistake has been made." Id. at 644.

I. Factual Basis

Williams argues that the post-conviction court erred when it denied his petition for post-conviction relief because his guilty plea to Class D felony criminal confinement lacked a sufficient factual basis.[1] An Indiana court cannot accept a guilty plea unless

[1] Williams also claims that he was denied the right to self-representation at trial, that he received ineffective assistance of trial counsel, and that his sentences violated the constitutional prohibition against double jeopardy. These issues are not available for post-conviction review. Williams has waived appellate review of the first two issues by failing to raise them in his petition for post-conviction relief. See Emerson v. State, 812 N.E.2d 1090, 1098-99 (Ind. Ct. App. 2004) ("Issues not raised in a petition for post-conviction relief may not be raised for the first time on appeal."); Ind. Post-Conviction Rule 1(8) ("All grounds for relief available to a petitioner under this rule must be raised in his original petition."). While Williams has not provided a copy of his petition for post-conviction relief for our review, the post-conviction court found that the only issues raised in the petition were Williams's claims of an inadequate factual basis to support his criminal confinement conviction and a violation of the constitutional prohibition against double jeopardy. Appellant's Br. at 5. Therefore, we need not address the merits of these issues.

Williams's double jeopardy claim is waived because it was known and available but not raised during Williams's direct appeal. Bunch v. State, 778 N.E.2d 1285, 1289 (Ind. 2002) (claims available on direct appeal but not presented are not available for post-conviction review). Waiver notwithstanding, the convictions at issue present no double jeopardy concerns because they involve separate victims. Appellant's App. p. 8; see Rawson v. State, 865

there is an adequate factual basis to support the plea. Ind. Code § 35-35-1-3(b) (2008). The trial court's determination of an adequate factual basis is presumed to be correct. Butler v. State, 658 N.E.2d 72, 76 (Ind. 1995). A factual basis exists when there is evidence about the elements of the crime from which a trial court could reasonably conclude that the defendant is guilty. Id. at 77. The factual basis of a guilty plea need not be established beyond a reasonable doubt; rather, relatively minimal evidence may be adequate. Id.

Indiana Code section 35-42-3-3 (2004) provides that a person who knowingly or intentionally "confines another person without the other person's consent" commits Class D felony criminal confinement. In accepting Williams's guilty plea to the confinement charge, the trial court engaged in the following exchange with Williams:

> THE COURT: Okay. You're pleading guilty to a lesser-included offense of count two, which will be confinement as a D felony. And it reads that James Williams, on or about January 13th, 2004, did knowingly confine Violet Coleman without the consent of Violet Coleman by holding Violet Coleman at gun point while ordering her not to move—I should say at fake gun point while ordering her not to move. Do you understand that's the count to which you're pleading guilty there?
> THE DEFENDANT: Yes. Yes, ma'am.
> THE COURT: And do you understand that by pleading guilty to that count you're admitting that what it says is true?
> THE DEFENDANT: Yes, ma'am.

Tr. of Guilty Plea Hearing, pp. 10-11. By admitting to knowingly confining Violet Coleman without her consent, Williams admitted all of the essential elements of Class D felony criminal confinement. Therefore, the post-conviction court properly concluded that a sufficient factual basis supported Williams's guilty plea.

N.E.2d 1049, 1055 (Ind. Ct. App. 2007), trans. denied ("[W]here convictions arise from a situation where separate victims are involved, no double jeopardy violation exists.").

II. Motion to Correct Error

Williams also claims that the post-conviction court erred in denying his motion to correct error. Williams claims that he filed a motion to correct error in February 2010, in which "he pointed out that in numerous instances he informed the [post-conviction] court of the issues of Ineffective Assistance of Counsel, and Violation of Right to proceed pro-se that he would be raising at the evidentiary hearing." Appellant's Br. at 14. However, Williams has not included a copy of the motion in his Appellant's Appendix. Indeed, on the record before us, we cannot verify that such a motion was ever filed, much less determine whether the post-conviction court erred in denying the motion. It is the appellant's duty to present this court with an adequate record clearly showing the alleged error, and where he fails to do so, the issue is deemed waived. Davis v. State, 935 N.E.2d 1215, 1217 (Ind. Ct. App. 2010). Williams has therefore waived appellate review of this issue.

Conclusion

Williams's guilty plea was supported by an adequate factual basis, and Williams has waived appellate review of the remaining issues raised in his brief. Therefore, the post-conviction court did not err when it denied Williams's petition for post-conviction relief.

Affirmed.

BAKER, C.J., and NAJAM, J., concur.