Note: In the case title, an asterisk (*) indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-260

JULY TERM, 2018

In re Victor G. Hall*	}	APPEALED FROM:
	}	
	}	Superior Court, Chittenden Unit,
	}	Civil Division
	}	
	}	DOCKET NO. 124-2-16 Cncv
		Trial Judge: Robert A. Mello

In the above-entitled cause, the Clerk will enter:

Petitioner appeals the trial court's dismissal of his petition for post-conviction relief (PCR). We affirm.

Petitioner pleaded guilty to two felony counts of aggravated sexual assault in November 2007. In January 2008, he moved to withdraw his guilty pleas. The trial court considered and denied the plea-withdrawal motion at petitioner's sentencing hearing on January 22, 2008. Petitioner appealed the denial of the motion to this Court. We affirmed, explaining that "there was ample evidence to support the court's finding that the motion was simply part of a larger scheme to delay the trial and was not brought in good faith." State v. Hall, No. 2008-086, 2008 WL 4906948, at *2-3 (Vt. Nov. 1, 2008) (unpub. mem.), https://www.vermontjudiciary.org/sites/default/files/documents/eo08-086.pdf [https://perma.cc/9ZJR-7EEC].

In November 2010, petitioner filed an eighty-nine-page PCR petition in which he claimed, among other things, that his trial counsel unreasonably failed to challenge errors made by the court in denying his plea-withdrawal motion. The PCR court granted summary judgment to the State on this and all other claims. It explained that this Court had affirmed the trial court's denial of the motion to withdraw on direct appeal, rendering any errors by counsel harmless. We subsequently affirmed. In re Hall, No. 2013-062, 2013 WL 9055937, at *3 (Vt. Dec. 18, 2013) (unpub. mem.), https://www.vermontjudiciary.org/sites/default/files/documents/eo13-062.pdf [https://perma.cc/YMP2-55AF].

In February 2016, petitioner filed the instant PCR petition, again alleging that his trial counsel rendered ineffective assistance when petitioner was attempting to withdraw his plea.* The

* Petitioner later amended his petition to add a claim that his first PCR counsel was ineffective because she did no work on his case for eight months and failed to adequately investigate "the validity of the plea/withdrawal process." The court dismissed this claim because the record showed that petitioner had chosen to represent himself in the first PCR action, and thus any errors were his own. Petitioner does not challenge this aspect of the court's ruling on appeal.

trial court granted the State's motion to dismiss the petition. It held that petitioner's ineffective-assistance-of-trial-counsel claim was barred by 13 V.S.A. § 7134 because it had been previously raised and decided in his first PCR action. The court stated that even if the statute gave it discretion to consider a successive petition, it would decline to do so in this case. The court further held that to the extent the present petition could be construed as raising a claim not litigated or decided previously, it was an abuse of the writ because petitioner had not shown good cause for his failure to raise the claim earlier.

On appeal, petitioner argues that 13 V.S.A. § 7134 does not bar successive petitions. He claims that his trial counsel rendered him ineffective assistance by refusing to assist him with withdrawing his plea, forcing him to file a pro se motion. Petitioner argues that this claim was not previously litigated or decided and that his failure to raise it previously should be excused because he was an inexperienced pro se litigant.

The PCR statute provides that "[t]he court is not required to entertain a second or successive motion for similar relief on behalf of the same prisoner." 13 V.S.A. § 7134. We have held that "it is clear that § 7134 bars relitigation of claims actually raised and decided on the merits in an earlier PCR." In re Laws, 2007 VT 54, ¶ 11, 182 Vt. 66.

The record shows that petitioner's ineffective-assistance-of-trial-counsel claim was raised and decided in his first PCR action. In that case, petitioner claimed that counsel was ineffective in numerous ways, including by failing to challenge the alleged errors made by the trial court when it refused to allow petitioner to withdraw his pleas. The first PCR court ruled that petitioner's claim failed because the trial court's decision to deny the motion to withdraw was affirmed on direct appeal, rendering any attorney errors harmless. The court's summary judgment decision was a decision on the merits, see Chandler v. State, 2016 VT 62, ¶ 14, 202 Vt. 226, and was affirmed on appeal. Petitioner's current petition arguing that his trial counsel refused to assist him with his motion to withdraw is "a thinly disguised rehash of the first." In re Reuschel, 141 Vt. 200, 203 (1982). The court was therefore not required to consider it. Laws, 2007 VT 54, ¶ 11; 13 V.S.A. § 7134.

In light of our conclusion that the trial court properly dismissed petitioner's second PCR petition as successive, we need not address its alternative conclusion that the petition was an abuse of the writ.

Affirmed.

BY THE COURT:

Marilyn S. Skoglund, Associate Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice