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APPELLANT PRO SE:

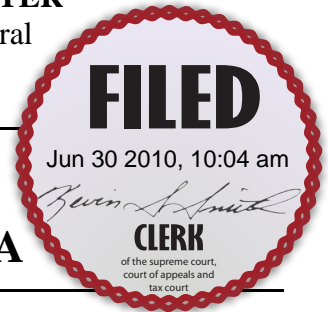
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**IN THE
COURT OF APPEALS OF INDIANA**



DANNY T. DUNLAP,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 49A02-0907-PC-620

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Steven J. Rubick, Magistrate
Cause No. 49G04-0011-PC-204466

June 30, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Danny Dunlap appeals the denial of his petition for Post-Conviction Relief. We affirm.

FACTS AND PROCEDURAL HISTORY

Dunlap was convicted of murder¹ and pled guilty to possession of cocaine, a Class D felony.² We affirmed his murder conviction. *See Dunlap v. State*, Cause No. 49A02-0208-CR-680 (Ind. Ct. App. March 24, 2003). Dunlap petitioned *pro se* for post-conviction relief, and the court appointed counsel. Dunlap eventually withdrew that petition and refiled *pro se* some time later. After he amended the petition, a hearing was held.

Dunlap testified at the hearing and submitted two documents³ in support of his assertion that his trial counsel was ineffective for failing to object to the admission of his confession to murder, as he claims the confession was the fruit of an illegal search and seizure.⁴ The trial court denied Dunlap's petition. Dunlap filed a motion to correct error, which was also denied.

DISCUSSION AND DECISION

Dunlap bore the burden of establishing the grounds for post-conviction relief by a preponderance of the evidence. *See* Ind. Post-Conviction Rule 1(5); *Timberlake v. State*, 753 N.E.2d 591, 597 (Ind. 2001), *reh'g denied, cert. denied* 537 U.S. 839 (2002). In reviewing a post-conviction court's judgment, we consider only the evidence and reasonable inferences

¹ Ind. Code § 35-42-1-1.

² Ind. Code § 35-48-4-6.

³ Those documents were the search warrant that resulted in his arrest and the affidavit filed in support of that warrant.

⁴ Dunlap wanted to subpoena his trial counsel, but counsel could not be located.

supporting the judgment. *Hall v. State*, 849 N.E.2d 466, 468 (Ind. 2006). The post-conviction court is the sole judge of the evidence and the credibility of the witnesses. *Id.* at 468-69. Dunlap is appealing a negative judgment, so to the extent his appeal turns on factual issues, he must convince us the evidence is without conflict and leads unerringly and unmistakably to a decision opposite that reached by the post-conviction court. *See Timberlake*, 753 N.E.2d at 597.

Dunlap's only claim is he was unable to properly present argument during his post-conviction hearing because he was denied access to the transcript of his original trial. Dunlap did not raise this argument during his Post-Conviction hearing.⁵ A party may not raise an issue on appeal that was not raised in his petition for post-conviction relief. *Allen v. State*, 749 N.E.2d 1158, 1171 (Ind. 2001) (citing Ind. Post-Conviction Rule 1(8)) ("All Grounds for relief available to petitioners under this rule must be raised in his original petition"). Although Dunlap petitioned *pro se*, *pro se* litigants are held to the same established rules of procedure that trained counsel are bound to follow. *See Ross v. State*, 877 N.E.2d 829, 833 (Ind. Ct. App. 2007), *trans denied*. Accordingly, Dunlap has waived his argument for appellate review.

Waiver notwithstanding, the record suggests Dunlap had a copy of the transcript. During his post-conviction hearing, Dunlap and the magistrate had this exchange:

THE COURT: I'm going to return to you your copy of the

⁵ Dunlap did raise the issue in his motion to correct error. However, this does not salvage Dunlap's argument, because an issue raised for the first time in a motion to correct error is not available for appeal. *Van Bibber v. Norris*, 419 N.E.2d 115, 126 (Ind. 1981).

transcript that you asked to have certified.

PETITIONER: Okay. I -- Your Honor, from my understand [sic] we had to file a request for transmission of records --

THE COURT: Right.

PETITIONER: -- and this is why I sent it to --

THE COURT: I understand. I'm returning it to you in case you need it.

(Tr. at 16.) This indicates Dunlap had a copy of the transcript at some point prior to his post-conviction hearing and it was returned to him during the hearing.

As Dunlap has not presented us with a ground for reversal, we affirm the post-conviction court's decision.

Affirmed.

BAILEY, J., and BARNES, J., concur.