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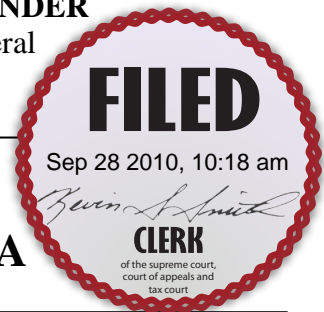
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**IN THE
COURT OF APPEALS OF INDIANA**



RONALD A. MANLEY,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 29A04-1002-PC-60

APPEAL FROM THE HAMILTON CIRCUIT COURT
The Honorable Paul A. Felix, Judge
Cause No. 29C01-9506-CF-106

September 28, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Ronald Manley appeals the post-conviction court's denial of his petition for post-conviction relief. Manley raises one issue, which we revise and restate as whether he was denied effective assistance of trial counsel. We affirm.

On June 9, 1995, the State charged Manley under cause number 29C01-9506-CF-106 ("Cause No. 106") with two counts of child molesting as class B felonies, four counts of child molesting as class C felonies, and impersonation of a public servant as a class A misdemeanor. Two of the molestation charges related to Manley's alleged actions with J.A., and four of the molestation charges related to Manley's alleged actions with K.G.

On March 27, 1996, the State charged Manley under cause number 29D02-9603-CF-32 ("Cause No. 32") with three counts of child molesting as class B felonies, attempted child molesting as a class B felony, child molesting as a class C felony, and vicarious sexual gratification as a class C felony. The charges related to Manley's alleged actions with K.G. The parties filed a joint motion to consolidate the cases, and the trial court consolidated Cause No. 106 and Cause No. 32.

After amendments, Manley was charged with Count I, child molesting as a class B felony; Count II, child molesting as a class C felony; Count III, impersonation of a public servant as a class A misdemeanor; Count IV, child molesting as a class B felony; Count V, child molesting as a class B felony; Count VI, attempted child molesting as a class B felony; Count VII, child molesting as a class B felony; Count VIII, vicarious sexual gratification as a class C felony; and Count IX, child molesting as a class C felony.

A four-day jury trial was held beginning on September 22, 1997. The court dismissed Counts VIII and IX upon Manley's motion. The jury found Manley guilty of Counts I, II, III, V, VI, and VII, and not guilty of Count IV. On May 22, 1998, the court sentenced Manley to ten years for the class B felony molesting convictions (Counts I, V, VI, and VII), four years for the class C molesting conviction (Count II), and one year for the class A misdemeanor conviction (Count III). The court ordered the sentences for Counts I and II to be served concurrent with each other and ordered the sentences for Counts III, V, VI, and VII to be served consecutive to each other and to the sentence for Counts I and II. Thus, Manley received an aggregate sentence of forty-one years.

On direct appeal, Manley argued that the trial court improperly imposed consecutive sentences and that his convictions for two counts of child molesting committed on the same date violated principles of double jeopardy. Manley v. State, No. 29A05-9807-CR-343, slip op. at 2 (Ind. Ct. App. August 31, 1999). This court affirmed. Id.

On January 26, 2000, Manley filed a *pro se* petition for post-conviction relief.¹ On January 23, 2009, Manley filed an amended petition for post-conviction relief.² On July 15, 2009, the post-conviction court held a hearing. At the post-conviction hearing,

¹ The record does not contain a copy of this petition.

² The record does not contain a copy of this petition. We direct Manley's attention to Ind. Appellate Rule 50(A)(2)(f), which requires an appellant's appendix to include "pleadings and other documents from the Clerk's Record in chronological order that are necessary for resolution of the issues raised on appeal."

Manley presented the trial court record and his own testimony. On December 3, 2009, the post-conviction court issued an order denying Manley's amended petition for post-conviction relief.

Before discussing Manley's allegations of error, we note the general standard under which we review a post-conviction court's denial of a petition for post-conviction relief. The petitioner in a post-conviction proceeding bears the burden of establishing grounds for relief by a preponderance of the evidence. Fisher v. State, 810 N.E.2d 674, 679 (Ind. 2004); Ind. Post-Conviction Rule 1(5). When appealing from the denial of post-conviction relief, the petitioner stands in the position of one appealing from a negative judgment. 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. Further, the post-conviction court in this case entered findings of fact and conclusions thereon in accordance with Indiana Post-Conviction Rule 1(6). Id. "A post-conviction court's 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. In this review, we accept findings of fact unless clearly erroneous, but we accord no deference to conclusions of law. Id. The post-conviction court is the sole judge of the weight of the evidence and the credibility of witnesses. Id.

The issue is whether Manley was denied effective assistance of trial counsel. To prevail on a claim of ineffective assistance of counsel, a petitioner must demonstrate both

that his counsel's performance was deficient and that the petitioner was prejudiced by the deficient performance. Ben-Yisrayl v. State, 729 N.E.2d 102, 106 (Ind. 2000) (citing Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984), reh'g denied), reh'g denied, cert. denied, 534 U.S. 830, 122 S. Ct. 73 (2001). A counsel's performance is deficient if it falls below an objective standard of reasonableness based on prevailing professional norms. French v. State, 778 N.E.2d 816, 824 (Ind. 2002). To meet the appropriate test for prejudice, the petitioner must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome. Perez v. State, 748 N.E.2d 853, 854 (Ind. 2001). Failure to satisfy either prong will cause the claim to fail. French, 778 N.E.2d at 824. Most ineffective assistance of counsel claims can be resolved by a prejudice inquiry alone. Id.

Here, Manley's brief violates a number of provisions of Ind. Appellate Rule 46 relating to citation to the record. Manley does not cite to the record in his Statement of Case. Ind. Appellate Rule 46(A)(5) governs the Statement of Case and provides that "[p]age references to the Record on Appeal or Appendix are required in accordance with Rule 22(C)."³ Further, Manley's Statement of Facts cites only to his testimony at the post-conviction hearing and at no point does Manley cite to the trial record, which

³ Ind. Appellate Rule 22(C) provides in part that "[a]ny factual statement shall be supported by a citation to the page where it appears in an Appendix, and if not contained in an Appendix, to the page it appears in the Transcript or exhibits, e.g., Appellant's App. p.5; Tr. p. 231-32."

consists of over 1,800 pages. See Appellant’s Brief at 4-6. Ind. Appellate Rule 46(A)(6)(a) governs the Statement of Facts and provides that “[t]he facts shall be supported by page references to the Record on Appeal or Appendix in accordance with Rule 22(C).” In addition, Manley fails to cite to the record at any point in his argument section. Ind. Appellate Rule 46(A)(8)(a) governs the argument section of appellate briefs and provides 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.”

In the argument section of his brief, Manley states that the evidence presented at the post-conviction hearing demonstrates that his trial counsel failed to adequately investigate potential defense witnesses, prepare for trial, and move to suppress “*any and all statements* made by [Manley] and of the apology letter written to one of the victims by [Manley].” Appellant’s Brief at 6 (emphasis added). Manley also states that his trial counsel was ineffective for failing to move to suppress Manley’s “partial admission.” Id. at 8. However, Manley does not cite to the trial record to indicate where his “partial admission” or any other statements were admitted into evidence. Without citation to authority, Manley argues that “[i]t is basic law to attack such admissions.” Id.

We conclude that Manley does not cite to authority, develop a cogent argument, or cite to the record. Consequently, the issues which Manley attempts to raise in this appeal are waived. See Johnson v. State, 675 N.E.2d 678, 681 n.1 (Ind. 1996) (observing that the defendant failed to cite to the record and “[o]n review, this Court will not search the

record to find grounds for reversal”); Keller v. State, 549 N.E.2d 372, 373 (Ind. 1990) (holding that a court which must search the record and make up its own arguments because a party has presented them in perfunctory form runs the risk of being an advocate rather than an adjudicator); Haddock v. State, 800 N.E.2d 242, 245 n.5 (Ind. Ct. App. 2003) (noting that “we will not, on review, sift through the record to find a basis for a party’s argument”); see also 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); Smith v. State, 822 N.E.2d 193, 202-203 (Ind. Ct. App. 2005) (“Generally, a party waives any issue raised on appeal where the party fails to develop a cogent argument or provide adequate citation to authority and portions of the record.”), trans. denied.

For the foregoing reasons, we affirm the post-conviction court’s denial of Manley’s petition for post-conviction relief.

Affirmed.

DARDEN, J., and BRADFORD, J., concur.