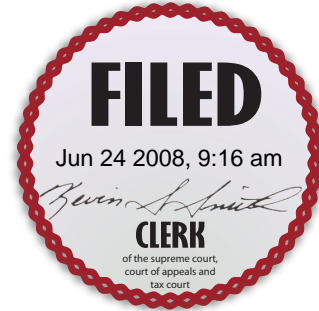


**Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.**



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**IN THE  
COURT OF APPEALS OF INDIANA**

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RANDY L. REEDER, )  
 )  
Appellant-Defendant, )  
 )  
vs. ) No. 71A03-0711-CR-530  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

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APPEAL FROM THE ST. JOSEPH SUPERIOR COURT  
The Honorable John Marnocha, Judge  
Cause No. 71D02-0702-MR-2

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**June 24, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BROWN, Judge**

Randy Reeder appeals his convictions for four counts of murder. For the following reasons, we dismiss Reeder's direct appeal without prejudice.

After this appeal was fully briefed and transmitted to this writing panel, Reeder, by counsel, filed a Motion to Remand Pursuant to Appellate Rule 37 asking this court to remand to the trial court for a determination of "whether defense counsel's performance at trial was ineffective." Motion at 3. The State filed its Response to Defendant's Motion to Remand. The State correctly set forth the mechanism for such a remand and indicated that it would not object to a remand that allows Reeder to terminate consideration of his direct appeal in order to file a petition for post-conviction relief.

In essence, Reeder has invoked the "Davis/Hatton" procedure, which allows an appellant to terminate a direct appeal without prejudice to file a petition for post-conviction relief regarding matters that were discovered after the trial. See Davis v. State, 267 Ind. 152, 368 N.E.2d 1149, 1151 (1977); Hatton v. State, 626 N.E.2d 442 (Ind. 1993). The procedure was thoroughly explained in Slusher v. State, 823 N.E.2d 1219, 1222 (Ind. Ct. App. 2005), based upon a request to "develop an additional evidentiary record" after the direct appeal was initiated:

[T]he proper procedure is to request that the appeal be suspended or terminated so that a more thorough record may be compiled through the pursuit of post-conviction proceedings. This procedure for developing a record for appeal is more commonly known as the Davis/Hatton procedure. See Hatton v. State, 626 N.E.2d 442, 443 (Ind. 1993); Davis v. State, 267 Ind. 152, 368 N.E.2d 1149, 1151 (1977). As we explained, the Davis/Hatton procedure involves a termination or suspension of a direct appeal already initiated, upon appellate counsel's motion for remand or stay, to allow a post-conviction relief petition to be pursued in the trial court. If the appellate court preliminarily determines that the motion has sufficient merit, the entire case is remanded for consideration of the petition for post-

conviction relief. If, after a full evidentiary hearing the post-conviction relief petition is denied, the appeal can be reinitiated. Thus, in addition to the issues initially raised in the direct appeal, the issues litigated in the post-conviction relief proceeding can also be raised. This way, a full hearing and record on the issue will be included in the appeal. If the petition for post-conviction relief is denied after a hearing, and the direct appeal is reinstated, the direct appeal and the appeal of the denial of post-conviction relief are consolidated.

Id. (some internal citations omitted).

Reeder has indicated that on remand he intends to pursue a claim of ineffective assistance of counsel. By employing the Davis/Hatton procedure, Reeder must file a petition for post-conviction relief that raises all post-conviction issues. After the post-conviction proceeding has concluded, Reeder may file a new Notice of Appeal. In that appeal, Reeder may raise any issues that could have been raised in his direct appeal and those matters that might arise based upon the post-conviction proceedings on remand. Because a favorable ruling on Reeder's petition for post-conviction relief could obviate the need for the direct appeal or an appeal from the post-conviction proceeding, Reeder's appeal will be dismissed without prejudice to his right to appeal as set forth above.

For the foregoing reasons, we dismiss Reeder's direct appeal without prejudice.

Dismissed without prejudice.

NAJAM, J. and DARDEN, J. concur