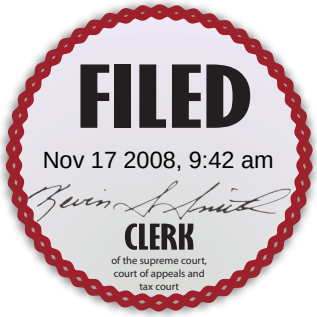

APPELLANT PRO SE:

LARRY WOOLEY
New Castle, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

NICOLE M. SCHUSTER
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

LARRY WOOLEY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 61A01-0703-PC-136
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE PARKE CIRCUIT COURT
The Honorable Sam A. Swain, Judge
Cause No. 61C01-9608-PC-82

November 17, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Larry Wooley appeals the denial of his petition for post-conviction relief and the denial of his motion to compel trial counsel to produce Wooley's client file. We affirm.

Issue[1]

Wooley raises two issues, which we consolidate and restate as whether the post-conviction court properly denied his petition.

Facts

In 1996, Wooley was charged with murder, attempted murder, and arson. In 1998, following a jury trial, Wooley was found guilty of murder. Although Wooley's sixty-five-year sentence was revised on direct appeal, our supreme court upheld his murder conviction. See Wooley v. State, 716 N.E.2d 919 (Ind. 1999).

In 2006, Wooley filed a pro se petition for post-conviction relief. On November 17, 2006, the post-conviction court granted the State's motion to proceed by affidavit. On December 27, 2006, Wooley filed a motion to compel trial counsel to release Wooley's file. The post-conviction court denied this motion. On February 6, 2007, the trial court denied Wooley's petition for post-conviction relief. Wooley now appeals.

Analysis

Wooley argues that the post-conviction court improperly denied his petition because he received ineffective assistance of trial counsel. A post-conviction petitioner bears the burden of establishing his or her claims by a preponderance of the evidence.

[1] On July 20, 2007, we ordered the consolidation of the appeal of the denial of Wooley's petition for post-conviction relief and the appeal of the denial of his motion to compel.

Donnegan v. State, 889 N.E.2d 886, 891 (Ind. Ct. App. 2008), trans. denied; Ind. Post-Conviction Rule 1(5). When reviewing the denial of a petition for post-conviction relief, we neither reweigh the evidence nor judge the credibility of the witness. 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 to that reached by the post-conviction court. Id. "We will disturb the post-conviction court's decision only if the evidence is without conflict and leads to but one conclusion and the post-conviction court has reached the opposite conclusion." Id.

"To establish a claim of ineffective assistance of counsel, a defendant must demonstrate that counsel performed deficiently and the deficiency resulted in prejudice." Lee v. State, 892 N.E.2d 1231, 1233 (Ind. 2008) (citing Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984)). The failure to satisfy either prong of the Strickland test will cause the claim to fail. Id. "Therefore, if we can dismiss an ineffective assistance claim on the prejudice prong, we need not address whether counsel's performance was deficient." Id.

Here, Wooley offered no evidence to support his post-conviction relief petition alleging ineffective assistance of counsel. Specifically, Wooley did not even offer the trial transcript into evidence in support of his petition.

Although Wooley argues on appeal that his trial attorney's client file would support his claim, there is no evidence—by way of affidavit or otherwise—in the record to support this claim. Without more than bare assertions as to the contents of the file, Wooley has not established that he has property or constitutional right to access his

attorney's files. Thus, Wooley has not established that the trial court improperly denied his motion to compel.

As for the denial of his petition for post-conviction relief, in the absence of any evidence in support of his claim we simply cannot conclude that Wooley met his burden of proof before the post-conviction court. See Tapia v. State, 753 N.E.2d 581, 588 n.10 (Ind. 2001) (noting that without the trial transcript offered into evidence in a post-conviction relief proceeding, "It is practically impossible to gauge the performance of trial counsel without the trial record, as we have no way of knowing what questions counsel asked, what objections he leveled, or what arguments he presented."). Further, as a general rule, a post-conviction court may not take judicial notice of a trial transcript. Taylor v. State, 882 N.E.2d 777, 782 (Ind. Ct. App. 2008). Thus, despite Wooley's request, we may not consult a transcript that was not offered to the post-conviction court and is not included in the record on appeal.[2]

Finally, we note that pro se litigants without legal training are held to the same standard as trained counsel and are required to follow procedural rules. Evans v. State, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004), trans. denied. "This has consistently been the standard applied to pro se litigants, and the courts of this State have never held that a trial court is required to guide pro se litigants through the judicial system." Id. To the extent Wooley argues otherwise, we will not impose a duty on courts—either this court or the post-conviction court—to develop arguments for pro se litigants. See id. Wooley did not

[2] Although Wooley's brief includes specific references to the transcript, it is not included in the record on appeal.

show by a preponderance of the evidence that he received ineffective assistance of counsel.

Conclusion

Wooley has not established that the post-conviction court erred in denying his petition for post-conviction relief. We affirm.

Affirmed.

FRIEDLANDER, J., and DARDEN, J., concur.