



A jury found Glenn Culler guilty of one count of Class A felony child molesting and two counts of Class C felony child molesting. A direct appeal resulted in a remand for resentencing, and he was sentenced to thirty years for the Class A felony and four years each on the Class C felonies, the sentences to run concurrently.

On January 17, 2007, Cullen filed a petition for post-conviction relief. The state responded, and on March 26, 2007, the court denied the petition without conducting a hearing. This appeal followed.

The first assigned error, which we find to be dispositive, is that the court erred when it failed to hold a hearing on Culler's petition.

Pursuant to the requirements of Ind. Post-Conviction Rule 1, § 4(f) a court may *sua sponte* deny a petition for relief only when "the pleadings conclusively show that petitioner is entitled to no relief." P-C.R. 1, § 4(g) permits the court to grant a motion for summary disposition only when it appears from the materials before the court that there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law.

As this court explained in *Evolga v. State*, 722 N.E.2d 370, 372 (Ind. Ct. App. 2000), if an issue of material fact is raised by the allegations of the petition, the court must hold an evidentiary hearing, and this is so even when the petitioner has only a remote chance of establishing his claim.

With respect to the ineffective assistance of counsel claim, the proper inquiry is not whether counsel was effective or adequate, but whether there existed a genuine issue of fact on those questions. *Id.* at 373.

Culler's petition asserted that he received ineffective assistance for three reasons: (1) his counsel failed to cross examine the alleged victims regarding inconsistencies in their statements and testimony and failed to cross examine the state's expert regarding the only physical evidence of the alleged offenses; (2) he failed to call witnesses in support of Culler's claim that he was at work at the time of many of the alleged instances; and, (3) he failed to present evidence that the victims and their families had motive to lie.

We believe, and the state acknowledges, that Culler's contentions raise genuine issues of material fact such that it was error for the court to summarily deny his petition without a hearing.

Accordingly, we reverse the summary denial of Culler's petition and remand to the trial court for further proceedings consistent herewith.

Reversed and remanded.

BAKER, C.J., and VAIDIK, J., concur.