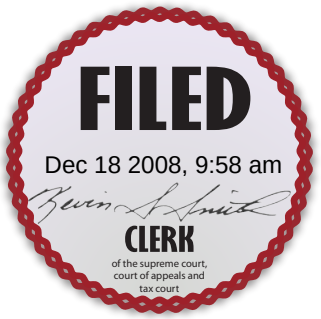

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IN THE
COURT OF APPEALS OF INDIANA

SIDNEY G. HOPKINS,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 33A04-0803-PC-119
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE HENRY CIRCUIT COURT
The Honorable Mary G. Willis, Judge
Cause No. 33C01-8707-CF-040

December 18, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Sidney G. Hopkins, pro se, appeals from the post-conviction court's denial of his petition for post-conviction relief. Hopkins raises two issues for our review, which we consolidate and restate as whether the post-conviction court properly denied Hopkins' petition.

We affirm.

FACTS AND PROCEDURAL HISTORY

The facts underlying Hopkins' conviction and sentence were stated by our Supreme Court in Hopkins v. State, 582 N.E.2d 345, 347 (Ind. 1991) ("Hopkins I"):

> A jury trial resulted in the conviction of appellant of Murder and Felony Murder (Robbery). As only one death occurred, the trial court correctly merged the convictions, entered judgment against appellant for murder, and sentenced him to an aggravated term of fifty-five (55) years.
>
> The facts are: On Saturday morning, August 8, 1987, Irene Sullivan, who lived on Cottage Avenue in New Castle, Indiana, became concerned that her neighbor, Clarence Guffey, was not up and about as usual. Upon investigating and getting no response at the door, Mrs. Sullivan looked through a window and saw Guffey lying on the floor. She immediately telephoned 911 for help. Police and medics responded and found the victim lying dead in a pool of blood; the walls and ceiling and the victim were covered with blood. An autopsy revealed he had suffered fifteen blunt-force wounds to the head and had bled to death. The house had been ransacked, with drawers turned out, papers strewn about, and two rifled billfolds on the floor.
>
> The previous night, appellant [Hopkins] had been drinking all night, first at a bar and then at a party, leaving one friend's home about 6:00 a.m. Saturday and appearing at another's about 6:30. He reappeared there around 9:00, having purchased more liquor between 8:30 and 9:00. Around 10:30, he went to his aunt's house, asking whether she was monitoring her police scanner, mentioning he had seen police cars headed towards Cottage

> Avenue. Later that day he made inculpatory remarks to several persons. He purchased a handgun from his cousin, who retrieved it after realizing how intoxicated appellant had become; when she explained she feared it would get him into trouble, he tearfully replied that he already was.
>
> The following day, appellant explained to another cousin, Jeff South, that on Saturday morning, he noticed Mr. Guffey working out in his back yard and so let himself in the front door. While looking for valuables, he was discovered by the victim who, he claimed, had a shotgun. He struck the victim on the head with a tire tool, causing him to fall back against the wall, and when he arose, appellant struck him some more. Appellant then resumed looking for money, finding $700. He explained to his cousin that on previous occasions he had stolen cash from the victim's house, once finding as much as $1500. As he related all this, appellant was carrying a bottle of whiskey and displayed a .25 caliber pistol to his cousin, saying he was willing to shoot an officer in order to draw police into killing him.
>
> By the next day, Monday, as a result of extensive investigation including interviews with members of his family, appellant became the focus of the murder case. When so informed, appellant, accompanied by his mother, brothers and sister, turned himself in to police. While being strip-searched after booking, he remarked, "I did it . . . I think I killed him." When asked why, he explained he had been "really messed up" on some "bad acid" from Muncie.

In his direct appeal in Hopkins I, Hopkins raised eight issues for appellate review. Those issues pertained to prosecutorial misconduct; the admission of evidence at trial, including Hopkins' inculpatory statements to officers; proper venue; and proper jury instructions. After reviewing Hopkins' alleged errors, our Supreme Court affirmed his conviction and sentence.

In November of 2000, Hopkins filed his first petition for post-conviction relief. After numerous motions, the post-conviction court summarily denied Hopkins' petition in August of 2005. In July of 2007, Hopkins requested this court's permission to file a

successive petition for post-conviction relief. We granted Hopkins' request, and on January 23, 2008, the post-conviction court held a hearing on Hopkins' successive petition. The following day, the post-conviction court entered its order denying Hopkins' request for relief. This appeal ensued.

DISCUSSION AND DECISION

Hopkins argues that the post-conviction court improperly denied his successive petition for post-conviction relief. Our standard of review here is well-established:

> The petitioner in a post-conviction proceeding bears the burden of establishing the grounds for relief by a preponderance of the evidence. P-C. R. 1(5); Curry v. State, 674 N.E.2d 160, 161 (Ind. 1996). When appealing from the denial of post-conviction relief, the petitioner stands in the position of one appealing a negative judgment. Id. As such, the petitioner faces a rigorous standard of review. The petitioner must convince the court that the evidence as a whole leads unerringly and unmistakably to a decision opposite that reached by the post-conviction court. Dewitt v. State, 755 N.E.2d 167, 170 (Ind. 2001). In other words, "this Court will disturb a post-conviction court's decision as being contrary to law only where the evidence is without conflict and leads to but one conclusion, and the post-conviction court has reached the opposite conclusion." Miller v. State, 702 N.E.2d 1053, 1058 (Ind. 1998). Further, the post-conviction court in this case entered findings of fact and conclusions of law in accordance with Indiana Post-Conviction Rule 1(6). We will reverse a post-conviction court's findings and judgment only upon a showing of clear error—that which leaves us with a definite and firm conviction that a mistake has been made. Saylor v. State, 765 N.E.2d 535, 547 (Ind. 2002).

Wesley v. State, 788 N.E.2d 1247, 1250-51 (Ind. 2003).

Hopkins asserts that he is entitled to post-conviction relief on the grounds of newly discovered evidence. Specifically, Hopkins maintains that a latent fingerprint discovered at the crime scene—and introduced and admitted at Hopkins' trial as State's

Exhibit #145—constitutes new evidence under our post-conviction rules. Our Supreme Court has established the following nine-part standard for determining whether "new evidence" mandates a new trial:

> (1) the evidence has been discovered since the trial; (2) it is material and relevant; (3) it is not cumulative; (4) it is not merely impeaching; (5) it is not privileged or incompetent; (6) due diligence was used to discover it in time for trial; (7) the evidence is worthy of credit; (8) it can be produced upon a retrial of the case; and (9) it will probably produce a different result at retrial.

Stephenson v. State, 864 N.E.2d 1022, 1048 (Ind. 2007) (emphasis added) (citing Carter v. State, 738 N.E.2d 665, 671 (Ind. 2000)).

Here, Hopkins' assertion that State's Exhibit #145 constitutes new evidence is without merit. Although Hopkins argues that he has satisfied each of the above nine factors, he concedes that the fingerprint in question was not only discovered before his trial, it was introduced and admitted at his trial. Likewise, Hopkins' assertion that he only learned of the latent fingerprint's "significance . . . only much later after the direct appeal" ignores the record of his trial. See Appellant's Brief at 13. When the State introduced the fingerprint, its expert specifically stated that the fingerprint, when "compared to the ink fingerprints of both Hopkins and Guffey[,] . . . is not identical to either one of them." Trial Transcript at 5382. And Hopkins' trial counsel emphasized that fact in his cross examination of the State's expert. See id. at 5396-97. Accordingly,

the fingerprint in no way constitutes newly discovered evidence,[1] and the post-conviction court properly denied Hopkins' successive petition for relief.

Affirmed.

BAKER, C.J., and KIRSCH, J., concur.

[1] We also agree with the State's position that the fingerprint was irrelevant in light of Hopkins' admissions—affirmed in Hopkins I as admissible evidence at his trial—the he killed Guffey.