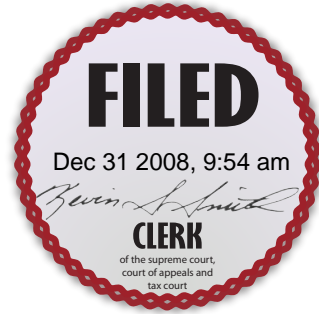


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



APPELLANT PRO SE:

ATTORNEYS FOR APPELLEE:

WENDELL IDDINGS
Carlisle, Indiana

STEVE CARTER
Attorney General of Indiana

THOMAS D. PERKINS
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

WENDELL IDDINGS,
Appellant-Petitioner,

vs.

STATE OF INDIANA,
Appellee-Respondent.

)
)
)
)
)
)
)
)
)
)
)

No. 06A05-0808-PC-461

APPEAL FROM THE BOONE SUPERIOR COURT
The Honorable Matthew C. Kincaid, Judge
Cause No. 06D01-0803-PC-35

December 31, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Petitioner Wendell Iddings appeals the summary denial of his petition for post-conviction relief (“PCR”). Iddings claims that he is entitled to withdraw his guilty pleas because the State violated the plea agreement when it did not promptly dismiss the charge that remained after his sentencing. Concluding that Iddings is not entitled to have his plea agreement set aside, we affirm.

FACTS AND PROCEDURAL HISTORY

In 1979, Iddings and three other persons were charged with three counts of robbery as a Class B felony, under cause numbers S-6716, S-6717, and S-6721. On November 13, 1979, Iddings entered into a plea agreement with the State whereby he agreed to plead guilty to S-6716 and S-6721. As an additional term of the plea agreement, the parties agreed that the State would dismiss the armed robbery charge under S-6717 in exchange for Iddings’s cooperation in testifying against co-defendants. The trial court accepted Iddings’s pleas and sentenced him to six years on November 19, 1979. Iddings was never called to testify by the State.

On March 17, 2008, Iddings filed a petition for PCR in which he claimed the State failed to fulfill its promise under the plea agreement. He asserted, “[T]he fact the State sought dismissal of Cause Number S-6717, 29-years after it promised to dismiss Cause Number S-6717 upon Iddings[’s] cooperation with the State, proves the failure of the prosecutor to abide by the terms of the plea agreement.” On April 22, 2008, the State voluntarily dismissed the charge under S-6717. On April 24, 2008, the State filed a motion for summary judgment. On May 28, 2008, Iddings filed a response to the State’s motion for summary judgment. On June 23, 2008, the post-conviction court found there

was no genuine issue of material fact and granted the State's motion for summary judgment. This appeal follows.

DISCUSSION AND DECISION

On appeal, Iddings claims the court erred by granting the State's motion for summary judgment and failing to set aside his guilty pleas. A petitioner for PCR must establish his grounds for relief by a preponderance of the evidence. Ind. Post-Conviction Rule 1(5). After being denied relief, a petitioner appealing from a negative judgment must demonstrate that the evidence as a whole "leads unerringly and unmistakably to a conclusion opposite to that reached by the trial court." *Allen v. State*, 749 N.E.2d 1158, 1164 (Ind. 2001) (quoting *Weatherford v. State*, 619 N.E.2d 915, 917 (Ind. 1993)). We may reverse the court's decision as contrary to law only if the "evidence is without conflict and leads to the conclusion opposite that reached by the court below." *Ivy v. State*, 861 N.E.2d 1242, 1244 (Ind. Ct. App. 2007), *trans. denied*.

A court may summarily deny a PCR petition "if the pleadings and the record conclusively demonstrate that there is no genuine issue of material fact and the petitioner is not entitled to relief." *Id.*; see Ind. Post-Conviction Rules 1(4)(f) and (g). "Where the post-conviction court is able to determine, after reading the petition and consulting the record, that there is no factual issue in dispute, a summary denial of a petition for post-conviction relief is proper." *Ivy*, 861 N.E.2d at 1245 (quoting *Godby v. State*, 809 N.E.2d 480, 482 (Ind. Ct. App. 2004)). The burden is on the appellant to persuade us that the post-conviction court erred. *Allen v. State*, 791 N.E.2d 748, 753 (Ind. Ct. App. 2003), *trans. denied*.

Here, Iddings claims that due to the State's failure to dismiss the pending charge in a timely manner, he is entitled to have his guilty pleas set aside. Although the State did wait over twenty-nine years to dismiss the charge against Iddings, the State's dismissal of the charge was voluntary and not required by the plea agreement. In fact, the dismissal of the charge was contingent on Iddings's testimony against co-defendants, and as Iddings concedes, he was never called to testify. The State did not violate the spirit or the letter of the plea agreement. *See Ivy*, 861 N.E.2d at 1245. Considering that the State did eventually dismiss the charge, Iddings is not entitled to relief. Therefore, we affirm the denial of Iddings's PCR petition.

The judgment of the post-conviction court is affirmed.

FRIEDLANDER, J., and MAY, J., concur.