MEMORANDUM DECISION

ATTORNEYS FOR APPELLANT

Amy E. Karozos
Public Defender of Indiana

Kristin M. Eichel
Deputy Public Defender
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Jodi K. Stein
Supervising Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Bruce Angelo Evans,
Appellant-Petitioner,

v.

State of Indiana,
Appellee-Respondent.

May 7, 2021

Court of Appeals Case No. 20A-PC-1888

Appeal from the Hendricks Superior Court

The Honorable Stephenie D. Lemay-Luken, Judge

Trial Court Cause No. 32D05-1807-PC-3

Mathias, Judge.

[1] In 2009, Bruce Evans pleaded guilty in Hendricks Superior Court to Class D felony possession of a controlled substance and admitted to a probation

violation. Pursuant to the plea agreement, the State dismissed two other Class D felony counts, and the court imposed a minimum 180-day sentence, which was time served. Years later, Evans was subsequently found—in proceedings unrelated to this appeal—to be a habitual offender based in part on the 2009 conviction. In 2018, Evans filed a petition for post-conviction relief attacking the 2009 conviction, claiming that: (1) he received ineffective assistance of trial counsel; and (2) his guilty plea was not knowing, intelligent, and voluntary. The post-conviction court denied the petition.

[2] On appeal, Evans argues that the court clearly erred in denying relief on both claims. Because we conclude Evans has failed to establish that the evidence unmistakably leads to conclusions opposite those reached by the post-conviction court, we affirm.

Facts and Procedural History

[3] On April 23, 2009, Jeremy Wyncoop was driving a "lowered" black Dodge Ram "with chrome rims," and Evans was riding in the passenger seat. Ex. Vol. at 3. Officer Teare, who was driving a police vehicle, saw the truck at an intersection and recognized that it "matched the description of a vehicle in a previous broadcast that dispatch had sent . . . approximately 2 weeks prior." *Id.* The previous broadcast advised law enforcement of "an anonymous tip that [Wyncoop] was dealing marijuana and was known" to drive a black Dodge Ram "that was lowered and had chrome rims." *Id.* Officer Teare began following the truck.

[4] At 3:26 p.m., after noticing that the truck's "windows were very darkly tinted," Officer Teare initiated a traffic stop. *Id.* at 3, 45. Wyncoop handed his driver's license to the officer, but he did not have the vehicle's registration with him. At 3:28 p.m., while "writing [Wyncoop] a citation for his window tint and a written warning for failure to carry registration," Officer Teare requested a canine unit. *Id.* Officer Schaeffer responded to the request, indicating that "he was nearby and would respond to assist." *Id.* at 3. The officer arrived with his canine at 3:45 p.m. *Id.* at 45.

[5] In the intervening nineteen minutes—or shortly after Officer Schaeffer arrived—the following events transpired in some order: Officer Teare issued a handwritten citation to Wyncoop for the window-tint violation and a handwritten warning for failure to carry registration in the vehicle; two other officers arrived on scene; law enforcement ordered Wyncoop and Evans to exit the truck, patted the two men down, and had them sit in the grass several feet from the vehicle; one of the officers confiscated a set of keys from Evans's hands and placed the keys on the ground nearby.

[6] Once Officer Schaeffer arrived and deployed the canine, the dog "immediately indicated" on several areas of the truck. *Id.* at 3. Inside, officers recovered "a purple 'one hitter' pipe" from a compartment on the driver's side door, a "glass pipe between the two front seats," and a "purple bong" from the backseat. *Id.* The dog also alerted on Evans's set of keys, which had a red vial attached to it. One of the officers opened the vial and discovered cocaine inside. Later, at the police department, officers recovered from Evans's boxer shorts a white beanie

that was filled with nearly ninety grams of marijuana, a pill bottle containing morphine and clonazepam, a digital scale, and about $400 in cash.

[7] The State charged Evans with Class D felony possession of more than thirty grams of marijuana and two of counts of Class D felony possession of a controlled substance—for the morphine and clonazepam respectively. At the time, Evans was serving probation in two counties for separate, recent felony convictions. The State and Evans's counsel entered into plea negotiations.

[8] At a July 2009 hearing, Evans's counsel rejected the State's plea offer. About a month later, however, Evans pleaded guilty to the Class D felony possession of marijuana charge and admitted to a probation violation. In exchange, the State agreed to a minimum 180-day sentence, which was time served, and dismissed the two remaining felony charges. During the guilty-plea hearing, Evans acknowledged that he understood the agreement, he wanted to plead guilty, and he was satisfied with his attorneys' representation. *See* Ex. Vol. at 11–16. The court accepted the plea agreement and sentenced Evans accordingly.

[9] Five years later, in 2014, Evans was sentenced to twenty years in the Department of Correction after he was convicted of Class B felony dealing in a narcotic drug and found to be a habitual substance offender.[1] The habitual-

[1] Our court affirmed the conviction on direct appeal. *Evans v. State*, 30 N.E.3d 769, 772 (Ind. Ct. App. 2015), *trans. denied*.

offender determination, which required two prior unrelated substance-offense convictions, was based in part on Evans's 2009 conviction.

[10] In 2018, Evans filed a petition for post-conviction relief from the 2009 conviction. In the petition, which was later amended by counsel, Evans raised two claims: (1) he received ineffective assistance of trial counsel due to counsel's failure to file a motion to suppress the evidence seized resulting from the traffic stop; and (2) he did not enter into his guilty plea knowingly, intelligently, and voluntarily because he did not realize that the evidence should have been suppressed. *See* Appellant's App. pp. 41–46. The court held an evidentiary hearing on the petition in July 2020. Several witnesses testified, including three of the officers involved in the 2009 traffic stop, Evans's trial counsel,[2] Wyncoop, and Evans. The post-conviction court subsequently issued an order denying the petition.

[11] Evans now appeals.

Standard or Review

[12] When appealing from the denial of post-conviction relief, the petitioner proceeds from a negative judgment. *See, e.g.*, *Walker v. State*, 903 N.E.2d 1022, 1024 (Ind. Ct. App. 2009), *trans. denied*. As such, the petitioner must convince the reviewing court that the evidence unmistakably and unerringly leads to a

[2] At the time of the evidentiary hearing, Evans's primary trial counsel was a Hendricks County Superior Court Judge.

conclusion opposite the one reached by the post-conviction court. *Id.* In making this determination, we consider only the evidence and reasonable inferences supporting the post-conviction court's judgment. *Shepherd v. State*, 924 N.E.2d 1274, 1280 (Ind. Ct. App. 2010), *trans. denied*. When a defendant fails to meet this "rigorous standard of review," we will affirm the court's denial of relief. *Id.*

[13] The post-conviction court here entered findings of fact and conclusions of law in accordance with Indiana Post-Conviction Rule 1(6). Though we do not defer to the court's legal conclusions, we review the factual findings for clear error—that which leaves us with a definite and firm conviction that a mistake has been made. *State v. Cozart*, 897 N.E.2d 478, 482 (Ind. 2008) (quotation omitted). We observe, however, that the post-conviction court here adopted verbatim the State's proposed findings of fact and conclusions of law; the court did not alter the State's submission in any way, including an abundance of errors.[3]

[14] Our supreme court has recognized that the practice of adopting a party's proposed findings and conclusions verbatim helps trial courts deal with "an enormous volume of cases" and "keep the docket moving," and thus declined to prohibit the practice for practical reasons. *Prowell v. State*, 741 N.E.2d 704, 708–09 (Ind. 2001). But the court also recognized that "when this occurs, there is an inevitable erosion of the confidence of an appellate court that the findings reflect the considered judgment of the trial court." *Id.* at 709. We therefore "do

[3] Even the name of the trial court judge was misspelled.

not encourage trial courts to engage in this practice." *Dallas v. Cessna*, 968 N.E.2d 291, 296 (Ind. Ct. App. 2012) (citing *Carpenter v. Carpenter*, 891 N.E.2d 587, 592 (Ind. Ct. App. 2008)). So, while we must take the findings and conclusions as the post-conviction court's own, we approach them with "cautious appellate scrutiny." *Stevens v. State*, 770 N.E.2d 739, 762 (Ind. 2002).

Discussion and Decision

[15] Evans contends the post-conviction court clearly erred in denying his claims that he received ineffective assistance of trial counsel and that his guilty plea was not knowing, intelligent, and voluntary. His ineffective-assistance claim is premised on trial counsel's failure to file a motion to suppress "the evidence obtained in violation of . . . the federal and state constitutions," and he maintains that he "would not have pleaded guilty" because a "suppression motion would have been successful if filed." Appellant's Br. at 21. In this way, both of Evans's claims hinge on a threshold question: whether the post-conviction court clearly erred in concluding that a motion to suppress would not have been successful. We therefore address that issue first and explain why Evans has failed to establish that he is entitled to relief.[4]

[4] At the same time, we agree with Evans that the post-conviction court's order contains *several* factual and legal errors. *See* Appellant's Br. at 25–26; *see, e.g.*, Appellant's App. pp. 139, 143, 146, 157–58, 160, 168–70. And while these errors do not entitle Evans to post-conviction relief, we encourage the court—and the State which wrote the findings and conclusions—to be more thorough in the future.

I. The post-conviction court did not clearly err in concluding that a suppression motion would not have been successful.

[16] Evans argues that a motion to suppress would have been granted because "the unreasonably prolonged traffic stop" and the "warrantless search of the vial" violated his rights under the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution. Appellant's Br. at 23. The post-conviction court concluded that a "motion to suppress could not have suppressed literally anything," and "counsel did not file a motion to suppress as it would have been fruitless and would not have been successful under any set of circumstances as a matter of law." Appellant's App. p. 178. Though we find this language unnecessarily provocative and exaggerated, the court included evidence-based findings that support its ultimate conclusion: Evans failed to establish that a motion to suppress would have been successful. To explain why, we take Evans's constitutional arguments in turn under the law that existed at the time of the traffic stop.

i. There was no violation of Evans's rights under the Fourth Amendment.

[17] The Fourth Amendment permits law enforcement to conduct a limited investigation unrelated to the reasons for a lawful traffic stop. *See Illinois v. Caballes*, 543 U.S. 405, 407 (2005). For instance, an officer may question a vehicle's occupants on topics unrelated to the traffic infraction, *see Arizona v. Johnson*, 555 U.S. 323, 333 (2009), or perform a dog sniff around the outside of a vehicle during the stop, *see Caballes*, 543 U.S. at 409. But a traffic stop can become unlawful when the investigation prolongs the stop "beyond the time

reasonably required to complete [its] mission." *Myers v. State*, 839 N.E.2d 1146, 1149 (Ind. 2005) (quoting *Caballes*, 543 U.S. at 407).

[18] Here, nineteen minutes elapsed from the time Officer Teare initiated the traffic stop to the time the canine unit arrived. The post-conviction court referred to the stop as "very brief" and the delay as "clearly not too long." Appellant's App. pp. 173, 178. These observations, however, largely miss the point. The proper inquiry does not look to the length of the stop or the delay, but to whether Officer Teare detained Evans longer than reasonably necessary to complete the traffic stop.

[19] In arguing that he was detained longer than reasonably necessary, Evans asserts that the "the stop was complete or could have been completed before the canine arrived." Appellant's Br. at 30. Our review of this assertion is hampered significantly by the fact that the traffic stop was in April 2009 and the officers involved were first questioned about it more than eleven years later. These circumstances makes it difficult for us to find that the traffic stop was, or could have been, completed at the time of the canine sweep. The post-conviction court concluded it was not and included evidence-based findings supporting the conclusion. *See* Appellant's App. pp. 152, 157, 160, 171. And we cannot say, on this limited record, that the evidence unmistakably and unerringly leads to an opposite conclusion.

[20] The exhibits introduced at the evidentiary hearing, the officers' testimony on those exhibits, and the officers' understandable lack of an independent

recollection of this particular traffic stop does not provide a clear indication of when the stop was, or could have been, complete. A printout of the computer-aided dispatch reveals that Officer Teare initiated the traffic stop at 3:26 p.m., requested a canine unit at 3:28 p.m., and the unit arrived at 3:45 p.m. Ex. Vol. at 45. In the probable-cause affidavit, Officer Teare noted that he requested the canine unit while "writing [Wyncoop] a citation for his window tint and a written warning for failure to carry registration." *Id.* at 3. And the window-tint citation Officer Teare issued lists a time of 3:30 p.m. *Id.* at 52. Based on this evidence, Evans maintains, "the time that elapsed between the start of the citations and the canine sweep demonstrates the citations must have been complete prior to the sweep." Appellant's Br. at 29. This assertion, however, is undercut by other evidence in the record that tends to show the 3:30 p.m. time notation on the window-tint citation is not conclusive of when the stop was complete.

[21] For example, multiple documents also list 3:30 p.m. as the time when Evans was placed under arrest. Ex. Vol. at 33, 44. But that is not possible, as Evans was not arrested until sometime after 3:46 p.m., when the canine unit arrived. *See id.* at 3, 45. Further, Officer Teare testified that he issued handwritten tickets in 2009 which "could take several minutes" and that the time he listed on those tickets was "not one hundred percent" accurate. Tr. p. 9. He remarked that the time he wrote may have been "when the violation occurred or when [he] actually [wrote] the ticket" and that he "would either round up or down." *Id.*

This evidence supports the post-conviction court's finding that 3:30 p.m. "was when the stop occurred not when it was concluded." Appellant's App. p. 152.

[22] Yet, even if we assume that the window-tint citation was issued at 3:30 p.m., the record still does not establish that the traffic stop was, or could have been, completed prior to the canine sweep. This is because Officer Teare also issued Wyncoop a "written warning for failure to carry . . . registration in the vehicle," Tr. p. 16, and that written warning is not in the record. It is therefore unclear when Officer Teare issued the warning. The record does indicate, however, that he requested information on the vehicle's registration at 3:34 p.m. Ex. Vol. at 45. But we do not know when the officer received confirmation that the truck belonged to Wyncoop. It may have been within a couple of minutes, or it could have been several minutes later—after the canine unit arrived.

[23] In short, the evidence does not establish that the canine sweep occurred after the lawful traffic stop was, or could have been, completed.[5] Evans has thus failed to establish that the post-conviction court clearly erred in concluding a motion to suppress would have been unsuccessful on these grounds.

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[5] We acknowledge there are certain factual similarities between this case and *Wilson v. State*, 847 N.E.2d 1064 (Ind. Ct. App. 2006), on which Evans relies. Appellant's Br. at 28–29, 31; Reply Br. at 6. However, his reliance on *Wilson* is misplaced for two reasons. First, Wilson raised his constitutional challenge in a direct appeal challenging the trial court's denial of his motion to suppress. *Wilson*, 847 N.E.2d at 1065. Second, the evidence in *Wilson* established that the officer called for a canine unit more than fifteen minutes after initiating the stop and after both the warning tickets were written and Wilson had refused to consent to a search. *Id.* at 1066–67. Here, Officer Teare requested a canine unit two minutes after initiating the stop, and even assuming the window-tint citation was written at 3:30 p.m., we do not definitively know when Officer Teare completed, or could have completed, the warning for failure to carry registration.

[24] We reach the same result on Evans's Fourth Amendment challenge to the warrantless search of the vial attached to his keys. The post-conviction court concluded that this search fell under the search incident to arrest exception to the warrant requirement. *See* Appellant's App. pp. 175, 178. We cannot say that the evidence unmistakably and unerringly leads to an opposite conclusion.

[25] The canine "immediately indicated" on several areas of Wyncoop's truck, and officers found several items of drug paraphernalia inside the vehicle. Ex. Vol. at 3. At that point, law enforcement had probable cause to arrest both men, *Maryland v. Pringle*, 540 U.S. 366, 371–72 (2003), and they could conduct a search incident to lawful arrest, *VanPelt v. State*, 760 N.E.2d 218, 223 (Ind. Ct. App. 2001), *trans. denied*. Evans contends that the search incident to arrest exception does not extend to the vial on his keychain because the "keys were not on Evans'[s] person at the time of the search," Appellant's Br. at 32. He is incorrect. The search incident to arrest exception extends to the area within the person's "immediate control," that is, "the area from within which he might gain possession of a weapon or destructible evidence." *Chimel v. California*, 395 U.S. 752, 763 (1969). And the record indicates that although the keys had been confiscated from Evans for officer safety, they were on the ground nearby and thus within an area from which he could gain possession. Tr. pp. 21, 23, 27, 39; Ex. Vol. at 4. This evidence supports the post-conviction court's conclusion that law enforcement's warrantless search of the vial fell within the search incident to arrest exception.

[26] In sum, Evans has not established that the post-conviction court clearly erred in concluding that a motion to suppress on Fourth Amendment grounds would have failed. Though the analysis under Article 1, Section 11, of the Indiana Constitution is a bit different, the result is the same.

ii. There was no violation of Evans's rights under Article 1, Section 11.

[27] The Fourth Amendment and Article 1, Section 11 share nearly identical language, but they part ways in application and scope. *See, e.g.*, *Trimble v. State*, 842 N.E.2d 798, 803 (Ind. 2006). In certain circumstances, Article 1, Section 11 affords broader protection than its federal counterpart and requires a separate, independent analysis. *Holder v. State*, 847 N.E.2d 930, 940 (Ind. 2006); *Mitchell v. State*, 745 N.E.2d 775, 786 (Ind. 2001). The focus of that analysis is whether, given the totality of the circumstances presented in a particular case, law enforcement's actions were reasonable. *Mitchell*, 745 N.E.2d at 786. When assessing reasonableness, we may consider the following nonexclusive factors: (1) the degree of concern, suspicion, or knowledge that a violation has occurred; (2) the degree of intrusion the method of the search or seizure imposes on the citizen's ordinary activities; and (3) the extent of law enforcement needs. *Litchfield v. State*, 824 N.E.2d 356, 361 (Ind. 2005).

[28] Here, Evans argues that "[t]he totality of circumstances surrounding the traffic stop demonstrate the police conduct was unreasonable." Appellant's Br. at 34. The post-conviction court concluded that Evans failed to establish a violation of his rights under Article 1, Section 11. *See* Appellant's App. pp. 168, 175–76,

178. Again, hindered by the sparse record in this case, we cannot say that the evidence unmistakably and unerringly leads to an opposite conclusion.

[29] To Evans's argument on the alleged "unreasonably prolonged stop," he acknowledges "the stop was legal" but asserts "it was evident [the stop] was a pretense for a drug investigation." Appellant's Br. at 31, 33, 35. Even assuming this assertion is true, it does not necessarily render law enforcement's conduct unreasonable under Article 1, Section 11. Indeed, our supreme court has observed there is

> nothing unreasonable in permitting an officer, who may have knowledge or suspicion of unrelated criminal activity by the motorist, to nevertheless respond to an observed traffic violation. It is likewise not unreasonable for a motorist who commits a traffic law violation to be subject to accountability for said violation even if the officer may have an ulterior motive of furthering an unrelated criminal investigation.

Mitchell, 745 N.E.2d at 787.

[30] The *Mitchell* court aptly cautioned that the potential for unreasonable behavior is "most likely to arise . . . in the ensuing police investigatory conduct that may be excessive and unrelated to the traffic law violation." *Id.* But law enforcement does not violate Article 1, Section 11 when an officer briefly detains "a motorist only as necessary to complete the officer's work related to the illegality for which the motorist was stopped." *Id.* at 788. And here, for the reasons provided above, we cannot definitively say Officer Teare prolonged the traffic stop beyond the time required to complete his work related to the stop. As a result,

Evans has not established that the post-conviction court clearly erred in concluding a motion to suppress would have failed on these grounds.

[31] We reach the same result on Evans's claim that the warrantless search of the vial violated his rights under Article 1, Section 11. We initially observe, as explained above, that Evans has not established the post-conviction court clearly erred in concluding that law enforcement searched the vial pursuant to a lawful search incident to arrest—a valid consideration under an Article 1, Section 11 analysis. *See, e.g.*, *State v. Moore*, 796 N.E.2d 764, 769–70 (Ind. Ct. App. 2003), *trans. denied*. And Evans has also failed to show that the officer's search of the vial was unreasonable.

[32] The officer's degree of concern or suspicion that a violation occurred was high because the canine alerted to the keys to which the vial was attached. The degree of intrusion on Evans's ordinary activities was minimal because the officer searched the vial only after law enforcement had probable cause to arrest Evans. As for the extent of law enforcement needs, Evans argues that "police could have contacted a magistrate to obtain a warrant prior to opening the vial." Appellant's Br. at 37. This is true; but we fail to see why, in these circumstances, law enforcement should have secured an independent warrant to search an item that was already lawfully seized. *See Farrie v. State*, 255 Ind. 681, 683, 266 N.E.2d 212, 214 (1971) ("A search incidental to a valid arrest is lawful regardless of what it reveals."). In short, Evans has failed to establish that the post-conviction court clearly erred in concluding that a motion to suppress would not have been successful under Article 1, Section 11.

[33] For all of these reasons, Evans has not established that the post-conviction court clearly erred in concluding that a motion to suppress would have failed. And because both of Evans's challenges to the post-conviction court's decision hinge on making that showing, Evans has failed to demonstrate reversible error. Yet, even if we were to conclude that a suppression motion would have been granted, Evans would still not be entitled to post-conviction relief.

II. The post-conviction court did not clearly err in concluding that Evans received effective assistance of counsel.

[34] Even assuming a motion to suppress would have been granted, Evans would not automatically be entitled to relief on his claim of ineffective assistance of counsel. *See* *Kimmelman v. Morrison*, 477 U.S. 365, 375 (1986); *Glotzbach v. State*, 783 N.E.2d 1221, 1224 (Ind. Ct. App. 2003). Indeed, he must still establish that: (1) counsel's failure to file the motion was deficient performance, meaning that it fell below an objective standard of reasonableness; and (2) he was prejudiced by the deficient performance such that, but for counsel's unprofessional errors, there is a reasonable probability the outcome of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 687, 694 (1984); *Hill v. Lockhart*, 474 U.S. 52, 57 (1985); *Bobadilla v. State*, 117 N.E.3d 1272, 1280 (Ind. 2019); *Moore v. State*, 872 N.E.2d 617, 621 (Ind. Ct. App. 2007), *trans. denied*. Both showings are necessary, and Evans has failed to establish here that the

post-conviction court clearly erred in concluding counsel's performance was not deficient.[6]

[35] With respect to the deficient-performance component, we presume trial counsel rendered competent performance. *Dullen v. State*, 721 N.E.2d 241, 243 (Ind. 1999). Evans "must rebut this presumption by proving that his attorney's representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy." *Kimmelman*, 477 U.S. at 384; *see Dullen*, 721 N.E.2d at 243. He has failed to do so.

[36] We evaluate reasonableness from counsel's perspective at the time of the alleged error and in light of all the relevant circumstances. *Pennycuff v. State*, 745 N.E.2d 804, 811–12 (Ind. 2001). As our supreme court has observed, "there is no one way to defend a particular defendant, and so a reviewing court must grant the trial attorney significant deference in choosing a strategy which, at the time and under the circumstances, he or she deems best." *Potter v. State*, 684 N.E.2d 1127, 1133 (Ind. 1997); *see also Glotzbach*, 783 N.E.2d at 1224 (recognizing that "the decision of whether to file a particular motion" is often a strategic decision). Also, relevant here, the U.S. Supreme Court has stressed the importance of adhering to the deferential standard "when reviewing the choices an attorney made at the plea bargain stage." *Premo v. Moore*, 562 U.S. 115, 124 (2011). This is because plea bargains "are the result of complex negotiations

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[6] We thus do not address the prejudice inquiry. *See Strickland*, 466 U.S. at 697.

suffused with uncertainty, and defense attorneys must make careful strategic choices in balancing opportunities and risks." *Id.*

[37] Here, the post-conviction court concluded that Evans failed to show trial counsel's performance was deficient, reasoning that counsel: (1) acted "in [Evans's] interest" by rejecting the State's initial plea offer; and (2) secured a guilty plea with "extremely favorable terms." Appellant's App. pp. 155, 161. The evidence supports those findings, which in turn support the court's conclusion.

[38] When counsel was negotiating a potential plea deal with the State, Evans faced three Class D felony charges and was currently serving probation on two separate felony convictions. Though Evans's counsel did not have "any specific recollection" of this particular case, Tr. p. 42, he rejected the State's initial plea offer, *id.* at 45; Ex. Vol. at 8. Counsel then negotiated a plea agreement under which Evans pleaded guilty to one of the Class D felony counts, received a minimum 180-day sentence, which was time served, and admitted to a probation violation. The State dismissed the remaining two felony counts and also agreed to time served on the probation violation. At the evidentiary hearing on Evans's petition, counsel surmised—after reviewing the record in the case—that he may have utilized the possibility of a suppression motion as a bargaining chip to entice the prosecutor to agree to such a favorable plea deal. Tr. pp. 43–44, 48.

[39] In short, Evans has not demonstrated that his trial counsel decided against a suppression motion due to reasonable strategic considerations. Indeed, counsel advocated on Evans's behalf by rejecting the State's initial plea offer and then negotiated an extremely favorable deal. *Cf. Premo*, 562 U.S. at 129 ("The bargain counsel struck was thus a favorable one—the statutory minimum for the charged offense—and the decision to forgo a challenge to the confession may have been essential to securing that agreement."). Evans has thus failed to show that the post-conviction court clearly erred in concluding that counsel's performance did not fall below an objective standard of reasonableness.

III. The post-conviction court did not clearly err in concluding that Evans's guilty plea was knowing, intelligent, and voluntary.

[40] Evans briefly challenges his guilty plea, arguing that it was "unknowing, unintelligent, and involuntary because he was unaware the evidence against him should have been suppressed." Appellant's Br. at 40. This claim fails. As explained above, Evans has failed to show that the post-conviction court clearly erred in concluding that a motion to suppress would have been unsuccessful. Thus, his challenge to his guilty plea on grounds that the evidence "should have been suppressed" falls flat. That argument aside, the record reveals that Evans's guilty plea was entered into knowingly, intelligently, and voluntarily.

[41] While an ineffective-assistance claim turns on counsel's performance and resulting prejudice, a voluntariness claim "focuses on whether the defendant knowingly and freely entered the plea." *State v. Moore*, 678 N.E.2d 1258, 1266 (Ind. 1997). It is well settled that a "plea entered after the trial judge has

reviewed the various rights which a defendant is waiving and made the inquires called for in the statute is unlikely to be found wanting in a collateral attack." *Id.* at 1265 (quoting *White v. State*, 497 N.E.2d 893, 905 (Ind. 1986)); *see* Ind. Code § 35-35-1-2. However, defendants who can prove they were "actually misled" by counsel into pleading guilty present a colorable claim for relief. *White*, 497 N.E.2d at 905–06. Evans has not made that showing.

[42] Evans does not claim that he was advised improperly at his guilty plea hearing. And, at that hearing, Evans confirmed that: he had read the agreement and understood the rights he was waiving; he wanted to plead guilty; he understood the State could use the conviction in the future for a habitual-offender enhancement; and he was satisfied with counsels' representation and there was nothing more they could have done for him. Ex. Vol. at 11–16. To the extent Evans argues that he was misled by trial counsel regarding the possibility of suppressing the evidence, *see* Appellant's Br. at 40, this argument is unavailing.

[43] By his own account, Evans discussed suppression with his trial counsel, who also discussed it with the prosecutor. *See* Tr. p. 49. According to Evans, counsel told him he had "no basis for illegal search and seizure." *Id.* Assuming that is true, Evans could still have insisted on going to trial, asked the trial court questions about suppression before pleading guilty, or expressed concern with counsel's performance on this issue. Yet, he did none of those things. And Evans does not direct us to any circumstances which might call into question his repeated assertions at the guilty plea hearing that he had decided, voluntarily, that entering the plea was in his best interests.

[44] In sum, Evans was advised of his rights at the plea hearing, and he has failed to show that he was misled into pleading guilty. He has thus failed to establish that the post-conviction court clearly erred in concluding his guilty plea was entered into knowingly, intelligently, and voluntarily.

Conclusion

[45] The post-conviction court concluded Evans failed to prove that a motion to suppress would have been successful, he received ineffective assistance of counsel, or his guilty plea was not entered into knowingly, intelligently, and voluntarily. Evans has failed to establish that the evidence unmistakably and unerringly leads to opposite conclusions. We thus affirm the court's denial of Evans's petition for post-conviction relief.

[46] Affirmed.

Altice, J., and Weissmann, J., concur.