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**IN THE
COURT OF APPEALS OF INDIANA**

TROY HOWARD,)
)
 Appellant-Petitioner,)
)
 vs.) No. 23A01-0511-PC-514
)
 STATE OF INDIANA,)
)
 Appellee-Respondent.)

APPEAL FROM THE FOUNTAIN CIRCUIT COURT
The Honorable Susan Henderson, Judge
Cause No. 23C01-0205-FB-206

October 23, 2006

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Troy E. Howard (“Howard”) appeals the denial of his petition for post-conviction relief in Fountain Circuit Court. We affirm.

Facts and Procedural History

On May 3, 2002, the State charged Howard with Class B felony dealing in methamphetamine, Class D felony possession of methamphetamine, and Class D felony possession of chemical reagents or precursors with intent to manufacture. Pursuant to the terms of a plea agreement, Howard pleaded guilty to the two Class D felony charges. In exchange, the State agreed to dismiss the Class B felony charge.

At a sentencing hearing held on April 11, 2003, the trial court sentenced Howard to three years on each conviction and ordered that the sentences be served consecutively. On July 19, 2004, Howard filed a pro se petition for post-conviction relief, claiming that his trial counsel was ineffective and that he had been subjected to double jeopardy. The post-conviction court conducted a hearing on August 11, 2005, and on October 13, 2005, denied Howard’s petition. He now appeals.

Standard of Review

Post-conviction procedures do not afford petitioners an opportunity for a “super appeal.” Matheney v. State, 688 N.E.2d 883, 890 (Ind. 1997). Rather, they create a narrow remedy for subsequent collateral challenges to convictions. Id. Those collateral challenges must be based upon grounds enumerated in the post-conviction rules. Id.; see also Ind. Post-Conviction Rule 1(1) (2006). The petitioner in a post-conviction proceeding bears the burden of establishing grounds for relief by a preponderance of the evidence. Ind. Post-Conviction Rule 1(5); Fisher v. State, 810 N.E.2d 674, 679 (Ind.

2004). When appealing from the denial of post-conviction relief, the petitioner stands in the position of one appealing from a negative judgment. Fisher, 810 N.E.2d at 679. On review, we will not reverse the judgment unless the evidence as a whole unerringly and unmistakably leads to a conclusion opposite that reached by the post-conviction court. Id.

Discussion and Decision

First, Howard contends that the post-conviction court erred by failing to secure the presence of his trial defense counsel at the PCR hearing. When Howard's trial counsel failed to appear, the court advised Howard that he could continue the hearing. Tr. pp. 9-10. Howard responded that he wanted to go forward with his other issues and that he wished to waive his ineffective assistance of counsel argument. Tr. p. 10. Thus, Howard has waived his argument that the post-conviction court erred in holding the hearing without Howard's defense counsel present.

Howard also argues that his sentences violate double jeopardy principles. "As a general rule, however, a defendant with adequate counsel who pleads guilty to achieve favorable outcomes gives up a plethora of substantive claims and procedural rights, including the right to collaterally challenge convictions upon double jeopardy grounds." Mays v. State, 790 N.E.2d 1019, 1022 (Ind. Ct. App. 2003) (citing Mapp v. State, 770 N.E.2d 332, 334-35 (Ind. 2002); Games v. State, 743 N.E.2d 1132, 1135 (Ind. 2001)). In Mapp, our supreme court reaffirmed this rule and further held that there is no exception under Indiana law even for "facially duplicative" charges. 770 N.E.2d at 335. Here, Howard has not demonstrated that he did not have the assistance of adequate counsel or

that he did not achieve a favorable outcome as a result of the plea bargaining process. Thus, by pleading guilty, Howard waived his right to directly challenge his convictions as violative of double jeopardy.

Conclusion

The post-conviction court properly denied Howard's petition.

Affirmed.

FRIEDLANDER, J., and BARNES, J., concur.