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**IN THE  
COURT OF APPEALS OF INDIANA**

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DARRELL STEPHENS,  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
Appellee-Plaintiff.

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No. 30A04-1105-PC-232

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APPEAL FROM THE HANCOCK CIRCUIT COURT  
The Honorable Richard Culver, Judge  
Cause No. 30C01-1102-PC-331

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**December 14, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**FRIEDLANDER, Judge**

Darrell Stephens appeals from the post-conviction court's order denying his petition for post-conviction relief. Stephens presents the following restated issue for our review: Did Stephens meet his burden of proving his entitlement to post-conviction relief by a preponderance of the evidence?

We affirm.

In December 1988, the State charged Stephens with Operating a Motor Vehicle After License Forfeited for Life,<sup>1</sup> a class C felony, among other charges. On February 13, 1989, Stephens pleaded guilty to the offense and the trial court sentenced Stephens to five years executed with three years suspended to probation. In his plea agreement, Stephens acknowledged the following: 1) that he was represented by counsel; 2) that he understood the charges; 3) that he understood and was waiving his constitutional rights; and 4) that he was advised of the possible penalties.

On February 24, 2011, Stephens filed a petition for post-conviction relief alleging that there was no record of a prior conviction to support the allegation in the underlying offense that his license had been suspended for life. He claimed there was no basis for his conviction for operating a motor vehicle after a lifetime forfeiture.

The post-conviction court held a hearing on Stephens's petition during which no evidence or testimony was presented. Rather, the post-conviction court and counsel discussed Stephens's allegations in his petition and efforts by counsel to gather evidence to

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<sup>1</sup> Ind. Code Ann. § 9-12-3-2 (repealed by P.L. 2-1991, SEC. 109). The current version of the offense is codified as Ind. Code Ann. § 9-30-10-17 (West, Westlaw current through 2011 1<sup>st</sup> Reg. Sess.).

support such claims. Ultimately, the post-conviction court denied Stephens's petition. This appeal ensued.

Post-conviction proceedings do not afford the petitioner an opportunity for a super appeal, but rather, provide the opportunity to raise issues that were unknown or unavailable at the time of the original trial or the direct appeal. *Ben-Yisrayl v. State*, 738 N.E.2d 253 (Ind. 2000), *cert. denied* 534 U.S. 1164 (2002); *Wieland v. State*, 848 N.E.2d 679 (Ind. Ct. App. 2006), *trans. denied*. The proceedings do not substitute for a direct appeal and provide only a narrow remedy for subsequent collateral challenges to convictions. *Ben-Yisrayl v. State*, 738 N.E.2d 253. The petitioner for post-conviction relief bears the burden of proving the grounds by a preponderance of the evidence. Ind. Post-Conviction Rule 1(5).

When a petitioner appeals a denial of post-conviction relief, he appeals from a negative judgment. *Fisher v. State*, 878 N.E.2d 457 (Ind. Ct. App. 2007), *trans. denied*. The petitioner must establish that the evidence as a whole unmistakably and unerringly leads to a conclusion contrary to that of the PCR court. *Id.* We will disturb a PCR court's decision as being contrary to law only where the evidence is without conflict and leads to but one conclusion, and the PCR court has reached the opposite conclusion. *Wright v. State*, 881 N.E.2d 1018 (Ind. Ct. App. 2008), *trans. denied*. The PCR court is the sole judge of the weight of the evidence and the credibility of witnesses. *Lindsey v. State*, 888 N.E.2d 319 (Ind. Ct. App. 2008), *trans. denied*.

Stephens appears to argue on appeal that his 1989 guilty plea must be set aside because there is no transcript of the guilty plea hearing, nor is there any record of the prior case in which his driving privileges were forfeited for life. He claims there was no factual

basis for his guilty plea, and, as a result, his guilty plea was not made knowingly and voluntarily.

During the hearing on Stephens's petition for post-conviction relief, he presented no evidence or testimony to support his claim. Counsel for Stephens presented argument and discussion regarding his claim, but nothing more. The post-conviction court and counsel discussed Stephens's contention that the record of his guilty plea hearing no longer existed and that there was no record of a prior case wherein Stephens was adjudicated a habitual traffic offender for life. This showing, however, does not meet Stephens's burden of proving by a preponderance of the evidence that he is entitled to post-conviction relief. Where a petitioner fails to present any evidence in support of his petition, the post-conviction court does not err by denying his petition for post-conviction relief. *Evans v. State*, 809 N.E.2d 338 (Ind. Ct. App. 2004).

Judgment affirmed.

DARDEN, J., and VAIDIK, J., concur.