ATTORNEY FOR APPELLANT:

ANDREW C. MATERNOWSKI
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

SCOTT L. BARNHART
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

DAVID S. BUCKROP,	)	
Appellant-Petitioner,	)	
vs.	)	No. 32A01-0605-PC-178
STATE OF INDIANA,	)	
Appellee-Respondent.	)	

APPEAL FROM THE HENDRICKS SUPERIOR COURT
The Honorable David H. Coleman, Judge
Cause No. 32D02-0511-PC-4

December 12, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Chief Judge

David S. Buckrop ("Buckrop") appeals the denial of his petition for post-conviction relief challenging the post-conviction court's finding that his guilty plea entered in the trial court was voluntarily made.

We affirm.

FACTS AND PROCEDURAL HISTORY

On May 5, 1994, the State filed a four-count information charging Buckrop with: (1) operating a vehicle while intoxicated ("OWI") with an OWI conviction within the previous five years,[1] a Class D felony; (2) operating a vehicle with ten-hundredths percent or more by weight of alcohol in his blood[2], a Class C misdemeanor; (3) operating a vehicle while driving privileges were suspended as a habitual traffic violator ("HTV"),[3] a Class D felony; and (4) fleeing from a law enforcement officer[4] as a Class A misdemeanor.

The State filed notice of Buckrop's guilty plea. The trial court held a plea hearing, at which counsel represented Buckrop. During the hearing, the trial court, in compliance with IC 35-35-1-2, informed Buckrop of the rights he would waive by pleading guilty, obtained Buckrop's assurances that he was not under the influence of alcohol or drugs, and confirmed that Buckrop had not been forced to plead guilty. *Appellant's App.* at 27.

---

[1] *See* IC 9-30-5-3.

[2] *See* IC 9-30-5-1. In 2001, the legislature amended this section from a requirement of an alcohol concentration equivalent to at least ten-hundredths gram to an alcohol concentration equivalent to at least eight-hundredths gram of alcohol.

[3] *See* IC 9-30-10-16.

[4] *See* IC 35-44-3-3.

After Buckrop stated his intent to plead guilty, the State set forth the following evidence:

> [I]f the State would have gone to trial in this matter we would have proven beyond a reasonable doubt that . . . on May 5, 1994 at approximately 4:32 p.m. the defendant, uh, was observed [by a Brownsburg Police Officer] behind the wheel of his vehicle and was noted that he was driving while suspended due to the fact that he was an Habitual Traffic Violator. His eyes were bloodshot. And he agreed to submit to a chemical test administered by Larry Pugliese who is a chemical test operator . . . and he tested a .12%. In addition on said -- the same date he did operate a vehicle with his driving privileges suspended under Indiana Code 9-30-10 due to the fact that he was Habitual Traffic Violator. All these event occurred in Hendricks County, Indiana.

Id. at 30. The trial court then engaged in the following exchange with Buckrop:

> THE COURT: Mr. Buckrop, is the deputy prosecutor substantially correct?
>
> DAVID BUCKROP: Yes. Sir.
>
> THE COURT: You now say that you're guilty of operating your vehicle while you were intoxicated, that your driving was impaired because of that intoxication and you had a prior conviction for OWI?
>
> DAVID BUCKROP: Yes. Sir.
>
> THE COURT: And you also say that you're guilty of operating a vehicle after you'd been adjudged Habitual Traffic Violator?
>
> DAVID BUCKROP: Yes. Sir.
>
> THE COURT: Mr. Brown, any advantage to going to trial?
>
> RICHARD BROWN: No, there's not, Your Honor.

Id. at 30-31. The trial court then took the matter under advisement.

At his March 14, 1995 sentencing hearing, the trial court accepted Buckrop's guilty plea for Counts I and III, and dismissed the other counts.[5] As to Count I, the OWI charge, the trial court imposed a fine of $100 and sentenced Buckrop to three years; with sixty days to be served in home detention and the remainder served on probation. As to Count III, operating a vehicle with license suspended as an HTV, the trial court imposed an additional $100 fine and a three-year sentence to be served concurrent with Count I. The trial court suspended Buckrop's driver's license for 365 days. Thereafter, as a consequence of these

[5] During the sentencing hearing, the trial court reviewed Buckrop's driving record and asked Buckrop's attorney: "Tell me, Mr. Brown, why I should accept this plea agreement based upon his record and the fact he's got three pending cases." *Appellant's App.* at 36. The trial court then entertained argument as to why it should accept Buckrop's plea of guilty. Just prior to accepting the plea, the trial court asked Buckrop personally why the court should accept the plea.

> DAVID BUCKROP: Well, sir, I don't believe that I'm as much as a criminal as what the record says. As far as alcohol-related arrests all the Public Intox charges none of them were valid anyway. I mean—
>
> THE COURT: (Interposing) Well, are you going to come back in two more years and say this is not valid either?
>
> DAVID BUCKROP: No, sir. No, sir, I made a mistake on this one and I've learned my lesson. It's –on the Habitual Traffic Violator offenses I had no other way to work. I had no choice if I was going to be able to pay for bills, pay for my truck, pay for my home and make a living I had to get back and forth to work somehow. I've gotten rides as far as I, you know, as many as I can but there was just sometimes I work construction that nobody could come and get me.
>
> THE COURT: Do you understand you'll have a felony conviction the rest of your life?
>
> BUCKROP: Yes, sir.
>
> THE COURT: All right, let the record reflect the defendant has entered a guilty plea knowingly and voluntarily. He understands the constitutional rights he's giving up by pleading guilty. There is a factual basis for the plea. He is satisfied with his counsel. . . .

Id. at 40.

convictions, the Indiana Bureau of Motor Vehicles ("BMV") suspended Buckrop's license indefinitely. *Appellant's Br.* at 1.

On November 2, 2005, Buckrop filed a petition for post-conviction relief arguing that the plea agreement was involuntary because the trial court failed to advise him of the full consequences of pleading guilty on Count III. The post-conviction court denied Buckrop's petition after finding that Buckrop: (1) failed to establish by a preponderance of the evidence that the trial court was required to notify him that his driver's license would be forfeited for life; and (2) provided no legal support for the proposition that a plea is involuntary if a trial court fails to notify the defendant that a guilty plea will result in lifetime forfeiture of his driver's license. Buckrop now appeals. Additional facts will be added as necessary.

DISCUSSION AND DECISION

Post-conviction proceedings do not afford a petitioner an opportunity for a "super appeal." *King v. State*, 848 N.E.2d 305, 307 (Ind. Ct. App. 2006); *Henderson v. State*, 825 N.E.2d 983, 985 (Ind. Ct. App. 2005), *trans. denied*. Post-conviction proceedings provide the petitioner with an opportunity to raise issues that were not known to him or her at the time of the original trial or were not available upon direct appeal. *King*, 848 N.E.2d at 307; *Seeley v. State*, 782 N.E.2d 1052, 1057-58 (Ind. Ct. App. 2003), *trans. denied*. "'The petitioner in a post-conviction proceeding bears the burden of establishing grounds for relief by a preponderance of the evidence.'" *King*, 848 N.E.2d at 307 (quoting *Henderson*, 825 N.E.2d at 985).

Buckrop's petition for post-conviction relief was denied. Therefore, he appeals a negative judgment. *Wallace v. State*, 836 N.E.2d 985, 1000 (Ind. Ct. App. 2005); *see Barker*

v. State, 812 N.E.2d 158, 162 (Ind. Ct. App. 2004), *trans. denied*. "'We accept the post-conviction court's findings of fact unless they are clearly erroneous, but we do not have to give deference to the post-conviction court's conclusions [thereon].'" *Wallace*, 836 N.E.2d at 1000 (quoting *Douglas v. State*, 800 N.E.2d 599, 604 (Ind. Ct. App. 2003), *trans. denied*). The trial court's denial of a petition for post conviction relief will not be reversed unless Buckrop presents evidence that, as a whole, leads to a conclusion opposite that reached by the post-conviction court. *King*, 848 N.E.2d at 307; *Wallace*, 836 N.E.2d at 1000.

A guilty plea is voluntary only if entered by one fully aware of the direct consequences of his plea. *Stoltz v. State*, 657 N.E.2d 188, 191 (Ind. Ct. App. 1995) (quoting *Brady v. United States*, 397 U.S. 742 (1970)). "A petitioner who claims that his plea was involuntary or unintelligent must plead specific facts from which a finder of fact could conclude by a preponderance of the evidence that the trial court's failure to make a full inquiry in accordance with [IC 35-35-1-2(a)] rendered his decision involuntary or unintelligent." *Stoltz*, 657 N.E.2d at 190. IC 35-35-1-2, in pertinent part, provides:

> (a) The court shall not accept a plea of guilty or guilty but mentally ill at the time of the crime without first determining that the defendant:
>
> . . .
>
> (3) has been informed of the maximum possible sentence and minimum sentence for the crime charged and any possible increased sentence by reason of the fact of a prior conviction or convictions, and any possibility of the imposition of consecutive sentences . . . .

Buckrop argues that lifetime forfeiture of his driver's license was a direct consequence of his guilty plea, and that the trial court, by failing to address this consequence, did not properly inform him of the maximum sentence as required by IC 35-35-1-2(a)(3). As such,

Buckrop contends that this lack of information caused his plea to be involuntary. While both parties agree that the trial court did not inform Buckrop that a guilty plea on Count III would cause his license to be forfeited for life, the State notes that there is no evidence in the record before us regarding the reason why Buckrop's license was forfeited. Further, the State contends that even if the forfeiture arose from this conviction, the suspension was collateral to the conviction and not a direct result thereof.

The post-conviction court entered findings and the following conclusions thereon:

> 6. The Court finds that the Petitioner is not entitled to any relief on his claim that his guilty plea should be set aside on the basis that he was never advised that a plea to HTV as a D Felony would result in a lifetime suspension as required by Indiana Code 9-30-10-16. The plea agreement entered only called for a 365-day license suspension for Operating While Intoxicated. Indiana Code 9-30-10-16 states in relevant part: "(c) In addition to any criminal penalty, a person who is convicted of a felony under subsection (a) forfeits the privilege of operating a motor vehicle for life." Indiana Code 9-30-10-5 states in relevant part: "If it appears from the records maintained in the [BMV] that a person's driving records makes the person a habitual violator under section 4 of this chapter, the [BMV] shall mail a notice to the person's last known address that informs the person that the person's driving privileges will be suspended in thirty (30) days because the person is a habitual violator according to the records of the [BMV]."
>
> 7. Indiana Code 9-30-10 requires the [BMV] to mail notice of suspension to the last known address. The statute does not require this Court to impose a suspension, nor does it require this Court to provide notice of that suspension. The license suspension imposed for operating as a habitual traffic violator is a [BMV] imposed suspension. Where evidence was presented that the defendant was operating a vehicle, had been determined by the [BMV] to be habitual, and notice had been sent, there was sufficient evidence to support a conviction. *Stanek v. State*, 519 N.E.2d 1263 (Ind. Ct. App. 1988).
>
> 8. Indiana Code 9-30-10-16 specifically provides that "*in addition to any criminal penalty*, a person who is convicted of a felony forfeits the privilege of operating a motor vehicle for life." (Emphasis added).

> This statute reads that the license suspension will be imposed separate from the criminal proceedings. Indiana Code 9-30-10-16 does not include the wording "the court shall/may order forfeiture of the defendant's license for life." The license suspension imposed under this code is a [BMV] imposed suspension, and this Court is not required to enter a separate order for a lifetime suspension.
>
> 9. The Petitioner has failed to establish by a preponderance of the evidence that this Court was required to notify the Petitioner that his license would be suspended for life. Furthermore, the Petitioner has not provided any statutory or case law to prove that failure of this Court to notify the Petitioner of his suspension makes his plea involuntary.

Appellant's App. at 9-10.

The trial court's denial of a petition for post conviction relief will not be reversed unless the petitioner presents evidence that leads to a conclusion opposite that reached by the post-conviction court. *King*, 848 N.E.2d at 307. To persuade this Court that reversal is required, Buckrop argues that where, like here, the statute contains language that requires an automatic license forfeiture upon conviction, the forfeiture is a direct consequence of the conviction.

While acknowledging three Indiana post-conviction cases that support the State's position, Buckrop contends that those cases are distinguishable. *See Stoltz*, 657 N.E.2d 188; *Allender v. State*, 560 N.E.2d 545 (Ind. Ct. App. 1990); *Wright v. State*, 495 N.E.2d 804 (Ind. Ct. App. 1986), *trans. denied*. In *Wright*, the petitioner alleged that his plea of guilty to OWI was not entered knowingly, intelligently, and voluntarily because the trial court failed to advise him of the ramifications of his guilty plea on later license suspension. 495 N.E.2d at 805. The trial court denied Wright's claim on the basis that such advisement was both an ancillary matter under the motor vehicle law and not required under IC 35-35-1-2. *Id*. at 805-

06. In *Allender*, the petitioner argued that his guilty plea was not knowing, voluntary, and intelligent because the trial court failed to notify him that his license could be suspended if the BMV determined he was a habitual offender. 560 N.E.2d at 546. The trial court again rejected this argument concluding that the statute placed no responsibility on the court to advise Allender of potential administrative action on behalf of the BMV. *Id*. Finally, in *Stoltz*, the petitioner claimed that the trial court's failure to advise him about the mandatory suspension of his license following a guilty plea amounted to a violation of his Fifth Amendment due process rights. *Stoltz*, 657 N.E.2d at 191. The trial court rejected Stoltz's argument and, citing to authority from other state and federal jurisdictions, concluded that, "license revocation is a collateral consequence to a guilty plea." *Id*. at 192 n.3

Buckrop attempts to distinguish these cases by noting that in those cases our Court relied upon the fact that the license suspension was either administratively imposed or was not a certain result of the conviction while, here, Buckrop's lifetime suspension resulted automatically by action of the trial court after accepting Buckrop's guilty plea. *Appellant's Br*. at 5. There is no evidence in the record before us, however, that supports Buckrop's assertion that his license was forfeited in any other way than administratively by the BMV. The trial court imposed a 365-day suspension of Buckrop's license. The trial court would not have imposed such a suspension if lifetime forfeiture was also being imposed at that time. Likewise in *Stoltz*, notwithstanding Buckrop's assertions to the contrary, the driving suspension was deemed a collateral consequence of a guilty plea. As such, the trial court concluded that the "automatic nature of [a] license suspension is of no moment." *Stoltz*, 657 N.E.2d at 192.

Finding, as we do, that the precedents of *Wright*, *Allender*, and *Stoltz* are applicable to the facts of this case, we conclude that the post-conviction court did not err in denying Buckrop's request for post-conviction relief on the basis that his guilty plea was not voluntarily given.

Affirmed.

SHARPNACK, J., and MATHIAS, J., concur.