APPELLANT PRO SE:

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IN THE
COURT OF APPEALS OF INDIANA

JOHN R. CRAWFORD	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 62A04-1102-PC-128
	)	
STATE OF INDIANA,	)	
	)	
Appellee.	)	

APPEAL FROM THE PERRY CIRCUIT COURT
The Honorable Lucy Goffinet, Judge
Cause No. 62C01-0804-FB-371

December 28, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

John Crawford ("Crawford") was convicted in Perry Circuit Court of Class B felony dealing in methamphetamine, Class D felony possession of methamphetamine, Class D felony possession of chemical reagents or precursors with intent to manufacture a controlled substance, Class A misdemeanor possession of paraphernalia, and Class B misdemeanor visiting a common nuisance. Crawford was ordered to serve an aggregate sentence of twenty years in the Department of Correction. Crawford subsequently filed a pro se petition for post-conviction relief, which the post-conviction court denied without holding a hearing. Crawford appeals the denial raising two issues:

> I. Whether the post-conviction court erred when it denied his petition without holding an evidentiary hearing; and,
>
> II. Whether the petitioner received ineffective assistance of trial and appellate counsel.

We affirm.

Facts and Procedural History

Crawford's convictions for Class B felony dealing in methamphetamine, Class D felony possession of methamphetamine, Class D felony possession of chemical reagents or precursors with intent to manufacture a controlled substance, Class A misdemeanor possession of paraphernalia, and Class B misdemeanor visiting a common nuisance were affirmed by our court on direct appeal. In our memorandum decision, we recited the following facts:

> On April 14, 2008, Indiana State Police Sergeant Paul Andry (Sergeant Andry), Indiana State Police Troopers Katrina Greenwell and Jackie Smith (Officer Smith), together with Corporal Marty Haughee (Corporal Haughee) of the Tell City Police Department went to the residence of Stephen Reed (Reed) in Cannelton, Perry County, Indiana, to

serve him with an arrest warrant. Before the officers could enter the property, they observed a white Chevy S–10 enter the driveway to the residence. The officers later identified Crawford as the driver of the truck. When the officers arrived at the residence, they noticed the Chevy truck parked a few feet away from a small outbuilding located approximately twelve feet behind Reed's mobile home.

Sergeant Andry knocked on the front door of the mobile home and announced that they were serving a warrant. Crawford opened the door and advised the officers that Reed was in the bathroom. Sergeant Andry noticed a box of pseudoephedrine sticking from Crawford's coat pocket. While Corporal Haughee arrested Reed on the warrant, Sergeant Andry remained with Crawford in the living room of the residence. At that moment, Officer Smith entered the mobile home through the backdoor and informed Sergeant Andry that they had discovered a meth lab in the outbuilding. Sergeant Andry patted Crawford down and removed two unopened 24–count pseudoephedrine boxes from his coat pocket. In addition, officers also found $200 in cash, as well as a pair of gloves that were covered in mud, a foil boat, i.e., "a piece of foil that's used to smoke [m]ethamphetamine from," and a lithium battery on Crawford's person. After being asked why he had the pills, Crawford "smirked and kind of laughed" and said "I've got chest congestion." Crawford indicated that he had bought the boxes the previous day in Owensboro, Kentucky. Asked why he hadn't opened them yet, Crawford "kind of shook his head like the question [the officer] was asking was ridiculous." When Sergeant Andry started to make a call to the Owensboro Police Department, Crawford told him not to "bother, [he] didn't get them from Owensboro, [he] got them from an individual." Crawford refused to give the name of this individual. Sergeant Andry stated that "if you're buying these pills for chest congestion, why would it bother you to tell me who you purchased them from." At that point, Crawford said, "you know why" and again smirked and laughed. While talking to Crawford, Sergeant Andry noticed him to be very excited and believed him to be in a "[m]eth psychosis, the situation when a person is using [m]ethamphetamine where they're very nervous, very excitable."

After searching the outbuilding, the officers found several items used for manufacturing methamphetamine and which tested positive for methamphetamine. They also noticed coffee filters, a plastic spoon with a white powdery substance on it; loose pseudoephedrine tablets, and lithium battery hulls. A search of the Chevy truck revealed two coffee filters in the driver's side door panel which were wadded up in a ball. The coffee filters tested positive for methamphetamine.

Crawford v. State, 912 N.E.2d 913, No. 62A01-0902-CR-61 (Ind. Ct. App. Aug. 31, 2009).

Crawford was ordered to serve an aggregate sentence of twenty years for his convictions. On direct appeal, Crawford challenged the sufficiency of the evidence for the dealing in methamphetamine conviction. Our court affirmed his conviction after observing that although there was no direct evidence that Crawford knowingly manufactured methamphetamine, there was sufficient circumstantial evidence to support his conviction. Id.

On June 23, 2010, Crawford filed his pro se petition for post-conviction relief alleging ineffective assistance of trial counsel. On January 12, 2011, the post-conviction court denied his petition without holding a hearing, Crawford now appeals the denial pro se.

Standard of Review

Post-conviction proceedings do not grant a petitioner a "super-appeal" but are limited to those issues available under the Indiana Post–Conviction Rules. Timberlake v. State, 753 N.E.2d 591, 597 (Ind. 2001) (citing Ind. Post–Conviction Rule 1(1)). Post-conviction proceedings are civil in nature, and petitioners bear the burden of proving their grounds for relief by a preponderance of the evidence. Ind. Post–Conviction Rule 1(5). A petitioner who appeals the denial of PCR faces a rigorous standard of review, as the reviewing court may consider only the evidence and the reasonable inferences supporting the judgment of the post-conviction court. Kien v. State, 866 N.E.2d 377, 381 (Ind. Ct. App. 2007), trans. denied. The appellate court must accept the post-conviction court's

findings of fact and may reverse only if the findings are clearly erroneous. Stephenson v. State, 864 N.E.2d 1022, 1028 (Ind. 2007). If a post-conviction petitioner was denied relief, he or she must show that the evidence as a whole leads unerringly and unmistakably to an opposite conclusion than that reached by the post-conviction court. Ivy v. State, 861 N.E.2d 1242, 1244 (Ind. Ct. App. 2007), trans. denied.

Discussion and Decision

First, we address Crawford's argument that the post-conviction court erred when it denied his petition without holding a hearing. If post-conviction pleadings show conclusively that the petitioner is entitled to no relief, the court may deny the post-conviction petition without further proceedings. Ind. Post–Conviction Rule 1(4)(f). Where a court disposes of a petition accordingly, we review the court's decision as we would a motion for judgment on the pleadings. Allen v. State, 791 N.E.2d 748, 752 (Ind. Ct. App. 2003), trans. denied. The court errs in disposing of a petition in this manner unless the pleadings show that the petitioner is entitled to no relief. Id. at 752–53. The petitioner has a burden "only to plead facts that raise[ ] an issue of possible merit." Id. at 754. When a petitioner alleges ineffective assistance of counsel and the facts pled raise an issue of possible merit, the petition should not be summarily dismissed. Id. at 756. But "without specific factual allegations in support of the claim of inadequacy of representation no evidentiary hearing is required." Tyson v. State, 868 N.E.2d 855, 858 (Ind. Ct. App. 2007) (citing Sherwood v. State, 453 N.E.2d 187, 189 (Ind. 1983)), trans. denied. The post-conviction court shall make specific findings of fact and conclusions of

law on all issues presented, whether or not a hearing is held. Ind. Post–Conviction Rule 1(6); Clayton v. State, 673 N.E.2d 783, 786 (Ind. Ct. App. 1996).

Crawford's petition for post-conviction relief alleges that his trial counsel was ineffective because

> Trial counsels [sic] representation fell well below the minimum standard of representation. The facts of this cause do not support the movants [sic] participation in a class "B" offense[.] [T]rial counsels [sic] failure to provide an advisarial [sic] role in the trial, has not only deprived him of liberty but has denied any successful appeal as the Appellate Court will not reweigh the evidence or the mistakes made by trial counsel. Basic phone record would has [sic] provide a not guilty verdict. Cousel [sic] alone has denied movant of liberty.

Appellant's App. pp. 16-17.

Crawford's allegation was that trial counsel was ineffective because the evidence was insufficient to support his conviction. This issue was previously resolved against him on direct appeal. Crawford also does not specifically delineate mistakes that counsel made at trial except for the vague reference to a phone record.

Although petitioners are allowed some latitude at the pleading stage, Crawford has failed to sustain his burden to plead proper grounds and facts in support of his claim of ineffective assistance, and we therefore find his allegations insufficient to withstand summary dismissal. See, e.g., Tyson, 868 N.E.2d at 858 (concluding that an allegation that "trial counsel failed to introduce available exculpatory evidence" was insufficient to plead ineffective assistance); Hutchinson v. State, 540 N.E.2d 109, 110–11 (Ind. Ct. App. 1989) (concluding that an allegation that counsel "only put on a pro forma defense on my behalf to satisfy the requirement that I have counsel" was insufficient), trans. denied.

Moreover, we observe that Crawford's argument in his Appellant's brief on this issue is simply a recitation of the post-conviction rules and citation to appellate decisions without any argument to support his claim of error. Failure to develop a cogent argument results in waiver of the issue on appeal. See Smith v. State, 822 N.E.2d 193, 202-03 (Ind. Ct. App. 2005), trans. denied; Ind. Appellate Rule 46(A)(8)(a).

Crawford also argues that his trial counsel rendered ineffective assistance. Claims of ineffective assistance of trial counsel are generally reviewed under the two-part test announced in Strickland v. Washington, 466 U.S. 668 (1984). Grinstead v. State, 845 N.E.2d 1027, 1031 (Ind. 2006). That is, a defendant must demonstrate that his counsel's performance fell below an objective standard of reasonableness based on prevailing professional norms and that his counsel's deficient performance resulted in prejudice. Strickland, 466 U.S. at 687–88. Prejudice occurs when the defendant demonstrates that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694. A reasonable probability arises when there is a "probability sufficient to undermine confidence in the outcome." Id.

A claim may be disposed of on either prong of the two-part Strickland test. Grinstead, 845 N.E.2d at 1031. An inability to satisfy either prong of the Strickland test is fatal to an ineffective assistance claim. Vermillion v. State, 719 N.E.2d 1201, 1208 (Ind. 1999). Generally, we need not evaluate counsel's performance if the defendant has suffered no prejudice. And most ineffective assistance of counsel claims can be resolved by a prejudice inquiry alone. Id.

Again Crawford's argument section in his brief contains only a recitation of constitutional amendments and citation to prior appellate decisions without any independent argument to support his claim of ineffective assistance of counsel. And therefore the issue is waived. See Smith, 822 N.E.2d at 202-03; Ind. Appellate R. 46(A)(8)(a).

Moreover, the only argument found in Crawford's brief concerning the alleged ineffectiveness of trial counsel[1] states:

> The appellant was denied effective assistance of counsel where counsel was unaware of the law and elements of the charges for which the petitioner was accused. Counsels [sic] ignorance was sufficient to make him ineffective in his advise [sic] relative to the appellant and this cause. The appellant essentially received a twenty (20) year sentence for visiting a criminal, having a smirk on his face, being nervous when talking to law enforcement and having items he in [sic] legally allowed to have.

Appellant's Br. at 2.

Crawford does not provide any argument to specifically support his claim that counsel was ignorant of the law. Furthermore, the last sentence of Crawford's argument leads us to conclude that he is simply attempting to relitigate the issue of sufficiency of the evidence. Sufficiency of the evidence is not a proper claim in post-conviction proceedings, see Post-Conviction Rule 1, and in any case, the issue was resolved against Crawford on direct appeal.

[1] In his brief, Crawford also argues that his appellate counsel was ineffective. Crawford failed to raise this argument in his petition for post-conviction relief and also fails to support his claim with cogent argument. Therefore, the issue is waived. See Emerson v. State, 812 N.E.2d 1090, 1098-99 (Ind. Ct. App. 2004); Appellate R. 46(A)(8)(a).

For all of these reasons, we conclude that the trial court properly denied Crawford's petition for post-conviction relief.

Affirmed.

FRIEDLANDER, J., and RILEY,J., concur.