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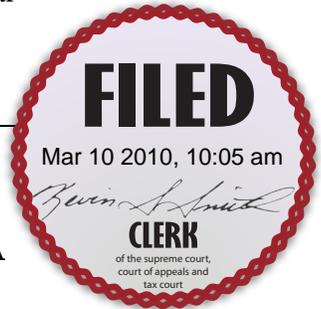
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**IN THE  
COURT OF APPEALS OF INDIANA**

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ANTHONY CRAIG, )  
 )  
Appellant-Defendant, )  
 )  
vs. )  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

No. 48A02-0907-PC-674

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APPEAL FROM THE MADISON SUPERIOR COURT  
The Honorable Thomas Newman, Jr., Judge  
Cause Nos. 48D03-0709-PC-249 and 48D03-0709-PC-250

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**March 10, 2010**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**MATHIAS, Judge**

The Madison Superior Court denied two petitions for post-conviction relief filed by Anthony Craig (“Craig”). Craig appeals and claims that the post-conviction court erred in concluding that he was not denied the effective assistance of trial counsel.

We affirm.

### **Facts and Procedural History**

Craig filed two pro se petitions for post-conviction relief under Cause numbers 48D03-0709-PC-249 and 48D03-0709-PC-250. Craig attacked his convictions under Cause number 48E02-9111-CF-275 where he pleaded guilty to Class D felony operating a motor vehicle after suspension and Cause number 48E02-8804-CF-78 in which he pleaded guilty to Class D felony driving while intoxicated, Class A misdemeanor driving while intoxicated, and Class A misdemeanor driving while suspended. In both petitions he argued that the State failed to establish that the Bureau of Motor Vehicles (“BMV”) sent him proper notice of his suspension and that trial counsel was ineffective for improperly advising him to plead guilty without investigating whether the State would be able to establish his guilt.

On September 3, 2008, the post-conviction court held a hearing where Craig appeared pro se. Craig tendered no evidence. The post-conviction court denied the petitions and appointed a public defender to represent Craig on appeal. Craig, by counsel, filed a notice of appeal. Both petitions were consolidated under Cause number 48A02-0812-PC-1083. On March 16, 2009, Craig filed a motion to dismiss without prejudice which we granted on April 7, 2009.

On June 22, 2009, the post-conviction court held a second hearing during which Craig introduced six exhibits. Craig argued that he had never lived at the address to which the BMV sent the notice of suspension. He also argued that his trial counsel were ineffective because they failed to advise Craig of the consequences of pleading guilty. The post-conviction court denied his petitions. Craig now appeals.

### **Standard of Review**

Post-conviction proceedings are not “super appeals” through which convicted persons can raise issues they failed to raise at trial or on direct appeal. McCary v. State, 761 N.E.2d 389, 391 (Ind. 2002). Rather, post-conviction proceedings afford petitioners a limited opportunity to raise issues that were unavailable or unknown at trial and on direct appeal. Davidson v. State, 763 N.E.2d 441, 443 (Ind. 2002). 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) (2006); 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<sup>1</sup>**

Craig claims that he was denied effective assistance of trial counsel.

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<sup>1</sup> Craig also raises one additional issue: that the State failed to comply with the notice requirements of Indiana Code § 9-30-10-5, which requires notice of suspension. However, by pleading guilty, Craig has waived this claim. See McKrill v. State, 452 N.E.2d 946, 949 (Ind. 1983) (a guilty plea “is an admission of guilt and a waiver of a variety of constitutional rights[.]”). Insofar as it is raised as an allegation of ineffective assistance of counsel, it is dealt with herein.

Claims of ineffective assistance of trial counsel are generally reviewed under the two-part test announced in Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Thus, a claimant must demonstrate that counsel's performance fell below an objective standard of reasonableness based on prevailing professional norms, and that the deficient performance resulted in prejudice. 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." A reasonable probability arises when there is a "probability sufficient to undermine confidence in the outcome."

Appellate review of the post-conviction court's decision is narrow. We give great deference to the post-conviction court and reverse that court's decision only when "the evidence as a whole leads unerringly and unmistakably to a decision opposite that reached by the postconviction court."

Although the two parts of the Strickland test are separate inquiries, a claim may be disposed of on either prong. Strickland declared that the "object of an ineffectiveness claim is not to grade counsel's performance. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, . . . that course should be followed."

Grinstead v. State, 845 N.E.2d 1027, 1031 (Ind. 2006) (internal citations omitted).

A petitioner alleging ineffective assistance of counsel in overlooking a defense leading to a guilty plea must show a reasonable probability that, had the defense been raised, the petitioner would not have pleaded guilty and would have succeeded at trial. Segura v. State, 749 N.E.2d 496, 503 (Ind. 2001). Moreover, we presume that counsel provided adequate assistance, and we give deference to counsel's choice of strategy and tactics. Smith v. State, 765 N.E.2d 578, 585 (Ind. 2002). "Isolated mistakes, poor strategy, inexperience, and instances of bad judgment do not necessarily render representation ineffective." Id.

In order for a post-conviction petitioner who pleaded guilty to prevail on a claim of ineffective assistance of counsel, he or she must establish both that counsel's performance was deficient and a reasonable probability that, but for counsel's errors,

petitioner would not have pleaded guilty and would have insisted on going to trial. Oliver v. State, 843 N.E.2d 581, 591 (Ind. Ct. App. 2006), trans. denied, 855 N.E.2d 1008. Appellate review of the post-conviction court's decision is narrow, and we give great deference to the decision of the post-conviction court. Grinstead, 845 N.E.2d at 1031. We will reverse the decision of the post-conviction court only when the evidence, as a whole, leads unerringly and unmistakably to a decision opposite that reached by the post-conviction court. Id.

Craig argues that trial counsel for both convictions provided ineffective assistance by failing to determine whether the State proved that Craig had received proper notice of his driver's license suspension. At the time of Craig's convictions and suspensions, the proof of mailing the suspension notice allowed an inference of this knowledge, the State needing "only prove that the defendant had knowledge of the suspension." McKeown v. State, 601 N.E.2d 462, 466 (Ind. Ct. App. 1992), see also Collins v. State, 567 N.E.2d 798, 800 (Ind. 1991), Chambers v. State, 547 N.E.2d 301, 302 (Ind. Ct. App. 1989). During the two hearings at issue, Craig did not claim that he had no knowledge of the license suspension, nor did he present evidence that he did not know of the suspension.

At his post conviction relief hearing, the only evidence Craig presented sought to establish that the BMV failed to provide adequate notice of suspension. Under the law in effect at the time of his convictions, and in view of the fact that Craig never denied actual notice of the suspensions, this evidence presented does not lead unerringly and unmistakably to a decision opposite that reached by the post-conviction court.

Craig failed to provide any evidence that he did not have personal knowledge of his license suspensions. Craig has not shown that a reasonable probability existed that, had this defense been raised, he would not have pleaded guilty and would have succeeded at a trial. The post-conviction court's decision to deny Craig's petitions for post-conviction relief is not clearly erroneous.

Affirmed.

BARNES, J., and BROWN, J., concur.