Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

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IN THE
COURT OF APPEALS OF INDIANA

GREGORY S. STEELE,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 20A03-0807-PC-372
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE ELKHART SUPERIOR COURT 5
The Honorable James W. Rieckhoff, Special Judge
Cause No. 20D05-0708-PC-5

April 9, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Petitioner, Gregory S. Steele (Steele), acting *pro se*, appeals the post-conviction court's denial of his petition for post-conviction relief.

We affirm.

ISSUES

Steele purports to present eleven issues for our review, which we consolidate and restate as the following six issues:

(1) Whether he is entitled to post-conviction relief because the trial court failed to advise him of his right to appeal his sentence following his guilty plea;

(2) Whether his counsel at sentencing was ineffective;

(3) Whether the trial court erred in revoking his home incarceration;

(4) Whether he was denied his right to fair and impartial judges at sentencing, when his home incarceration was revoked, and during post-conviction proceedings;

(5) Whether he is entitled to withdraw his guilty plea; and

(6) Whether he was deprived of due process during the post-conviction proceedings.

FACTS AND PROCEDURAL HISTORY

On May 21, 2002, Steele pled guilty to burglary as a Class C felony. On July 22, 2002, the trial court sentenced Steele to two years in a home incarceration program, to be followed by four years of reporting probation. He was also ordered to pay the fees associated

with the home incarceration program. At some point, Steele stopped paying the required fees and was discharged from the program. On December 1, 2003, Steele admitted to the trial court that he had fallen behind on the fees, that he did not want to be on home incarceration, and that he wanted to "finish out" in prison. (Appellant's App. p. 180). The trial court ordered Steele to serve the rest of his sentence in prison. Steele was released from the DOC and discharged from parole on November 16, 2006.

On July 27, 2007, Steele filed a petition for post-conviction relief. On April 11, 2008, the post-conviction court issued an order denying Steele's petition. Steele then filed a motion to correct error, which was also denied.

Steele now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Steele argues that the post-conviction court erred in denying his petition for post-conviction relief. The burden of one whose petition for post-conviction relief has been denied is a substantial one. *Hopkins v. State*, 889 N.E.2d 314, 317 (Ind. 2008). We will affirm the denial unless the evidence is without conflict and leads to but one conclusion, and the post-conviction court has reached the opposite conclusion. *Id*.

Before turning to Steele's contentions, we observe that he was granted permission by this court to file an oversized brief. Still, he makes the following disclaimer in his brief:

> Steele advises the Court that even with permission to file an oversized brief, his arguments must be abbreviated in order to comply with the new page limit. Therefore, he must rely heavily on frequent citations to the record and filings in the post-conviction court to incorporate arguments made therein to the arguments presented herein. Appellant Steele appreciates the forebearance of the Court.

(Appellant's Br. p. 21). As the State notes, we require that briefs be prepared so that each judge, considering the brief along and independent of the transcript, can intelligently consider each question presented. *Bigler v. State*, 732 N.E.2d 191, 196 (Ind. Ct. App. 2000), *trans. denied*. A party may not evade this requirement by referring us to arguments found in a brief filed at some earlier point in the case. *Oxley v. Lenn*, 819 N.E.2d 851, 855 n.2 (Ind. Ct. App. 2004). In this opinion, we will address only those arguments that we can decipher from the briefs before us.

I. *Failure to Advise of Right to Appeal Sentence Following Guilty Plea*

Steele's first contention is that he is entitled to post-conviction relief because the trial court failed to advise him of his right to appeal his sentence. As the State notes, Steele was released from the DOC and discharged from parole on November 16, 2006. Generally, once a defendant's sentence has been served, the issue of the validity of the sentence is rendered moot. *Irwin v. State*, 744 N.E.2d 565, 568 (Ind. Ct. App. 2001). Steele seeks to circumvent this rule by arguing that he is suffering a continuing injury because he was ordered to pay home incarceration monitoring fees; Steele asks that the fees he paid be refunded. However, Steele has failed to show, or even argue, that the imposition of fees was at all illegal or that he would have otherwise prevailed on appeal even if he had been advised of his right to appeal his sentence. The post-conviction court properly denied relief on this ground.

II. *Effective Assistance of Counsel at Sentencing*

In a related argument, Steele asserts that he was denied the effective assistance of counsel at sentencing because "his trial counsel failed to consult with him with respect to his right to appeal his discretionary sentence and failed to object when the trial court failed to inform." (Appellant's Br. p. 27). Again, insofar as Steele is challenging a sentence that he has already served, this argument is moot. *Irwin*, 744 N.E.2d at 568. But Steele also contends that the lack of an advisement regarding his right to appeal his sentence rendered the entire plea agreement invalid. Specifically, he urges that he "is entitled to withdraw from an invalid plea agreement to correct a manifest injustice[.]" (Appellant's Br. p. 27). However, Steele makes no argument whatsoever that he would not have pled guilty if he had been informed of his right to appeal his sentence. To the contrary, we fail to see how an advisement of the right to appeal one's sentence following a guilty plea would deter him from pleading guilty. The post-conviction court properly denied relief on this ground.

III. *Revocation of Home Incarceration*

Steele makes three arguments with regard to the revocation of home incarceration: (1) he was deprived of procedural due process; (2) he was deprived of substantive due process; and (3) the trial court failed to advise him of his right to appeal. The State does not contend that these issues are moot, acknowledging that the revocation of home incarceration can have negative collateral consequences down the road, *e.g.*, treatment as an aggravating circumstance in sentencing for future crimes. Nonetheless, at the time of the revocation hearing, Steele admitted to the trial court that he had fallen behind on the payment of the

required home incarceration fees, that he did not want to be on home incarceration, and that he wanted to "finish out" in prison. (Appellant's App. p. 180). As such, any error by the trial court in revoking Steele's home incarceration was invited by Steele. Under the doctrine of invited error, a party may not take advantage of an error that he or she commits or invites or that is the natural consequence of his or her own neglect or misconduct. *Wright v. State*, 828 N.E.2d 904, 907 (Ind. 2005). The post-conviction court properly denied relief with regard to the revocation of Steele's home incarceration.

IV. *Right to a Fair and Impartial Judge*

Steele contends that he is entitled to post-conviction relief because he was denied "a hearing by a fair and impartial judge[.]" (Appellant's Br. p. 31). He does not specify to which "hearing" he refers, nor to which judge (two different judges presided over the trial court proceeding and the post-conviction proceeding), and he does not point to any evidence of impartiality or bias. We are simply unable to decipher exactly what it is that Steele is arguing. By failing to provide us with a cogent argument, Steele has waived this issue. *See* Ind. Appellate Rule 46(A)(8)(a). The post-conviction court properly denied relief on this ground.

Later in his brief, Steele specifically argues that the post-conviction judge was biased. He alleges that the post-conviction court

> failed to address all issues raised, failed to hold a hearing, failed to allow discovery, and failed to even maintain an accurate official court record. Steele believes that the post-conviction court strived mightily to avoid finding any facts or rendering any conclusions that might be construed as favorable to this petitioner or inconvenient for the State.

(Appellant's Br. p. 39). These are serious allegations by Steele, yet he fails to cite a single page from the record to support them. In the absence of some evidence of bias, we will not grant relief on this ground.

V. *Withdrawal of Guilty Plea*

Steele argues that he is entitled to withdraw his guilty plea because "he was denied the effective assistance of counsel, his plea was not knowingly and voluntarily made, and the plea and judgment are voidable to correct a manifest injustice." (Appellant's Br. p. 32). Again, Steele has failed to develop this argument with cogent reasoning or relevant citations to authority or the record on appeal. As such, it is waived. *See* App. R. 46(A)(8)(a).

VI. *Due Process in Post-Conviction Proceedings*

Steele urges that the post-conviction court deprived him of due process by (1) failing to compel an adequate answer from the State prior to a hearing, (2) granting summary disposition for the State, (3) failing to render findings and conclusions on all issues presented, (4) failing to allow amendment of the petition as a matter of right, (5) failing to rule on motions and to consider pleadings, and (6) failing to maintain a complete and accurate court record. He introduces this argument by stating: "Again, Steele lacks the space required in his few remaining pages to discuss these issues but can only direct the Court to the record. Steele would hope that his contentions and arguments are self-evident where supported by the full record of proceedings in this case." (Appellant's Br. p. 36). That is not

how this court operates. Having failed to present a cogent argument, Steele has waived this issue. *See* App. R. 46(A)(8)(a).

CONCLUSION

Based on the foregoing, we conclude that the post-conviction court did not err in denying Steele's petition for post-conviction relief.

Affirmed.

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