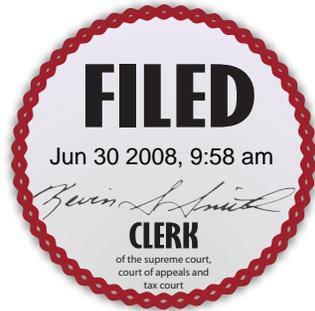


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

CHAD LEMONS,)
)
 Appellant-Defendant,)
)
 vs.) No. 46A04-0801-PC-35
)
 STATE OF INDIANA,)
)
 Appellee-Plaintiff.)

APPEAL FROM THE LAPORTE SUPERIOR COURT
The Honorable Kathleen B. Lang, Judge
Cause No. 46D01-0406-FB-93

June 30, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Chad Lemons appeals the denial of his petition for post-conviction relief contending the trial court erred in failing to find that his trial counsel was ineffective because trial counsel overlooked a viable defense which caused him to plead guilty and failed to file any pre-trial motions.

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). When appealing the denial of post-conviction relief, the petitioner stands in the position of one appealing from a negative judgment, *Fisher v. State*, 810 N.E.2d 674, 679 (Ind. 2004), and we will not reverse the judgment unless the evidence unerringly and unmistakably leads to the opposite conclusion, *Patton v. State*, 810 N.E.2d 690, 697 (Ind. 2004).

Here, Lemons presented no evidence at the post-conviction hearing to support his claims. Thus, he failed to show that trial counsel overlooked a viable defense or that the unspecified pre-trial motions that he claims should have been filed would have been sustained. Accordingly, the post-conviction court's order is affirmed.

Affirmed.

FRIEDLANDER, J., and BAILEY, J., concur.