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

GEWON JOHNSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0811-PC-675
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Patricia J. Gifford, Judge
Cause No. 49G04-0108-CF-165016

JULY 7, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

GARRARD. Senior Judge

A jury convicted Gewon Johnson of murder, auto theft and theft. He was sentenced to sixty-five years for murder and to concurrent three-year terms for the theft convictions. The convictions were affirmed in a memorandum opinion by this court and transfer was denied. Johnson filed a *pro se* petition for post-conviction relief on May 9, 2005. The state public defender withdrew from the case on November 27, 2007, and Johnson proceeded *pro se.* A hearing on the petition was scheduled for July 9, 2008, and, according to the information contained in the court's order,[1] Johnson was advised in writing that no continuances would be granted on the day of trial.

According to the hearing record, Johnson filed a motion for a continuance, which was denied. Johnson then refused to come out of his holding cell for the hearing. He did not testify, nor were any witnesses or documentary evidence introduced on his behalf. The court therefore denied the petition for post-conviction relief.[2] Johnson appeals the denial.

In post-conviction relief proceedings the burden is on the petitioner to establish his right to relief by a preponderance of the evidence. Ind. Post-Conviction Rule 1(5). Where the petitioner wholly fails to present any evidence in support of his petition, the post-conviction court does not err in denying the petition. *Evans v. State*, 809 N.E.2d

[1] The transcript filed with this court contains only the record of the hearing on July 9.

[2] Johnson's brief on appeal addresses none of these matters. Instead he argues the points raised in his petition.

338, 344 (Ind. Ct. App. 2004), *trans. denied.* Accordingly, the post-conviction court did not err in denying Johnson's petition.

Affirmed.

DARDEN, J., and KIRSCH, J., concur.