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IN THE
COURT OF APPEALS OF INDIANA

DEAN C. WILLIAMS,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 29A02-1011-PC-1361
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable Steven R. Nation, Judge
The Honorable David K. Najjar, Magistrate
Cause No. 29D01-0901-FC-3

August 9, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Petitioner Dean Williams appeals from the post-conviction court's denial of his petition for post-conviction relief ("PCR"). As restated, Williams contends that his sentence was improperly enhanced, the trial court did not adhere to the terms of his plea agreement, he received ineffective assistance of trial counsel, and his guilty plea was involuntary. We affirm.

FACTS AND PROCEDURAL HISTORY

On or about January 15, 2009, in cause number 29D01-0901-FC-3 ("Cause No. 3"), the State charged Williams with two counts of Class C felony forgery, two counts of Class D felony counterfeiting, two counts of Class D felony identity deception, and Class A misdemeanor possessing a false government identification. On or about March 2, 2009, in cause number 29D05-0903-FD-1065 ("Cause No. 1065"), the State charged Williams with three counts of Class D felony identity deception and alleged him to be a habitual offender. On March 24, 2009, the State moved to consolidate Cause No. 1065 into Cause No. 3, which motion the trial court granted.

On September 29, 2009, pursuant to a written plea agreement, Williams pled guilty in Cause No. 3 to one count of Class C felony forgery and admitted to being a habitual offender. In exchange for Williams's guilty plea, the State agreed to dismiss all remaining charges. On November 5, 2009, the trial court sentenced Williams to eight years of incarceration for forgery enhanced by four years by virtue of his habitual offender status. In its sentencing order, the trial court ordered six other counts dismissed but did not dismiss the three identity deception charges originally filed in Cause No. 1065. On or about December 29, 2009,

Williams filed a PCR petition. On November 9, 2010, the post-conviction court denied Williams's PCR petition in full.

DISCUSSION

PCR Standard of Review

Our standard for reviewing the denial of a PCR petition is well-settled:

> In reviewing the judgment of a post-conviction court, appellate courts consider only the evidence and reasonable inferences supporting its judgment. The post-conviction court is the sole judge of the evidence and the credibility of the witnesses. To prevail on appeal from denial of post-conviction relief, the petitioner must show that the evidence as a whole leads unerringly and unmistakably to a conclusion opposite to that reached by the post-conviction court.... Only where the evidence is without conflict and leads to but one conclusion, and the post-conviction court has reached the opposite conclusion, will its findings or conclusions be disturbed as being contrary to law.

Hall v. State, 849 N.E.2d 466, 468, 469 (Ind. 2006) (internal citations and quotations omitted).

I. Whether Williams's Sentence was Properly Enhanced

Williams is essentially arguing that his sentence for Class C felony forgery could not have been enhanced by virtue of his habitual offender status because he was originally alleged to be one in Cause No. 1065, in which he was charged with three counts of Class D felony identity deception. Williams argues that the habitual offender enhancement cannot "roam" to the forgery charge from one of the identity deception charges. Williams, however, cites no authority for this proposition, and we are aware of none.

Williams also contends that, even if it was proper to attach the habitual offender enhancement to the forgery conviction, he was never properly advised of the greater penal

consequences of such an attachment to a Class C felony, as opposed to attachment to a Class D felony. At Williams's guilty plea hearing, however, the trial court specifically asked him if he understood "that for a designation of an Habitual Felony Offender that the sentence that you may receive for Forgery may be enhanced by an additional period of incarceration of between four and twelve years[,]" and Williams responded that he did. Tr. p. 66. Williams does not claim that he did not understand this advisement. Williams has failed to establish that his sentence was improperly enhanced.

II. Whether the Trial Court Failed to Adhere to the Terms of the Plea Agreement

Williams contends that the trial court failed to adhere to the terms of the plea agreement because it failed to dismiss three of the pending charges against him. We agree that the trial court failed to adhere to the terms of the plea agreement in this regard. As Williams acknowledges, however, the post-conviction court dismissed the charges at issue, correcting what it found to be a "scrivener's error." Appellant's App. p. 105. Consequently, Williams seems to have already received all of the relief to which he is entitled in this regard. Although Williams claims to have been otherwise damaged by the trial court's initial failure to dismiss the charges, Williams does not explain, and we fail to see, how this alleged prejudice occurred.

III. Whether Williams Received Effective Assistance of Trial Counsel

We review claims of ineffective assistance of counsel based upon the principles enunciated in *Strickland v. Washington*, 466 U.S. 668 (1984):

> [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."

Grinstead v. State, 845 N.E.2d 1027, 1031 (Ind. 2006) (quoting *Strickland*, 466 U.S. at 694). Because an inability to satisfy either prong of this test is fatal to an ineffective assistance claim, this court need not even evaluate counsel's performance if the petitioner suffered no prejudice from that performance. *Vermillion v. State*, 719 N.E.2d 1201, 1208 (Ind. 1999).

Williams contends that his trial counsel was ineffective for failing to advise him regarding the possible consequences of attaching a habitual offender enhancement to a Class C felony and for failing to object when the trial court erroneously did not dismiss three felony counts as provided for in the plea agreement. As previously mentioned, however, even if Williams's trial counsel did not properly advise him regarding the potential effect of the habitual offender enhancement, the trial court *did*, and he does not argue that that advisement was inadequate. Moreover, the charges that were not initially dismissed have now been dismissed, so it is difficult to see how Williams could show any prejudice in this regard. Williams has not established that he received ineffective assistance of trial counsel.

IV. Whether Williams's Plea was Voluntary

Williams's argument in this regard seems to be that his plea was rendered involuntary by his ignorance of the consequences of attaching a habitual offender to a Class C felony, and Williams claims that "[a]t no time in the record was it clarified to the appellant that he was expected to face the increased penalty. That he would be facing as a class 'C' enhancement

rather than a class 'D'." Appellant's Br. p. 11. Again, as previously mentioned, the record indicates that the trial court properly advised Williams regarding the habitual offender enhancement, and Williams does not claim, much less establish, that this advisement was in any way deficient. Williams has not established that his plea was involuntary.

The judgment of the post-conviction court is affirmed.

ROBB, C.J., and BARNES, J., concur.