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.

APPELLANT PRO SE:

DANNIE R. FLANAGAN
Westville Correctional Facility
Westville, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

JOBY JERRELLS
Deputy Attorney General
Indianapolis, Indiana

FILED
Sep 24 2009, 9:01 am
CLERK
of the supreme court, court of appeals and tax court

IN THE
COURT OF APPEALS OF INDIANA

DANNIE R. FLANAGAN, JR.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 91A04-0811-PC-670
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE WHITE SUPERIOR COURT
The Honorable Robert B. Mrzlack, Judge
Cause No. 91D01-0404-FB-46

September 24, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

The White Superior Court denied a petition for post-conviction relief filed by Dannie R. Flanagan, Jr. ("Flanagan"). Flanagan appeals and claims that the post-conviction court erred in determining that he was not denied the effective assistance of trial counsel. We affirm.

Facts and Procedural History

On direct appeal, the facts were set forth as follows:

> The facts of the case disclose that on April 1, 2004, Flanagan entered a CVS drugstore in Monticello. He went to the pharmacy where he jumped over the counter, brandished what was later determined to be a BB gun and demanded Oxycontin and Lortab. Flanagan took the drugs and left, but was later apprehended. He admitted prior convictions for robbery in 1986 and burglary in 1988.
>
> At sentencing the court found the nature of Flanagan's childhood, his expression of remorse and the fact that he pled guilty to be mitigating factors. It found there was a great risk that he would commit further crimes in the future, and that this risk substantially outweighed the mitigating factors.

Flanagan v. State, No. 91A02-0412-CR-1076, slip op. (Ind. Ct. App. May 26, 2005).

On October 7, 2004, Flanagan pleaded guilty to Class C felony robbery, Class D felony possession of a controlled substance, and admitted to being a habitual offender. Pursuant to the agreement, the sentence imposed could not exceed twenty years.

On direct appeal, we affirmed Flanagan's convictions. On November 13, 2005, Flanagan filed a pro se petition for post-conviction relief. On July 21, 2008, the post-conviction court conducted a hearing on the petition which included testimony from Flanagan's trial counsel. On October 14, 2008, the post-conviction court issued an order denying the requested relief. Flanagan 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.

The post-conviction court entered findings of fact and conclusions of law in accordance with Indiana Post-Conviction Rule 1(6) (2006). "A post-conviction court's findings and judgment will be reversed only upon a showing of clear error – 'that which leaves us with a definite and firm conviction that a mistake has been made.'" Ben-Yisrayl v. State, 729 N.E.2d 102, 106 (Ind. 2000) (quoting State v. Moore, 678 N.E.2d 1258, 1261 (Ind. 1997). Although we accept findings of fact unless they are clearly erroneous, we give conclusions of law no deference. Fisher, 810 N.E.2d at 679.

Discussion and Decision[1]

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

> 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 inquires, 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 petititoner 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,

[1] Flanagan raises two additional issues: (1) that the trial court used an improper aggravator at sentencing and (2) that the State's failure to establish the commission date for a supporting felony for the habitual offender admission was fundamental error. However, both of these arguments were available on appeal and not raised at that time, they are therefore waived as free-standing issues. See Lindsey v. State, 888 N.E.2d 319 (Ind. Ct. App. 2008). Insofar as they were raised as allegations of ineffective assistance of counsel, they are dealt with herein.

inexperience, and instances of bad judgment do not necessarily render representation ineffective." Id.

Flanagan argues that trial counsel provided ineffective assistance of counsel by overlooking various defenses and failing to perform in a reasonably professional manner. Flanagan alleges that trial counsel (1) failed to challenge alleged errors in the charging information; (2) failed to explain the required sequencing of the habitual offender enhancement and failed to require sufficient documentary proof of the habitual offender enhancement which caused Flanagan's admission to being a habitual offender to be involuntary and unintelligently entered into; (3) failed to object to the trial court's use of aggravating circumstances to enhance the sentence imposed; and (4) failed to object or challenge the State's failure to present sufficient proof or documentation to support the habitual offender allegation at the guilty plea hearing.

At the post-conviction hearing, trial counsel testified and denied all claims asserted by Flanagan. Specifically, trial counsel testified that he had discussed the issue of the charging information with Flanagan and it had been decided that the filing of a motion to dismiss on the issue of erroneous charging informations would lead only to an amending of charges, not dismissal. Tr. pp. 14, 16. Trial counsel also testified that he had spoken with Flanagan about the habitual offender enhancement and Flanagan's prior criminal history. Tr. pp. 18-19, 20-23. Trial counsel also denied Flanagan's allegation that his admission to being a habitual offender was involuntary and unintelligent. Tr. p. Tr. p. 20.

Flanagan also failed to provide evidence that trial counsel provided ineffective assistance by failing to object to the State's presentation of the factual basis for Flanagan's admission to being a habitual offender. Trial counsel testified that he believed that the State had provided supporting information that suggested that there were two prior unrelated convictions and that there were likely have been other felony convictions from Florida. Tr. p. 22. Flanagan did not present any evidence that would show that the State had not provided the appropriate supporting information.

Flanagan failed to provide any evidence that contradicted trial counsel aside from his own self-serving testimony at the post-conviction hearing. Flanagan has not shown that a reasonable probability existed that, had any of the defenses been raised, Flanagan would not have pleaded guilty and would have succeeded at trial. The post-conviction court's decision to deny Flanagan's petition for post-conviction relief is not clearly erroneous.

Affirmed.

DARDEN, J., and ROBB, J., concur.