

Appellant/Petitioner Wayman H. Lyons appeals the denial of his petition for post-conviction relief (“PCR”), claiming ineffective assistance of both trial and appellate counsel. We affirm.

FACTS AND PROCEDURAL HISTORY

Our opinion in Lyons’s prior appeal instructs us as to the underlying facts leading to this post-conviction appeal:

On August 6, 1966, Lyons, Ed Harris, and Phillip Curts broke into the National Guard Armory in Elwood. After the men were unsuccessful in trying to open a locked door inside the Armory, Lyons found the night watchman, Virgil Arehart, and Lyons rendered Arehart unconscious before taking a set of keys from him. Lyons, Harris, and Curts then stole two radios and left the premises. Arehart sustained serious injuries and was hospitalized. A few days later, while still hospitalized, Arehart died as a result of pneumonia.

The State charged Lyons with murder. A jury found him guilty as charged, and the trial court entered judgment and sentence accordingly. Lyons’ trial counsel filed a Motion for a New Trial, alleging several trial errors, but the trial court denied that motion. Lyons believed that his counsel would file a direct appeal on his behalf thereafter, but no appeal was filed. In August 1978, Lyons filed a pro se petition for post-conviction relief, and the trial court appointed a public defender to represent Lyons in October 1978. Lyons’ public defender filed an amended petition for post-conviction relief on October 10, 1978, and it was amended a second time on October 21, 2007.¹

Lyons v. State, No. 48A02-0804-PC-352 (Ind. Ct. App. October 22, 2008). Following a hearing, the post-conviction court denied Lyons’s petition, concluding that his petition was barred by the doctrine of laches.

On appeal, this court reversed the determination of the post-conviction court and remanded the matter to the post-conviction court for a determination on the merits of the

¹ The record does not reveal a reason for the delay between amended petitions.

petition. *Id.* However, noting that post-conviction procedures do not afford a petitioner with a super-appeal and that not all issues were available, this court limited the scope of Lyons's petition to his claims of ineffective assistance of trial and appellate counsel. *Id.*

The post-conviction court conducted a hearing on Lyons's petition on August 14, 2009. On September 25, 2009, the post-conviction court issued an order denying Lyons's request for post-conviction relief. Lyons now appeals.

DISCUSSION AND DECISION

Post-conviction procedures do not afford the petitioner with a super-appeal. *Williams v. State*, 706 N.E.2d 149, 153 (Ind. 1999). Instead, they create a narrow remedy for subsequent collateral challenges to convictions, challenges which must be based on grounds enumerated in the post-conviction rules. *Id.* A petitioner who has been denied post-conviction relief appeals from a negative judgment and as a result, faces a rigorous standard of review on appeal. *Dewitt v. State*, 755 N.E.2d 167, 169 (Ind. 2001); *Collier v. State*, 715 N.E.2d 940, 942 (Ind. Ct. App. 1999), *trans. denied*.

Post-conviction proceedings are civil in nature. *Stevens v. State*, 770 N.E.2d 739, 745 (Ind. 2002). Therefore, in order to prevail, a petitioner must establish his claims by a preponderance of the evidence. Ind. Post-Conviction Rule 1(5); *Stevens*, 770 N.E.2d at 745. When appealing from a denial of a petition for post-conviction relief, a petitioner must convince this court that the evidence, taken as a whole, "leads unmistakably to a conclusion opposite that reached by the post-conviction court." *Stevens*, 770 N.E.2d at 745. "It is only where the evidence is without conflict and leads to but one conclusion, and the post-

conviction court has reached the opposite conclusion, that its decision will be disturbed as contrary to law.” *Godby v. State*, 809 N.E.2d 480, 482 (Ind. Ct. App. 2004), *trans. denied*. The post-conviction court is the sole judge of the weight of the evidence and the credibility of the witnesses. *Fisher v. State*, 810 N.E.2d 674, 679 (Ind. 2004). We therefore accept the post-conviction court’s findings of fact unless they are clearly erroneous but give no deference to its conclusions of law. *Id.*

Ineffective Assistance of Counsel

The right to effective counsel is rooted in the Sixth Amendment to the United States Constitution. *Taylor v. State*, 840 N.E.2d 324, 331 (Ind. 2006). “The Sixth Amendment recognizes the right to the assistance of counsel because it envisions counsel’s playing a role that is critical to the ability of the adversarial system to produce just results.” *Id.* (quoting *Strickland v. Washington*, 466 U.S. 668, 685 (1984)). “The benchmark for judging any claim of ineffectiveness must be whether counsel’s conduct so undermined the proper function of the adversarial process that the trial court cannot be relied on as having produced a just result.” *Strickland*, 466 U.S. at 686.

A successful claim for ineffective assistance of counsel must satisfy two components. *Reed v. State*, 866 N.E.2d 767, 769 (Ind. 2007). Under the first prong, the petitioner must establish that counsel’s performance was deficient by demonstrating that counsel’s representation “fell below an objective standard of reasonableness, committing errors so serious that the defendant did not have the ‘counsel’ guaranteed by the Sixth Amendment.” *Id.* We recognize that even the finest, most experienced criminal defense attorneys may not

agree on the ideal strategy or most effective way to represent a client and therefore under this prong, we will assume that counsel performed adequately, and will defer to counsel's strategic and tactical decisions. *Smith v. State*, 765 N.E.2d 578, 585 (Ind. 2002). Isolated mistakes, poor strategy, inexperience, and instances of bad judgment do not necessarily render representation ineffective. *Id.* Under the second prong, the petitioner must show that the deficient performance resulted in prejudice. *Reed*, 866 N.E.2d at 769. A petitioner may show prejudice by demonstrating that there is "a reasonable probability (*i.e.* a probability sufficient to undermine confidence in the outcome) that, but for counsel's errors, the result of the proceeding would have been different." *Id.*

A petitioner's failure to satisfy either prong will cause the ineffective assistance of counsel claim to fail. *See Williams*, 706 N.E.2d at 154. Therefore, if we can resolve a claim of ineffective assistance of counsel based on lack of prejudice, we need not address the adequacy of counsel's performance. *See Wentz v. State*, 766 N.E.2d 351, 360 (Ind. 2002).

A. Ineffective Assistance of Trial Counsel

Lyons contends that he received ineffective assistance of trial counsel on a number of grounds. Specifically, Lyons claims his trial counsel elicited inadmissible testimony that Lyons submitted to a polygraph examination and that the examination revealed that he had knowledge of the crimes at issue. Lyons also claims that his trial counsel were ineffective for failing to investigate potential deficiencies with the victim's medical care. Lyons further claims that his counsel were ineffective because of the cumulative effect of the above-mentioned alleged errors in conjunction with the fact that one of Lyons's defense witnesses

was not permitted to testify because she violated the trial court's order for a separation of the witnesses.

1. Polygraph Examination

Lyons claims that his trial counsel were ineffective because they elicited certain testimony that established that Lyons had submitted to a polygraph examination during the State's investigation in the instant case. In support, Lyons relies upon *Zupp v. State*, 258 Ind. 625, 283 N.E.2d 540 (1972), for the proposition that polygraph examination results are inadmissible unless both parties stipulate to the results. However, while Lyons's contention regarding the admissibility of the results of a polygraph examination is an accurate statement of the law following the Indiana Supreme Court's decision in *Zupp*, we note that Lyons's trial was conducted in 1967, approximately five years before *Zupp* was decided by the Indiana Supreme Court. We will not label counsel ineffective for failing to argue the legal reasoning of cases not yet decided at the time of the defendant's criminal trial. *Jarrett v. State*, 580 N.E.2d 245, 250 (Ind. Ct. App. 1991). Therefore, in order to determine whether Lyons's trial counsel were ineffective for eliciting testimony relating to the polygraph examination, we must look to the applicable authority that existed at the time of Lyons's criminal trial.

Our review of the relevant controlling authority at the time of Lyons's 1967 criminal trial reveals that testimony demonstrating that a defendant had submitted to a polygraph examination appears to have been admissible at the time of Lyons's trial. *See Wallace v. State*, 235 Ind. 538, 540, 135 N.E.2d 512, 512 (1956) (admitting testimony which indicated

that the defendant had submitted to a polygraph examination during the police investigation); *Breedlove v. State*, 235 Ind. 429, 440, 134 N.E.2d 226, 231 (1956) (admitting testimony about a discussion between the defendant and his family members about whether he would submit to a polygraph examination); *Sturgeon v. State*, 237 Ind. 25, 28, 143 N.E.2d 411, 413 (1957) (admitting testimony that defendant decided to plead guilty during transport to a polygraph examination). Because it appears that testimony regarding polygraph examinations was admissible at the time of Lyons's 1967 criminal trial, we refuse to label his trial counsel as ineffective for failing to anticipate future changes in the law or to argue legal reasoning presented in cases that had yet to be decided. *See Jarrett*, 580 N.E.2d at 250. Accordingly, the post-conviction court did not err in determining that Lyons's trial counsel did not provide ineffective assistance in this regard.

2. Failure to Investigate

Lyons next claims that his trial counsel were ineffective for failing to investigate potential deficiencies in the medical care administered to Arehart following the August 6, 1966 beating. Lyons argues that an investigation into potential deficiencies in Arehart's medical care may have exposed evidence that could have conceivably reduced or eliminated his culpability for Arehart's death. In support, Lyons argues that his trial counsel must have failed to investigate the issue because the record establishes that his counsel did not enter their appearances until the first day of trial. *See Powell v. Alabama*, 287 U.S. 45, 57 (1932) (providing that pre-trial investigation, consultation, and preparation are vital to the effective assistance of counsel). However, the record clearly indicates that while Lyons's trial counsel

may not have entered their appearances until the first day of Lyons's trial, they had been working on Lyons's case for quite some time. The record includes a conversation between the judge and all counsel of record, including defense counsel, in which all participants recognized that defense counsel had been working on Lyons's case for some time. Tr. p. 1.

Lyons argues that his trial counsel were deficient because they failed to investigate whether potentially deficient medical care, not the beating, was the contributing factor leading to Arehart's death. However, we observe that Lyons could be held responsible for Arehart's death even if Arehart did receive deficient medical care following the beating. At the time of Lyons's 1967 criminal trial, it was well-established that one who inflicts an injury on another is deemed by law to be guilty of homicide if the injuries inflicted by the defendant contribute "mediately or immediately" to the death of the victim. *Wahl v. State*, 229 Ind. 521, 533, 98 N.E.2d 671, 676 (1951); *Hicks v. State*, 213 Ind. 277, 295, 11 N.E.2d 171, 179 (1937). An injury inflicted by the defendant contributes "mediately" when it exhibits an indirect causation, connection, or relation. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1402 (14th ed. 1961). An injury inflicted by the defendant contributes "immediately" when it exhibits direct causation without the intervention of another object, cause, or agency. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1129 (14th ed. 1961). The fact that other causes contribute to the death does not relieve the actor of responsibility. *Wahl*, 229 Ind. at 533, 98 N.E.2d at 676.

Here, even assuming that Arehart did receive deficient medical care, Arehart's treatment was necessitated by the injuries inflicted by Lyons and thus was not so

extraordinary as to relieve Lyons of responsibility. *See Wooley v. State*, 716 N.E.2d 919, 928 (Ind. 1999) (providing that the defendant could be held responsible for the victim’s death even if the victim’s death was in some way attributable to inadequate medical care because said medical care was necessitated by the injury inflicted upon the victim by the defendant). Lyons admitted that he beat Arehart with sufficient force to render Arehart unconscious and in need of medical care. Arehart later died from pneumonia which he contracted as a complication from either the beating or the medical care he required because of the beating. Thus, because Lyons’s beating of Arehart necessitated the allegedly deficient medical care received by Arehart, the injuries inflicted by Lyons were undoubtedly a “mediate or immediate” cause of Arehart’s death. *See id.*; *Wahl*, 229 Ind. at 533, 98 N.E.2d at 676. Because the injuries inflicted by Lyons were undoubtedly either a “mediate or immediate” cause of Arehart’s death such that Lyons could be held responsible for Arehart’s death, we conclude that Lyons has failed to convince us that he suffered any prejudice as a result of trial counsel’s alleged failure to investigate whether Arehart received deficient medical care following the beating. Having concluded that Lyons has failed to show that he was prejudiced by trial counsel’s alleged failure to investigate whether Arehart received deficient medical care, we conclude that Lyons has failed to prove that he received ineffective assistance of trial counsel, and we need not address the adequacy of counsel’s performance. *See Wentz*, 766 N.E.2d at 360; *Williams*, 706 N.E.2d at 154.

3. Cumulative Effect

Lyons also claims that even if his trial counsel’s above-mentioned alleged errors are

not sufficient to individually support a conclusion that his trial counsel were ineffective, the cumulative effect of said alleged errors, in conjunction with the trial court's ruling that defense witness Isabelle Braiser could not testify because she violated the court's order for a separation of the witnesses, sufficiently prejudices him so as to warrant a new trial.² Lyons, however, has failed to prove any error by his trial counsel. Moreover, he makes no showing of prejudice and, as such, fails to convince us that there is "a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different." *See Reed*, 866 N.E.2d at 769. Lyons has failed to show such a probability sufficient to undermine our confidence in the outcome of his trial, and we therefore conclude that he was not sufficiently prejudiced by the "cumulative effect" of his trial counsel's alleged mistakes so as to warrant a finding of ineffective assistance of trial counsel. Lyons has failed to raise any claim that has undermined our confidence in the outcome of his trial. The post-conviction court properly denied Lyons's claim of ineffective assistance of trial counsel.

B. Ineffective Assistance of Appellate Counsel

Lyons also contends that he received ineffective assistance of appellate counsel. Specifically, Lyons claims that he was effectively denied his right to a direct appeal because he was not appointed appellate counsel and his trial counsel failed to perfect a direct appeal.

² At trial, Isabelle Braiser claimed that she violated the separation of witnesses order at the direction of Lyons's trial counsel. We observe that Lyons does not raise a separate claim of ineffective assistance of counsel for this potential error, but rather claims that counsel were ineffective because of the cumulative effect of the above-mentioned alleged errors and Braiser's inability to testify because she violated the court's order. Lyons does not offer any evidence as to who Braiser was, how she was connected to Lyons or any of the other participants involved in the instant crimes, or what information she would have been able to testify to regarding the August 6, 1966 burglary and beating of Arehart. As a result, Lyons has failed to offer any proof showing how he was prejudiced by Braiser's inability to testify at his 1967 trial.

Lyons argues that prejudice should be presumed in the instant matter pursuant to the United States Supreme Court's holding in *U.S. v. Cronic*, 466 U.S. 648 (1984), because he was effectively denied counsel during a critical stage of the trial proceedings. *See Hernandez v. State*, 761 N.E.2d 845, 849 (Ind. 2002) (providing that an appeal as a matter of right is a critical stage in trial proceedings).

1. Whether *Cronic* Should be Applied Retroactively to the Instant Matter

Cronic and its progeny stand for the proposition that the actual or constructive denial of counsel at a critical stage of criminal proceedings constitutes prejudice per se and thus invalidates a defendant's conviction. *Cronic*, 466 U.S. at 659. However, *Cronic* was issued by the U.S. Supreme Court in 1984, approximately seventeen years after Lyons was convicted of murder in 1967. Therefore, the U.S. Supreme Court's holding in *Cronic* is only applicable to the instant matter if *Cronic* applies retroactively.

In *Whorton v. Bockting*, 549 U.S. 406, 416 (2007), the U.S. Supreme Court observed that it had previously laid out the framework to be used in determining whether a rule announced in one of its opinions should be applied retroactively to final judgments in criminal cases in *Teague v. Lane*, 489 U.S. 288 (1989), and subsequent cases.

Under the *Teague* framework, an old rule applies both on direct and collateral review, but a new rule is generally applicable only to cases that are still on direct review. A new rule applies retroactively in a *collateral* proceeding only if (1) the rule is substantive or (2) the rule is a watershed rule of criminal procedure implicating the fundamental fairness and accuracy of the criminal proceeding.

Whorton, 549 U.S. at 416 (citations and quotations omitted) (emphasis added).

In the instant matter, Lyons appeals the post-conviction court’s denial of his petition for PCR. “[T]he courts of this state have repeatedly labeled post-conviction proceedings as ‘collateral’ in nature.” *Jackson v. State*, 826 N.E.2d 120, 127 (Ind. Ct. App. 2005) (citing *Lambert v. State*, 743 N.E.2d 719, 725 (Ind. 2001)), *trans. denied*. Therefore, because Lyons is before this court on collateral appeal, we must first determine whether the relief sought under the rule announced in *Cronic* would constitute a “new rule” under the *Teague* framework. *See Saffle v. Parks*, 494 U.S. 484, 487 (1990). Generally, a case announces a new rule “when it breaks new ground or imposes a new obligation on the States or the Federal Government.” *Teague*, 489 U.S. at 301. “To be put differently, a case announces a new rule if the result was not *dictated* by precedent existing at the time the defendant’s conviction became final.” *Id.* (emphasis in original).

In determining whether the rule announced in *Cronic* constitutes a “new rule” under the *Teague* framework, we adopt the rationale employed by the United States Court of Appeals for the First Circuit in *Curtis v. Duval*, 124 F.3d 1 (1st Cir 1997). The *Curtis* court determined that although it had been long established that the Sixth Amendment right to assistance of counsel attaches at all critical stages of the prosecution, it was by no means settled before 1984, when *Cronic* was announced, what remedy a court should employ to redeem a violation of the right to counsel. 124 F.3d at 5. The *Curtis* court noted that some courts had found that the constitutional right to counsel was so basic to a fair trial that the denial of said right could never be treated as harmless error, while other courts had found that the denial of the right to counsel during a critical stage of the criminal proceedings could

amount to harmless error. *Id.* The *Curtis* court concluded that in light of these competing precedents, it was not certain that “a state court in 1983 would have felt that Sixth Amendment jurisprudence compelled the adoption of the principle established a year later by the [U.S.] Supreme Court’s opinion in *Cronic*.” *Curtis*, 124 F.3d at 6. Consequently, the *Curtis* court concluded “that *Cronic* announced a ‘new rule’ as that term is understood in the *Teague* context.” *Id.* Likewise, in adopting the rationale employed by the *Curtis* court, we also conclude that *Cronic* announced a “new rule” as the term is understood in the *Teague* context.

Having concluded that *Cronic* announced a “new rule” as the term is understood in the *Teague* context, we recognize that *Cronic* may be applied retroactively in the instant matter only if “(1) the rule is substantive or (2) the rule is a watershed rule of criminal procedure implicating the fundamental fairness and accuracy of the criminal proceeding.” *Whorton*, 549 U.S. at 416. “The first exception is operative only if the rule places a class of private conduct beyond the power of the State to proscribe, and the second only if the rule is a watershed rule of criminal procedure implicating the fundamental fairness and accuracy of the criminal proceeding.” *Curtis*, 124 F.3d at 5 (quotations omitted). In determining whether *Cronic* falls into one of the *Teague* exceptions, we again adopt the rationale employed by the First Circuit Court in *Curtis* and conclude that the *Cronic* principle does not fall into either of the *Teague* exceptions because “the principle does not place any conduct beyond the power of the state to regulate, and it does not implicate the fundamental fairness or accuracy of a criminal proceeding.” *Id.* at 6. Therefore, we conclude that pursuant to the U.S. Supreme

Court's holding in *Teague*, Lyons is not entitled to rely on the principle announced in *Cronic* because the rule announced in *Cronic* was a new rule that does not apply retroactively to Lyons's conviction. Thus, Lyons's alleged denial or lack of appellate counsel did not constitute prejudice per se. Rather, in order to successfully bring a claim of ineffective assistance of appellate counsel, Lyons must prove both that his alleged denial or lack of appellate counsel constituted deficient performance and that he suffered prejudice. *See Reed*, 466 U.S. at 769.

2. Whether Lyons Suffered Ineffective Assistance of Appellate Counsel

Lyons argues that the denial or lack of appellate counsel constituted deficient performance and that he was prejudiced by such because he was effectively denied the ability to raise certain claims on direct appeal. Specifically, Lyons asserts that had counsel raised claims of prosecutorial misconduct and sufficiency of the evidence on direct appeal, his culpability would likely have been reduced or eliminated and, as a result, his sentence modified or his conviction overturned. However, even assuming that the denial or lack of appellate counsel constituted deficient performance, Lyons has failed to convince us that there is a reasonable probability that either of these potential claims, if raised, would have been successful on direct appeal. *See Bieghler v. State*, 690 N.E.2d 188, 194 (Ind. 2007) (providing that in order to prove prejudice as a result of appellate counsel's failure to present certain issues on direct appeal, petitioner must show that the outcome of petitioner's direct appeal would have been different but for counsel's error).

a. Prosecutorial Misconduct

Lyons challenges the post-conviction court's determination that he was not prejudiced by the loss of his ability to raise a claim of prosecutorial misconduct on direct appeal. In order to successfully establish his claim of prosecutorial misconduct before the post-conviction court, Lyons must demonstrate both that the prosecutor engaged in misconduct and that the misconduct, under all of the circumstances, placed the defendant in a position of grave peril to which he or she would not have been subjected. *See Baer v. State*, 866 N.E.2d 752, 756 (Ind. 2007) (providing that a claim for prosecutorial misconduct must establish both misconduct and that said misconduct placed the defendant in a position of great peril). However, misconduct by the prosecutor would be harmless where defendant's guilt was established beyond a reasonable doubt by the testimony of several witnesses, unless said misconduct was in some way prejudicial to the defendant. *See Temple v. State*, 245 Ind. 21, 24, 195 N.E.2d 850, 851 (1964).

In the instant matter, Lyons has failed to prove that the prosecuting attorney engaged in any misconduct. Lyons argues that the prosecutor committed misconduct during his trial by allegedly allowing an investigating officer who later testified at trial to speak to a witness at her home following her testimony in violation of the court's order for a separation of the witnesses. Specifically, Lyons claims that the prosecutor committed misconduct by allegedly allowing Edgewood Police Chief Lee Graham to speak to witness Stella Atkins following the conclusion of her testimony but prior to Chief Graham being called to testify. However, to the extent that any conversation between Atkins and Chief Graham violated the trial court's order requiring a separation of the witnesses, Lyons failed to point to any evidence in the

record indicating that the prosecuting attorney was in any way responsible for or engaged in the alleged violation of the trial court's order.

The record indicates that Atkins informed Chief Graham that during her prior testimony, she had omitted the names of two individuals who were present with Lyons's group on the night in question. The record is silent as to who initiated the conversation and whether the prosecutor knew this conversation took place. We therefore conclude that the record is insufficient to prove that the prosecuting attorney engaged in any misconduct. Because the record does not support Lyons's claim that the prosecuting attorney engaged in any misconduct, we conclude that Lyons has failed to demonstrate that any claim for prosecutorial misconduct would have been successful. Accordingly, Lyons has failed to prove that he was prejudiced by the alleged denial or lack of appellate counsel.

Furthermore, to the extent that the prosecutor may have engaged in conduct that facilitated the violation of the trial court's order, we observe that the alleged misconduct was harmless given the overwhelming evidence of Lyons's guilty at trial. The State introduced Lyons's confession at trial, in which he admitted that he broke into the Armory on the night in question, struck Arehart with the force to knock him over onto a couch, took Arehart's keys, and stole two government-owned radios before leaving Arehart unconscious in the ladies bathroom. In addition, multiple witnesses testified that Lyons broke into the Armory, stole two government-owned radios, and exited the Armory with an unknown set of keys and

blood on his shirt.³ In light of the testimony, including Lyons's admission, demonstrating Lyons's guilt, we conclude that any alleged misconduct by the prosecutor could only be considered harmless. *See Temple*, 245 Ind. at 24, 195 N.E.2d at 851.

b. Sufficiency of the Evidence

Lyons also challenges the post-conviction court's determination that he was not prejudiced by the loss of his ability to raise a claim of insufficient evidence to support his murder conviction on direct appeal. Upon review of a challenge to the sufficiency of the evidence supporting a criminal conviction, the reviewing court "cannot weigh the evidence but will consider only the evidence most favorable to the State, and the reasonable inferences that may be drawn therefrom to determine whether the jury was warranted in returning a verdict of guilty." *Reid v. State*, 249 Ind. 247, 249, 231 N.E.2d 808, 809 (1967).

Here, the evidence most favorable to the State provides that Lyons, who broke into the Armory with the intention to steal equipment from the Armory, swung at least one government-owned radio at Arehart's head. The evidence establishes that Lyons struck Arehart with his fists, the radios, or both with the force to knock him over onto a couch, rendering Arehart unconscious. The evidence also establishes that Lyons struck Arehart with sufficient force to cause major bleeding from and bruising to Arehart's upper extremities. Arehart later died from complications arising from his injuries. In light of these facts, we are unable to conclude that there is a reasonable probability that any potential challenge to the

³ Lyons admitted that he had blood on his shirt when he exited the armory, but claims that the blood was never tested because his shirt had been washed numerous times since that evening.

sufficiency of the evidence supporting Lyons's murder conviction would have been successful. As a result, we conclude that Lyons has failed to prove that he was prejudiced by the alleged denial or lack of appellate counsel. In sum, Lyons has failed to convince us that he suffered any prejudice as a result of the alleged denial or lack of appellate counsel. Therefore, we affirm the post-conviction court's determination that Lyons did not suffer ineffective assistance of appellate counsel.

Having concluded that Lyons failed to prove that he suffered ineffective assistance of either trial or appellate counsel, we affirm the judgment of the post-conviction court.

The judgment of the post-conviction court is affirmed.

RILEY, J., and MATHIAS, J., concur.