



## STATEMENT OF THE CASE

Wajibu Wynn appeals the trial court's summary denial of his petition for post-conviction relief.

We reverse and remand.

### ISSUE

Whether the post-conviction court erred when it denied Wynn's petition without first conducting a hearing on the merits of his claims.

### FACTS

On July 6, 2001, the State charged Wynn with possession of and dealing in cocaine. On April 1, 2002, the trial court rendered guilty verdicts on both counts. At the May 21, 2002 sentencing hearing, the trial court merged the two convictions and imposed a forty-year enhanced sentence. Wynn appealed and, on March 6, 2003, we affirmed the trial court's judgment in an unpublished memorandum opinion. *See Wynn v. State*, No. 49A02-0206-CR-473, (Ind. Ct. App. January 21, 2003), *trans. denied*.

On June 6, 2003, Wynn filed a pro se petition for post-conviction relief, in which he alleged (1) that his trial and appellate counsel were ineffective; (2) that the prosecutor committed misconduct justifying a reversal of Wynn's conviction; and (3) that the trial court had abused its discretion in some unspecified manner. The post-conviction court summarily denied Wynn's petition without a hearing on January 20, 2006. Wynn now appeals.

## DECISION

Post-conviction proceedings afford petitioners a limited opportunity to raise issues that were unavailable or unknown at trial and on direct appeal. *Allen v. State*, 791 N.E.2d 748, 751 (Ind. Ct. App. 2003). Such proceedings are not “super appeals” through which convicted persons can raise issues that they failed to raise at trial or on direct appeal. *Id.* Post-conviction proceedings are civil in nature, and petitioners bear the burden of establishing their grounds for post-conviction relief by a preponderance of the evidence. *Smith v. State*, 822 N.E.2d 193, 198 (Ind. Ct. App. 2005).

When a petitioner appeals the denial of post-conviction relief, he appeals from a negative judgment. *Allen*, 791 N.E.2d at 752. “[T]o the extent his appeal turns on factual issues, the petitioner must convince this court that the evidence ‘as a whole leads unerringly and unmistakably to a decision opposite that reached by the post-conviction relief court.’” *Smith*, 822 N.E.2d at 198. “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, 481 (Ind. Ct. App. 2004). We accept the post-conviction court’s findings of fact unless they are clearly erroneous, but we do not give deference to the court’s conclusions of law. *Allen*, 791 N.E.2d at 752.

Wynn contends that the trial court erred in summarily denying his petition for post-conviction relief without a hearing. Specifically, he argues that our post-conviction rules require a hearing on his claims of ineffective assistance of counsel. Pursuant to Indiana Post-Conviction Rule 1(4)(g),

The court may grant a motion by either party for summary disposition of the petition when it appears from the pleadings, depositions, answers to interrogatories, admissions, stipulations of fact, and any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. The court may ask for oral argument on the legal issue raised. If an issue of material fact is raised, then the court shall hold an evidentiary hearing as soon as reasonably possible.

*Truitt v. State*, 853 N.E.2d 504, 507 (Ind. Ct. App. 2006). Thus, “an evidentiary hearing is required when issues of fact are raised, even in the unlikely event that the petitioner will produce evidence sufficient to establish his claim.” *Id.* That said, however, when the petition for post-conviction relief conclusively demonstrates that the petitioner is entitled to no relief, a hearing is unnecessary and the petition may be denied without further proceedings. *Id.*

Here, in his petition for post-conviction relief, Wynn alleged six types of errors committed by his trial counsel. Specifically, Wynn alleged ineffectiveness in that counsel failed to investigate and learn exculpatory evidence; to interview Wynn and other witnesses; to investigate the crime scene; to advocate Wynn’s interests and to pursue his claim of innocence; to subpoena defense witnesses; and to file a motion to suppress. We find, and the State concedes, that Wynn’s petition raised genuine issues of material fact and that the trial court erred in summarily denying Wynn’s post-conviction petition without a hearing. Accordingly, we must reverse the summary denial of Wynn’s request for relief and remand this cause to the post-conviction court for a hearing on the merits of Wynn’s petition.

Reversed and remanded.

KIRSCH, J., and MATHIAS, J., concur.