APPELLANT PRO SE:

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ATTORNEYS FOR APPELLEE:

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IN THE COURT OF APPEALS OF INDIANA

JOSEPH T. WILLIAMS-BEY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A03-0611-PC-528
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Salvador Vasquez, Judge
The Honorable Kathleen Sullivan, Magistrate
Cause No. 45G02-0412-PC-17

July 30, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Joseph Williams-Bey appeals the denial of his petition for post-conviction relief. We affirm.

Issue

Williams-Bey raises two issues, which we consolidate and restate as whether the post-conviction court properly denied his petition.

Facts

On March 16, 1992, Williams-Bey was charged with Class C felony burglary. On September 3, 1992, Williams-Bey pled guilty to Class D felony theft and the State dismissed the burglary charge.

On December 21, 2004, Williams-Bey filed a petition for post-conviction relief. On December 16, 2005, Williams-Bey amended his petition. A hearing was held on March 1, 2006. On October 12, 2006, the post-conviction court denied Williams-Bey's petition. He now appeals.

Analysis

Williams-Bey contends the post-conviction court improperly denied his petition for post-conviction relief. Generally, a post-conviction petitioner has the burden of establishing grounds for relief by a preponderance of the evidence. Ind. Post-Conviction Rule 1(5). When appealing the denial of post-conviction relief, the petitioner appeals a negative judgment. McElroy v. State, 864 N.E.2d 392, 395 (Ind. Ct. App. 2007). "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.

When a post-conviction court enters finding and conclusions, as it did here, its 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. Id. at 395-96. We accept findings of fact unless clearly erroneous, but we owe no deference to conclusions of law. Id. at 396. "The post-conviction court is the sole judge of the weight of the evidence and the credibility of witnesses." Id.

Williams-Bey first argues that he received ineffective assistance of counsel because trial counsel did not adequately investigate the case, did not interview Williams-Bey, did not depose witnesses, and did not prepare for trial or prepare pretrial motions. The standard of review for ineffective assistance of counsel claim is well settled:

> 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. Strickland, 466 U.S. at 687-88, 104 S.Ct. 2052. 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." Id. at 694, 104 S.Ct. 2052. A reasonable probability arises when there is a "probability sufficient to undermine confidence in the outcome." Id.

Grinstead v. State, 845 N.E.2d 1027, 1031 (Ind. 2006).

"Although the two parts of the Strickland test are separate inquires, a claim may be disposed of on either prong." Id. Williams-Bey's claim can be resolved on the performance prong of the Strickland test. As our supreme court recently observed, when addressing the performance prong, "the question is not whether the attorney could—or even should—have done something more. Rather, the question is whether the attorney's performance amounted to a reasonably competent defense or did not." Reed v. State, 866 N.E.2d 767, 769 (Ind. 2007). "As a result, the inquiry must focus on what the attorney actually did . . . ." Id.

At the post-conviction hearing, held more than thirteen years after he pled guilty, Williams-Bey's attorney testified that he did not remember Williams-Bey's specific case. He testified, however, that more than likely he went over the discovery in the case, sat down with Williams-Bey, sat down with the prosecutor, and came up with an agreement that Williams-Bey "could live with." Tr. p. 8. The record indicates that Williams-Bey was charged with Class C felony burglary based on the allegations of a witness who saw Williams-Bey break into a hardware store, called the police, observed the police arrive, and watched them apprehend Williams-Bey as he left the store carrying items he had taken from inside the store. Williams-Bey pled guilty to Class D felony theft.

At the post-conviction proceeding and on appeal, Williams-Bey focuses on what his attorney did not do. Our focus is instead on what Williams-Bey's attorney did do—negotiated a plea bargain pursuant to which Williams-Bey pled guilty to Class D felony theft and the State dismissed the Class C felony burglary charge. In doing so, Williams-Bey's potential jail time was reduced from eight years to three years.

In light of the evidence against Williams-Bey, his attorney negotiated a favorable plea-bargain on his behalf. There is no indication that his attorney's performance fell below an objective standard of reasonableness. Williams-Bey has not established that he received ineffective assistance of trial counsel.

Williams-Bey also argues that the trial court failed to inform him of his "right to appeal his guilty plea." Appellant's Br. p. 6. However, "[a] person who pleads guilty is not permitted to challenge the propriety of that conviction on direct appeal." Collins v. State, 817 N.E.2d 230, 231 (Ind. 2004). Because Williams-Bey could not have appealed his guilty plea, there was no error in not informing him that he could do so.

Conclusion

The post-conviction court properly denied Williams-Bey's petition for post-conviction relief. We affirm.

Affirmed.

NAJAM, J., and RILEY, J., concur.