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**IN THE
COURT OF APPEALS OF INDIANA**

CLYDE PIGGIE,)
)
 Appellant-Petitioner,)
)
 vs.) No. 20A05-0703-PC-142
)
 STATE OF INDIANA,)
)
 Appellee-Respondent.)

APPEAL FROM THE ELKHART SUPERIOR COURT
The Honorable David C. Bonfiglio, Judge
Cause No. 20D06-0609-PC-9

September 28, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

BRADFORD, Judge

Clyde Piggie appeals from the summary denial of his petition for post-conviction relief (“PCR”). We reverse and remand.

FACTS

On April 1, 1993, a jury found Piggie guilty of Class A felony dealing in cocaine and the trial court subsequently sentenced him to forty-two years of incarceration. On direct appeal, this Court affirmed Piggie’s conviction. *See Piggie v. State*, No. 20A05-9308-CR-284 (Ind. Ct. App. June 15, 1994). Piggie filed a PCR petition on January 18, 2005 followed by an amended petition on April 26, 2006. On January 22, 2007, the post-conviction court denied Piggie’s PCR petition without a hearing.

DISCUSSION AND DECISION

Whether the Post-Conviction Court Properly Denied Piggie’s PCR Petition Without Receiving Evidence

A trial court is not permitted to summarily deny a PCR petition unless “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 State] is entitled to judgment as a matter of law.” Ind. Post-Conviction Rule 1(4)(g). If an issue of material fact is raised in the petition, “the court shall hold an evidentiary hearing as soon as reasonably possible.” *Id.* A hearing is mandatory even where the petitioner has only a remote chance of establishing his claim. *Gann v. State*, 550 N.E.2d 803, 804 (Ind. Ct. App. 1990). An evidentiary hearing is not required, however, in the absence of “specific factual allegations in support of the claim[s]” alleged by the petitioner. *Sherwood v. State*, 453 N.E.2d 187, 189 (Ind. 1983) (citing *Ferrier v. State*,

270 Ind. 279, 280, 385 N.E.2d 422, 423 (1979)). In the event the petitioner is proceeding *pro se*, the post-conviction court may, at its discretion, “order the case submitted upon affidavit.” P-C.R. 1(9)(b).

This court has recognized, as a general rule, that a claim of ineffective assistance of counsel raises an issue of material fact, thereby rendering summary disposition improper. *See, e.g., Evolga v. State*, 722 N.E.2d 370, 373 (Ind. Ct. App. 2000). Such is the case here, as the State concedes. Piggie raises several distinct claims of ineffective assistance of trial and appellate counsels, all of which he is entitled to try to establish by submitting evidence. As such, we remand so that the post-conviction court may receive evidence regarding Piggie’s claims of ineffective assistance of counsel.

In the interest of judicial economy, we will also resolve the other two claims raised by Piggie, neither of which is available to him in this post-conviction proceeding as a matter of law. Piggie claims that the trial court abused its discretion in limiting his cross-examination of a confidential informant who testified for the State. This precise issue, however, was raised and decided against Piggie in his direct appeal, and we may not revisit this court’s earlier ruling on the matter. If an issue was raised on direct appeal, but decided adversely to the petitioner, it is *res judicata*. *Conner v. State*, 829 N.E.2d 21, 25 (Ind. 2005).

Piggie also claims for the first time here that the State suborned perjury from another witness at trial, one Tamara Sue Cassidy. This issue, however, is procedurally defaulted, as Piggie may not raise a freestanding claim of error for the first time in a post-conviction proceeding and has made no claim that the issue was unavailable or unknown

to him at the time of his direct appeal. *See Conner*, 829 N.E.2d at 24-25. On remand, therefore, the post-conviction court need only address and receive evidence, either by affidavit or at a hearing, regarding Piggie's claims of ineffective assistance of trial and appellate counsel.

The judgment of the post-conviction court is reversed and remanded.

NAJAM, J., and MATHIAS, J., concur.