MEMORANDUM DECISION

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.

ATTORNEY FOR APPELLANT

Amy E. Karozos
Public Defender of Indiana

J. Michael Sauer
Deputy Public Defender
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

J.T. Whitehead
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Anthony M. Premore,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 5, 2022

Court of Appeals Case No. 21A-PC-2094

Appeal from the Elkhart Superior Court

The Honorable Teresa L. Cataldo, Judge

Trial Court Cause No. 20D03-1810-PC-54

Mathias, Judge.

[1] Anthony M. Premore appeals the Elkhart Superior Court's denial of his petition for post-conviction relief. Premore raises two issues:

I. Whether Premore received ineffective assistance of trial counsel; and,

II. Whether the post-conviction court abused its discretion when it denied his motion to compel discovery.

[2] We affirm.

Facts and Procedural History

[3] In 2016, Premore was convicted of two counts of Level 4 felony sexual misconduct with a minor. During Premore's jury trial, A.S. testified that she and Premore had sexual intercourse on four occasions when she was fifteen years old. The sexual activity occurred in August 2015. She stated that they had sex at Premore's house in his bedroom and one time in his car. After they had sex in Premore's car, Premore was driving A.S. to her godmother's house when he was stopped by law enforcement officers in the early morning hours on August 9, 2015. He received a warning as a result of the traffic stop. A.S. testified that she skipped school on August 14, 2015, and she and Premore had sex that day as well.

[4] A.S. was acquainted with Premore because he was her ex-boyfriend's stepbrother and she also babysat for his family members. A.S.'s parents became suspicious that A.S. was involved in a relationship with Premore, and her father called the police after he found them together at a boat launch near his home. A.S. initially told the police that she and Premore had not had sexual intercourse because she cared for him and did not want him to be arrested.

Eventually, she admitted that they had engaged in sexual intercourse, and during the ensuing investigation, officers looked at A.S.'s cell phone records and found numerous phone calls and text messages between A.S. and Premore. The text messages were "romantic" in nature. A.S.'s younger sister, J.S., also witnessed A.S. and Premore having sex on one occasion. J.S. was often present when A.S. spent time with Premore.

[5] Premore's defense at trial was that A.S. was not credible and that he lacked the opportunity to commit the charged acts. The jury disagreed and found him guilty as charged. The trial court ordered Premore to serve consecutive terms of eight years for each Level 4 felony count but suspended four years of Premore's sentence on Count II. Premore filed a direct appeal but only challenged the trial court's imposition of fines at sentencing.

[6] On October 12, 2018, Premore filed a pro se petition for post-conviction relief. Shortly thereafter, the Indiana State Public Defender filed its appearance to represent Premore. He then filed two amendments to his petition for post-conviction relief over the course of these proceedings. In those amended petitions, Premore alleged that his trial counsel was ineffective for 1) failing to investigate and present evidence to impeach A.S.'s credibility, 2) failing to object to improper impeachment of Penny Premore, and 3) failing to object to prejudicial testimony that violated Trial Rule 404(b) concerning Premore's character.

[7] Premore filed numerous discovery requests on the Elkhart County Prosecutor. Specifically, he requested 1) all written agreements concerning discovery between his trial counsel and the prosecutor, 2) a copy of all discovery provided by the prosecutor to his trial counsel, 3) any additional discovery not provided to trial counsel but made available for viewing prior to his jury trial, and 4) a copy of A.S.'s recorded interview with detective Cameron McDowell taken on August 21, 2015. The Elkhart County Prosecutor did not respond to Premore's discovery requests and the post-conviction court denied Premore's motion to compel discovery.

[8] Premore sought additional discovery, including the investigating officer's reports, any video or audio recordings provided to trial counsel, and a summary of the expected testimony of a State's witness identified in pre-trial filings, but who did not testify at trial. The Elkhart County Prosecutor filed a motion to quash these discovery requests, and the post-conviction court granted the motion.

[9] Finally, Premore filed discovery requests on the Elkhart County Sheriff's Department for records related to the August 9, 2015, traffic stop that A.S. testified to at trial. The post-conviction court granted the State's motion to quash the discovery request. Premore then issued subpoenas duces tecum to Sheriff Department employees, and the post-conviction court granted the State's motion to quash the subpoenas.

[10] The post-conviction court held an evidentiary hearing on Premore's petition on March 15, 2021. Premore's post-conviction counsel initially argued that Premore was unable to have a procedurally fair post-conviction hearing because his motion to compel was denied and his discovery requests were quashed. Thereafter, Premore, his trial counsel, Detective McDowell, Sheriff Department Officer Michael Culp, A.S., and Premore's brother and sister testified at the hearing.

[11] Trial counsel explained that he signed a discovery compliance agreement with the Elkhart County Prosecutor. That agreement provided that Premore's counsel would receive discovery from the State, including police reports. In exchange, trial counsel was permitted to discuss information obtained from the discovery with the defendant but was not permitted to provide copies of discovery materials to any person, including the defendant and post-conviction counsel. Therefore, when Premore requested his file from his trial counsel, counsel only gave him documents from the file that he was able to provide under the parameters of the discovery compliance agreement. P-C.R. Tr. pp. 52, 79. However, trial counsel also testified that he reviewed and discussed the police reports with Premore. *Id*. at 72.

[12] A.S. testified that she was interviewed by Detective McDowell in August 2015 and that the interview was recorded. *Id*. at 82. Premore attempted to elicit testimony concerning alleged animosity A.S. had toward Premore and his family in August 2015. A.S. stated that, while she was angry with Premore's brother, who was a former boyfriend, she was not upset with Premore or his

sisters who she babysat for during that summer, and that she had voluntarily left her babysitting job. A.S. stated that she testified truthfully at trial. *Id*. at 99. Premore's sister testified that A.S. was fired from her babysitting job because she suspected that A.S. had an inappropriate relationship with her boyfriend at the time. *Id*. at 105-06. She also stated that she never spoke to trial counsel or anyone from the public defender's office about Premore's case. Premore's brother testified that his sisters fired A.S. from her babysitting jobs before they stopped dating. *Id*. at 125.

[13] Sheriff Deputy Culp testified that their officers had body cameras in 2015 and officers were required to record every traffic stop. *Id.* at 113. The deputy also explained that their office attempted to locate dashboard and body camera recordings from Premore's traffic stop on August 19, 2015, but the office could not locate them. *Id*. at 115-16. But the deputy also did not know if a body camera actually recorded the traffic stop and stated that the office experienced difficulty with body cameras malfunctioning during that period of time.

[14] On September 10, 2021, the post-conviction court issued its findings of fact and conclusions of law denying Premore's petition for post-conviction relief. In pertinent part, the court found:

> 22. Mr. Crawford[, Premore's trial counsel,] appeared with Petitioner at all hearings, filed a speedy trial motion, and prepared a Witness and Exhibit List consisting of four (4) separate witnesses and various statements. Also, it is clear that Mr. Crawford was aware of the babysitting issue involving A.S. and [Premore's sister] and addressed the same during a pretrial

hearing. A review of that hearing transcript reveals that while counsel may have contemplated introducing certain testimony which may have gone to the motive of A.S. in making her disclosure, there was also an issue raised about the potential for testimony about the babysitting job to veer into inadmissible areas regarding other sexual behavior by A.S. This demonstrates that tactical reasons may have existed as to why Mr. Crawford did not call [Premore's sister] and the Court will not second guess that decision in hindsight.

23. Additionally, the Record establishes that Mr. Crawford made appropriate objections throughout the trial, thoroughly cross-examined and re-crossed Detective McDowell who had interviewed A.S., and extensively examined defense witness Penny Premore, as well as objected at pertinent times during the State's cross-examination of this witness. In sum, contrary to Petitioner's allegations, trial counsel represented Petitioner diligently over a three[-]day jury trial, objected at appropriate times, cross-examined witnesses, and put forth a defense for Petitioner. Petitioner has not demonstrated that the effect of anything counsel did or did not do amounted to deficient performance or prejudicial error.

* * *

25. Petitioner next claimed that his Sixth Amendment right guaranteed by United States Constitution was violated by a denial of his alleged right to reconstruct circumstances of trial counsel's conduct and evaluate it from counsel's perspective at the time of trial. Petitioner also suggests that the post[-]conviction court denied his right to a fair post[-]conviction hearing for the same reason.

26. Although the civil rules of discovery apply to post[-]conviction proceedings, it is not a normal civil proceeding and due to the very nature of being based upon a criminal action, post[-]conviction relief is at best a "quasi-civil" remedy that is designed for the presentation of errors unknown or unavailable at

> the time of trial or direct appeal. In other words, a post[-]conviction action does not amount to an opportunity for a retrial or super appeal. With respect to discovery in a post[-]conviction proceeding, there must be a basis for the material that is being sought and the Petitioner is not permitted to go on a "fishing expedition" for any possible error. Because post[-]conviction proceedings take place after trial or a guilty plea hearing, the convicted individual typically has already discovered particular items of State evidence or foregone the opportunity to do so. Discovery in a post[-]conviction proceeding is not required under the Due Process Clause of the Constitution. A second opportunity to discover the same evidence will typically be precluded. In most cases, a post[-]conviction petitioner will be fully informed of the documentary sources of the errors that he brings to the post[-]conviction court's attention. Moreover, post[-]conviction is not a device for investigating possible claims, but a means of vindicating actual claims. The filing of a petition for post[-]conviction relief is not a license to obtain unlimited information from the State.
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> 28. Here, the Petitioner sets forth the same argument made in *Hinkle* [*v. State*, 97 N.E.3d 654 (Ind. Ct. App. 2018), *trans. denied*], alleging that the post[-]conviction court's limitations on discovery denied him the right to have all the information trial counsel had in order to reconstruct trial counsel's conduct based on that discovery and evaluate that conduct accordingly. In essence, this was an attempt to fish for something trial counsel may have learned in order to find instances of error that Petitioner could litigate in this post[-]conviction proceeding in support of his ineffective assistance of counsel claim, which is the precise activity held improper by the Indiana Supreme Court in Roche, followed by Hinkle, *supra*. The Court's denial of Petitioner's numerous attempts to do this were in accordance with Indiana law, did not violate any rights of the Petitioner to

> proceed in his post[-]conviction case, and did not deny Petitioner a procedurally fair post[-]conviction proceeding.

Appellant's App. pp. 193-96 (trial record and case citations omitted).

[15] Premore now appeals.

Standard of Review

[16] "Post-conviction proceedings are civil proceedings in which a defendant may present limited collateral challenges to a conviction and sentence." *Gibson v. State*, 133 N.E.3d 673, 681 (Ind. 2019) (citing Ind. Post-Conviction Rule 1(1)(b)). "The scope of potential relief is limited to issues unknown at trial or unavailable on direct appeal." *Id.* A defendant who files a petition for post-conviction relief "bears the burden of establishing grounds for relief by a preponderance of the evidence." P-C.R. 1(5); *Humphrey v. State*, 73 N.E.3d 677, 681 (Ind. 2017). Because the defendant is appealing from the denial of post-conviction relief, he is appealing from a negative judgment:

> Thus, the defendant must establish that the evidence, as a whole, unmistakably and unerringly points to a conclusion contrary to the post-conviction court's decision. In other words, the defendant must convince this Court that there is no way within the law that the court below could have reached the decision it did. We review the post-conviction court's factual findings for clear *error, but do not defer to its conclusions of law.*

Wilkes v. State, 984 N.E.2d 1236, 1240 (Ind. 2013) (citations and quotation marks omitted). We will not reweigh the evidence or judge the credibility of witnesses and will consider only the probative evidence and reasonable

inferences flowing therefrom that support the post-conviction court's decision. *Hinesley v. State*, 999 N.E.2d 975, 981 (Ind. Ct. App. 2013), *trans. denied*.

I. Ineffective Assistance of Trial Counsel

[17] Premore maintains that he is entitled to post-conviction relief because he was denied the right to effective assistance of counsel guaranteed by the Sixth Amendment to the United States Constitution. *See Strickland v. Washington*, 466 U.S. 668, 686 (1984) ("[T]he right to counsel is the right to the effective assistance of counsel.") (quoting *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970)). To succeed on an ineffective assistance of counsel claim, the defendant must satisfy the two-part *Strickland* test. *Humphrey*, 73 N.E.3d at 682. "To satisfy the first prong, 'the defendant must show deficient performance: representation that 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.* (quoting *McCary v. State*, 761 N.E.2d 389, 392 (Ind. 2002)). When considering a claim of ineffective assistance of counsel, we strongly presume "that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Hinesley*, 999 N.E.2d at 982 (citation omitted). We presume that counsel performed effectively, and a defendant must offer strong and convincing evidence to overcome this presumption. *Id.* Isolated poor strategy, inexperience, or bad tactics does not necessarily constitute ineffective assistance. *Id.*

[18] To satisfy the second prong of the *Strickland* test, the defendant must show prejudice. *Humphrey*, 73 N.E.3d at 682. To demonstrate prejudice from counsel's deficient performance, a petitioner need only show "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Middleton v. State*, 72 N.E.3d 891, 891 (Ind. 2017) (emphasis and citation omitted). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* at 891-92. "Although the performance prong and the prejudice prong are separate inquiries, failure to satisfy either prong will cause the claim to fail." *Baer v. State*, 942 N.E.2d 80, 91 (Ind. 2011).

[19] Premore argues that he was subjected to ineffective assistance of counsel when his trial counsel "failed to object to inadmissible and unfairly prejudicial evidence regarding" Premore's and his mother's character. Appellant's Br. at 32. First, we address trial counsel's failure to object to Premore's girlfriend's testimony that she did not trust Premore because he cheated on her. At the post-conviction hearing, trial counsel agreed that he should have objected to this questioning to prevent the jury from inferring that prior wrongful conduct suggests present guilt. P-C. R. Tr. pp. 63-64; *see also* Ind. Trial Rule 404(b); *Halliburton v. State*, 1 N.E.3d 670, 681 (Ind. 2013).

[20] The State elicited Premore's girlfriend's testimony concerning Premore's cheating in the context of whether she could trust Premore and whether he was dishonest with her. During closing argument, the State did not specifically reference her testimony that Premore cheated on her but argued that Premore's

girlfriend agreed that Premore was dishonest with her about his whereabouts. Trial Tr. Vol. 4 p. 189. Therefore, we disagree with Premore's claim that the State asked the jury to make a "forbidden inference" that he cheated on his girlfriend and therefore he must have had sexual intercourse with A.S. *Cf. Williams v. State*, 983 N.E.2d 661, 667 (Ind. Ct. App. 2013) (concluding that Williams was prejudiced by admission of his prior bad acts because the "sheer quantity of past offenses admitted undoubtedly tainted the jury's mind and eviscerated Williams' credibility"). Moreover, during the three-day jury trial, the evidence that Premore cheated on his girlfriend was limited to one statement on cross-examination.

[21] Counsel also testified that he should have objected to A.S.'s testimony that Premore's mother liked to drink because it was irrelevant. P-C. R. Tr. pp. 59-60. After A.S. testified, during the State's cross-examination of Premore's mother, she denied that she had a drinking problem. Over trial counsel's objection Premore's mother was then asked whether she had a pending operating while intoxicated charge. Premore's mother admitted that she did.

[22] This evidence likely had an impact on the jury's determination of Premore's mother's credibility. However, Premore's mother's testimony did not contradict A.S.'s testimony describing when she and Premore had sexual intercourse.[1]

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[1] For this reason, Premore also cannot establish that he was prejudiced by the prosecutor's statement in closing argument that Premore's mother's testimony was not credible because she was only able to see her grandson once or twice a year due to the criminal charges against her son. The prosecutor's statement was not accurate and misstated her testimony.

Trial counsel elicited testimony from Premore's mother attempting to prove that Premore lacked the opportunity to have sexual intercourse with A.S. particularly on the date that A.S. skipped school. Premore's mother testified that unless she was assisting relatives or cleaning houses she rarely left her home. But she also stated that she often stayed in her bedroom with her door shut. And she testified that Premore helped her transport her relatives to a doctor's appointment on August 14, 2015. But Premore would have had the opportunity to both have sexual intercourse with A.S. that day as alleged and transport his relatives to their appointment.

[23] We agree that trial counsel should have objected to the testimonies discussed above, but Premore cannot establish that counsel's deficient performance prejudiced him. Premore's defense in this case centered on challenging A.S.'s credibility and whether he had the opportunity to have sex with her as alleged.[2] But A.S.'s sister, J.S., corroborated A.S.'s testimony. J.S. was present during many of A.S.'s interactions with Premore and witnessed Premore having sex with A.S. on one occasion. J.S. was able to describe Premore's bedroom. Her testimony was consistent with A.S.'s testimony and Premore's girlfriend's

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[2] In his petition for post-conviction relief, Premore alleged that his trial counsel was ineffective for failing to investigate and present evidence to impeach A.S.'s credibility. As the post-conviction court noted, trial counsel considered introducing evidence that A.S. was fired by Premore's sister from her babysitting job for the purposes of impeachment but abandoned that tactic for strategic reasons. But counsel attempted to impeach A.S.'s credibility with other evidence including her initial denial that she and Premore had sexual intercourse, her lack of recall, her state of intoxication during their sexual encounters, and her description of Premore's penis, which was not consistent with Premore's girlfriend's testimony. On appeal, Premore does not argue that his counsel was ineffective for failing to present evidence to impeach A.S.'s credibility.

description of the furnishings and items in the room. A.S. testified that she skipped school on August 14, 2015, to spend time with Premore, and the school records established that she was not in school that day. A.S.'s father caught A.S. and Premore together at a boat launch near their home and called the police. A.S.'s testimony describing the location and time of the August 9, 2015, traffic stop resulting in Premore receiving a warning was consistent with the police department's documentation of the stop. And phone calls and text messages between A.S. and Premore corroborated both A.S.'s testimony concerning dates that the sexual activity occurred and the "romantic" nature of their relationship.

[24] Given the weight of the evidence against Premore, there is no reasonable probability that the jury would not have convicted him if counsel had objected to the testimonies described above. Because Premore cannot establish that he was prejudiced by counsel's deficient performance, we conclude that he was not subjected to ineffective assistance of trial counsel.

II. Discovery Claims

[25] Premore also argues that he was "denied a procedurally fair post-conviction proceeding when the post-conviction court refused to allow him to see any of the discovery provided to his trial counsel by the State." Appellant's Br. at 20. Premore claims that it is "impossible to evaluate Trial Counsel's performance without the trial discovery" counsel obtained from the Prosecutor's office. *Id.* at 24. "'A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the

circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time.'" *Id*. at 20 (quoting *Strickland v. Washington*, 466 U.S. 668, 689 (1984)).

[26] In *Roche v. State*, 690 N.E.2d 1115 (Ind. 1997), petitioner Roche unsuccessfully sought to compel discovery of the "prosecutor's entire files regarding the co-defendants/key witnesses, and, regarding Roche['s] specific file: the State's notes from trial and 'intake sheets ref. filing the instant charges, attorney notes on jury questionnaires, phone message pad notes, letters from [the State's] victim department to witnesses, and copies of press releases.'" *Id.* at 1132 (brief citation omitted). Our supreme court affirmed the trial court's denial of Roche's motion to compel after observing that "in most circumstances, the post-conviction petitioner will be fully informed of the documentary source of the petitioner's claims and that it is an abuse of the post-conviction process to use it to investigate possible claims rather than vindicate actual claims." *Id.* at 1133 (citation omitted). Roche only established that he wanted access to the files to investigate possible claims and did not argue that there was any specific information in the State's files that supported his claims of ineffective assistance of counsel. *Id*.

[27] Following the *Roche* Court, our court has reiterated that the post-conviction court may properly deny discovery requests in post-conviction proceedings if the request amounts to an "improper fishing expedition[]" and not an "attempt[] to vindicate actual claims." *Hinkle v. State*, 97 N.E.3d 654, 666 (Ind.

Ct. App. 2018) (citing *Roche*, 690 N.E.2d at 1132)), *trans. denied*. However, the *Hinkle* Court also observed that

> [t]he dichotomy adopted by the Indiana Supreme Court in *Roche* between "investigating possible claims" and "vindicating actual claims" does not fully take into account the fact that post-conviction counsel needs to walk in the shoes of trial counsel to determine whether trial counsel's decisions created actual claims that deserve vindicating. This often requires an investigation into territory outside the trial record. . . . Indeed, "[i]n *any* case presenting an ineffectiveness claim, the performance inquiry *must be whether counsel's assistance was reasonable considering all the circumstances*." After all, "the purpose of the effective assistance guarantee of the Sixth Amendment . . . is simply to ensure that criminal defendants receive a fair trial." To prohibit an investigation into possible claims, which after an investigation turn out to be actual claims, does not meet those Sixth Amendment standards.

Id. (citations omitted and emphasis in original). Despite these observations, our court affirmed the post-conviction court's denial of Hinkle's motion to compel discovery because our court is "in no position to reconsider the opinions of the Indiana Supreme Court." *Id*. (citing *Horn v. Hendrickson*, 824 N.E.2d 690, 694 (Ind. Ct. App. 2005)).

[28] The petitioner in *Hinkle* was also charged and convicted in Elkhart County and his trial counsel likewise signed a Discovery Compliance Agreement with the Elkhart County Prosecutor. *Id*. at 659. During the post-conviction proceedings, Hinkle asked his trial counsel for the discovery from his criminal case. Counsel stated that she could not provide copies of discovery without permission from the Elkhart County Prosecutor's Office. The Prosecutor's Office declined

Hinkle's request for permission to receive a copy of the discovery from his case. *Id.* at 660.

[29] Premore agrees that his case is analogous to *Hinkle* but argues that *Hinkle* was wrongly decided. Premore observes that the breadth of the discovery request in *Roche* was broader than that in *Hinkle*. Appellant's Br. at 23 (arguing that "[t]here is a substantial distinction between requesting everything in the State's files, and requesting only the trial discovery that the State previously disclosed to trial counsel"). But the critical issue in both *Roche* and *Hinkle* was whether discovery was being sought to investigate possible claims or to attempt to vindicate actual claims.

[30] Premore never received copies of police reports or any other type of investigative report prepared by law enforcement officers or the prosecutor.[3] However, trial counsel viewed and discussed the police reports with Premore during his criminal proceedings. P-C. R. Tr. p. 72. And Premore has not argued that he sought discovery of the prosecutor's file in an attempt to vindicate an actual claim of ineffective assistance of counsel. Post-conviction counsel called many witnesses to testify at Premore's post-conviction hearing including A.S.,

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[3] Recently, in *Ramirez v. State*, 186 N.E.3d 89 (Ind. 2022), our supreme court concluded that a local rule requiring a defendant to apply to the trial court for a copy of relevant, nonprivileged video evidence stating a specific reason for needing a copy impermissibly conflicted with Trial Rule 34. *Id.* at 95. However, while the trial court's decision prohibiting Ramirez from obtaining a copy of the recording was erroneous, the court determined that reversal was not required because Ramirez had over seven months to view the video at the prosecutor's office and he had actually viewed the video. *Id.*

Premore's trial counsel,[4] and Detective McDowell, who took A.S.'s statement during the investigation. The witnesses' testimonies were consistent with their trial testimonies.

[31] As we were in *Hinkle*, we are sympathetic to Premore's request for access to trial discovery. Such access would certainly assist post-conviction petitioners and counsel to investigate whether trial counsel was ineffective. But Premore has not argued that he has been denied the opportunity to present evidence to vindicate an actual claim of ineffective assistance of trial counsel. For these reasons, and because our court cannot reconsider opinions of our supreme court, we conclude that Premore was not denied a procedurally fair post-conviction proceeding.

[32] In the alternative, Premore claims that the trial court abused its discretion when it refused Premore access to discovery because he sufficiently designated the items sought to be discovered which are relevant to his post-conviction claims. Appellant's Br. at 26 (citing *In re WTHR-TV*, 693 N.E.2d 1 (Ind. 1998)). Post-conviction proceedings are governed by the same rules "applicable in civil proceedings including pre-trial and discovery procedures." P–C.R. 1(5). Trial and post-conviction courts are accorded broad discretion in ruling on discovery

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[4] Premore fairly notes that "[r]equiring post-conviction petitioners to depend on the accuracy of the trial attorney's memory is not a substitute for having access to the trial discovery." Reply Br. at 8. But trial counsel discussed the police reports with Premore during preparation for trial. P-C. R. Tr. p. 72. Premore has not alleged that there is any specific evidence in the police reports that could support a claim of ineffective assistance of trial counsel.

matters and we will affirm their determinations absent a showing of clear error and resulting prejudice. *State v. McManus*, 868 N.E.2d 778, 790 (Ind. 2007).

[33] The following test has been applied to determine in a criminal case whether the information sought by the defendant is discoverable: "(1) there must be a sufficient designation of the items sought to be discovered (particularity); (2) the items requested must be material to the defense (relevance); and (3) if the particularity and materiality requirements are met, the trial court must grant the request unless there is a showing of 'paramount interest' in non-disclosure." *WTHR-TV*, 693 N.E.2d at 7 (citing *Kindred v. State*, 540 N.E.2d 1161, 1174 (Ind.1989); *see also* Ind. Trial Rule 26(B)(1) (allowing parties to "obtain discovery regarding any matter, not privileged, which is relevant to the subject-matter involved in the pending action").

[34] Premore sought a copy of the prosecutor's file in his criminal case. This file would presumably include many privileged documents because the documents are the prosecutor's work product. In the discovery compliance agreement, Premore's trial counsel explicitly agreed that the State did not waive its work product privilege by allowing him access to their file. *See e.g.* Pet. Ex. 6. Moreover, our supreme court has previously held that police reports "constitute the work product of the prosecuting attorney[.]"[5] *Keaton v. Cir. Ct. of Rush Cnty.*,

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[5] In *Minges v. State*, 180 N.E.3d 391, 400-01 (Ind. Ct. App. 2022), *trans. pending*, this court urged our supreme court to revisit its *Keaton* holding. Our supreme court held oral argument on Minges's transfer petition on May 18, 2022. To date, the court has not ruled on that petition.

475 N.E.2d 1146 (Ind. 1985); *see also Goudy v. State*, 689 N.E.2d 686, 695 (Ind. 1997).

[35] And, as we noted above, Premore has not alleged that there is evidence in the State's file that would support an actual claim of post-conviction relief. It is possible that if Premore had been given unfettered access to the State's file in his criminal case he might have found instances of error to litigate in these proceedings. However, Premore's trial counsel was given that access, he reviewed the contents of the State's file, including A.S.'s statement to Detective McDowell, and discussed the contents of that statement with Premore.

[36] Premore's motion to compel must be examined within the context of a post-conviction proceeding, which only allows for collateral challenges to convictions based on the grounds enumerated in the post-conviction rules. *See* P-C. R. 1(1). Requesting the State's entire file is insufficient designation of the items sought to be discovered. To the extent that Premore requested specific documents, such as A.S.'s statement to Detective McDowell, he failed to show that her statement is material to the claims alleged in his petition for post-conviction relief. Premore's claim that A.S.'s statement might include evidence his trial counsel could have used to impeach her credibility is an improper fishing expedition. Both Premore and his trial counsel had access to evidence that could have been and was used to attempt to impeach A.S.'s credibility. Premore simply speculates that her statement could have included additional evidence that could have been used to impeach her.

[37] For all of these reasons, Premore has not established that the trial court abused its discretion when it denied his motion to compel discovery of the State's file.

[38] Finally, Premore claims that the trial court abused its discretion when it denied his discovery request to obtain any records the Sheriff Department retained related to his August 9, 2015, traffic stop. Specifically, Premore sought to discover body camera footage recorded during the traffic stop. However, it is not known whether any body camera footage ever existed.

[39] At trial, the State presented a dashboard camera recording of the traffic stop. The State also admitted a dispatch record establishing the location of the stop and that it resulted in a warning. The Sheriff's Department's records of the stop presented at trial do not establish whether A.S. was in Premore's vehicle when the stop occurred in the early morning hours on August 9, 2015. Premore claims the State had an obligation to show the body camera recording to the jury which would have established whether A.S. was in the vehicle.

[40] However, A.S. accurately described the location of the traffic stop, the time of day, and that the officer administered a field sobriety test to Premore. Her testimony was consistent with the dashboard camera recording and documentary evidence.

[41] Contrary to Premore's claim, he has not "demonstrated a substantial need for information in the hands of the Sheriff relating to his traffic stop." Reply Br. at 16. Although it was the Sheriff Department's policy to record all traffic stops with the dashboard and body cameras on August 9, 2015, the State presented

evidence at the post-conviction hearing that the body cameras often malfunctioned during that time period. Therefore, it is entirely possible that no body camera footage of the stop existed. And Premore's claim that only the body camera footage could establish whether A.S. was present in his vehicle is unavailing. A.S.'s testimony concerning Premore's attempt to evade the officer before he was pulled over, the location of the traffic stop, and her recall of the details of the stop support the State's claim that she was with Premore in his vehicle during the early morning hours on August 9, 2015.

[42] In sum, Premore has not established that he did not receive a procedurally fair post-conviction proceeding or that the trial court abused its discretion when it denied his motions to compel discovery.

Conclusion

[43] Premore has not established that he was subjected to ineffective assistance of trial counsel. And Premore was not denied a procedurally fair post-conviction proceeding. For all of these reasons, we affirm the trial court's order denying his petition for post-conviction relief.

[44] Affirmed.

Brown, J., and Molter, J., concur.