

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

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Maurice Amos, Jr.,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

August 24, 2023

Court of Appeals Case No.  
23A-PC-82

Appeal from the Grant Circuit  
Court

The Honorable Mark E. Spitzer,  
Judge

Trial Court Cause No.  
27C01-1701-PC-4

**Memorandum Decision by Judge Tavitas**  
Judges Bailey and Brown concur.

**Tavitas, Judge.**

## Case Summary

[1] In 2013, Maurice Amos was convicted of murder, attempted murder, and receiving stolen auto parts. The jury also found him to be an habitual offender. Following an unsuccessful direct appeal, Amos filed a petition for post-conviction relief, which the post-conviction court (“PC Court”) denied. On appeal, Amos contends that the PC Court clearly erred, and he argues that: 1) the trial court’s denial of Amos’s motion to continue the jury trial violated Amos’s right to counsel of his choice; 2) witness testimony violated Amos’s due process rights; and 3) Amos’s trial and appellate counsel were ineffective. We find Amos’s arguments without merit and, accordingly, affirm.

## Issues

[2] Amos raises several issues on appeal, which we consolidate, reorder, and restate as:

- I. Whether Amos’s arguments regarding his right to counsel of choice and due process rights are available for appellate review.
- II. Whether the PC Court’s determination that Amos’s trial counsel was not ineffective was clearly erroneous.
- III. Whether the PC Court’s determination that Amos’s appellate counsel was not ineffective was clearly erroneous.

## Facts

[3] The facts underlying Amos's convictions were set forth in Amos's direct appeal as follows:

In the late evening hours of November 1, 2012, Cletus Luster went to 3021 South Branson Street in Marion to sell one ounce of marijuana to Amos for \$300. Danielle Stalling, who also knew Amos, agreed to drive Cletus to the location. Stalling parked her vehicle in the alley behind the residence, and Amos came out of the residence and met them at the vehicle. After a brief discussion, Amos went back inside the residence to show his family the marijuana and see if they wanted it. Amos instructed Stalling to move her vehicle into a nearby gravel parking spot, which she did. Her car was facing Amos's house.

Amos then exited the house with a firearm and start[ed] shooting into Stalling's car. Amos fired at least fifteen shots. Stalling was struck eight to ten times in the chest and abdomen. Cletus was also struck multiple times and heard Stalling yell out "Reesie," which was Amos's nickname. Cletus then blacked out momentarily, and when he awoke he saw Amos in the front driver's side of the car. Cletus "act[ed] like [he] was dead" until Amos left. As Amos was returning to the house, Cletus grabbed his own firearm, shot at Amos, and then fled the scene.

At 10:19 p.m. the Marion Police Department received a report of shots fired. Officer Chris Butchie arrived at the scene and observed Stalling lying on the ground with multiple gunshot wounds. Officer Butchie observed that Stalling was having trouble breathing, and she stated, "please don't let me die." Officer Butchie "knew that her health was deteriorating quickly" and he "asked her . . . who shot you." Stalling twice responded, "Maurice Green." Stalling also told the officer that

“Cletus” had been in the passenger seat. Stalling died about thirty minutes later, before she could be treated at a hospital.

Across the alley and “just feet away” from the crime scene, officers observed a Nissan Maxima. When “nobody had come and asked about the vehicle or inquired about it,” the officers ran the license plate number and the vehicle identification number and learned that the vehicle had been reported stolen in Chicago. Officers had the vehicle impounded. Thereafter, officers searched the vehicle and recovered an IRS letter addressed to Amos. . . . Officers also recovered letters addressed to Amanda Green and Shakara Green, Amos’s mother and sister, respectively. And officers recovered a box of Newport-brand cigarettes, which matched the brand of a half-smoked cigarette the officers had collected from the crime scene. The cigarette collected from the crime scene contained Amos’s DNA.

On November 7, 2012, the State charged Amos with murder, a felony; attempted murder, a Class A felony; possession of a firearm by a serious violent felon, a Class B felony; receiving stolen auto parts, as a Class D felony; and with being an habitual offender. After a continuance, the trial court set Amos’s jury trial for July 29, 2013. On July 26—the Friday before the Monday trial was to commence—and again at the start of the trial on July 29, Amos moved to continue the trial so that he could obtain new counsel. The court denied Amos’s requests.

At the ensuing trial, the State called Cletus to testify, and he described the November 1 shooting. Phone records corroborated Cletus’s testimony that he and Amos had arranged to meet during the evening of November 1. . . . Three responding officers, including Officer Butchie, testified that Stalling had said at the scene that she had been shot by Maurice Green. Five witnesses testified that Amos and/or his family had the last name of Green. One of those witnesses was the aunt of Amos’s mother. Another was Latosha Georgia, a friend of Amos’s, who

testified that she had “assumed” Amos’s last name was Green because it was his family’s last name. The State also had admitted into the record the DNA evidence from the cigarette at the crime scene and items recovered from the Nissan Maxima, including the IRS letter. . . .

The jury found Amos guilty of murder, attempted murder, and receiving stolen auto parts. At the ensuing trial on Amos’s status as an habitual offender, the State introduced certified records that demonstrated that Amos had previously been convicted of two Class C felonies in June of 2011 and a Class D felony, along with several misdemeanors, in October of 2007. However, the judgment of conviction on the October 2007 charges erroneously stated that Amos pleaded guilty to a “Class D Misdemeanor.” The jury found Amos guilty of being an habitual offender, and the court entered its judgment and sentenced Amos accordingly.

*Amos v. State*, No. 27C01-1211-MR-251, slip op. pp. 2-5 (Ind. Ct. App. July 16, 2014) (record citations omitted).

- [4] Amos appealed and argued, among other things: 1) the trial court abused its discretion by permitting Latosha Georgia to testify that she assumed Amos’s last name was Green; 2) the trial court abused its discretion and violated Amos’s right to counsel of his choice by denying Amos’s motion to continue the trial so that Amos could obtain private counsel; and 3) the State presented insufficient evidence to support Amos’s status as an habitual offender. A panel of this Court rejected Amos’s arguments in an unpublished opinion. *See generally id.*

[5] On January 23, 2017, Amos filed a petition for post-conviction relief.<sup>1</sup> Amos argued, among other things, that: 1) the trial court’s denial of his motion to continue violated his right to counsel of his choice; 2) Georgia’s testimony violated his due process rights; and 3) his trial and appellate counsel were ineffective. The PC Court held an evidentiary hearing on Amos’s petition on August 2, 2022, and the PC Court later entered findings of fact and conclusions of law denying the petition. Amos now appeals.

## **Discussion and Decision**

[6] 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), *reh’g denied*; Ind. Post-Conviction Rule 1(1)(b). “The scope of potential relief is limited to issues unknown at trial or unavailable on direct appeal.” *Gibson*, 133 N.E.3d at 681. “Issues available on direct appeal but not raised are waived, while issues litigated adversely to the defendant are res judicata.” *Id.* The petitioner bears the burden of establishing his claims by a preponderance of the evidence. *Id.*; P.-C.R. 1(5).

[7] When, as here, the petitioner “appeals from a negative judgment denying post-conviction relief, he ‘must establish that the evidence, as a whole, unmistakably and unerringly points to a conclusion contrary to the post-conviction court’s

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<sup>1</sup> Amos amended his petition on April 27, 2022, and again on July 1, 2022. The amendments do not affect our decision today.

decision.’” *Gibson*, 133 N.E.3d at 681 (quoting *Ben-Yisrayl v. State*, 738 N.E.2d 253, 258 (Ind. 2000)). When reviewing the PC court’s order denying relief, we will “not defer to the post-conviction court’s legal conclusions,” and the “findings and 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.” *Bobadilla v. State*, 117 N.E.3d 1272, 1279 (Ind. 2019). When a petitioner “fails to meet this ‘rigorous standard of review,’ we will affirm the post-conviction court’s denial of relief.” *Gibson*, 133 N.E.3d at 681 (quoting *DeWitt v. State*, 755 N.E.2d 167, 169-70 (Ind. 2001)).

***I. Amos’s right-to-counsel-of-choice and due-process arguments are unavailable for post-conviction review***

***A. Right to Counsel of Choice***

[8] Amos argues that the trial court violated Amos’s right to counsel of his choice by denying Amos’s motion to continue the jury trial. The jury trial was scheduled for Monday, July 29, 2013, and on July 24, 2013, Amos asked the trial court if it would be “amenable” to granting a continuance so that Amos could retain as private counsel Attorney Caroline Briggs, who would need additional time to prepare for trial if she were to represent Amos.<sup>2</sup> Ex. Vol. I p. 56. Meanwhile, Amos’s appointed attorneys indicated that they were prepared to try the case as scheduled. The trial court stated that it was not inclined to continue the trial because: Attorney Briggs had not yet filed an appearance;

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<sup>2</sup> The transcript of his hearing was not included in Amos’s direct appeal.

Amos was currently represented by competent appointed counsel; and Amos’s counsel, the State, and the trial court were all prepared for the trial. Two days later, Amos filed a written motion to continue, which the trial court denied.<sup>3</sup>

[9] On direct appeal, Amos argued that, because the trial court denied his motion to continue, “he was not afforded a fair opportunity to obtain counsel.” Prior Case Appellant’s Br. pp. 38; *see also id.* at pp. 36-37 (arguing “[t]his appeal raises the fundamental question of whether a defendant is deprived of counsel of his choice . . .”). A panel of this Court rejected that argument, holding, “there is no right to a last-minute motion to continue in a criminal trial for the purposes of hiring new counsel.” *Amos*, No. 27C01-1211-MR-251, slip op. p. 13 (citing *Lewis v. State*, 730 N.E.2d 686, 688-90 (Ind. 2000)).

[10] The PC Court determined that Amos’s right-to-counsel-of-choice argument was unavailable for post-conviction review, finding:

Clearly, this issue was known and available to Amos at the time of his direct appeal, and was in fact raised by him as “Issue 5” in his Brief of Appellant. There, he makes much [of] the same arguments and relies upon the same authority. The Court of Appeals decided this issue adversely to him, citing *Lewis v. State*, 730 N.E.2d 686 (Ind. 2000), the same case cited by the [trial court] in denying the late motions for continuance. . . . Amos had a full and fair opportunity to litigate this issue on his direct

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<sup>3</sup> The record reveals that Attorney Briggs never entered an appearance in Amos’s trial.



appeal, and it was decided against him. He may not revisit it in a post-conviction relief petition.

Appellant's App. Vol. II p. 105. Based on our review of Amos's briefing in his direct appeal and this Court's decision thereon, Amos's counsel-of-choice argument has already been raised and litigated. Accordingly, we conclude that the PC Court did not clearly err by determining that Amos's counsel-of-choice argument is unavailable for post-conviction review.

### ***B. Due Process***

[11] Amos argues that Latosha Georgia testified falsely and that the State's presentation of her testimony violated Amos's due process rights. As we have just alluded to, however, not every claim of trial court error is available for review in post-conviction proceedings. Regarding Amos's due-process argument, this Court has previously explained:

“Post-conviction procedures do not provide a petitioner with an opportunity to present freestanding claims that contend the original trial court committed error.” *Wrinkles v. State*, 749 N.E.2d 1179, 1187 n.3 (Ind. 2001). Rather, “[i]n post-conviction proceedings, complaints that something went awry at trial are generally cognizable only when they show deprivation of the right to effective counsel or issues demonstrably unavailable at the time of trial or direct appeal.” *Bunch v. State*, 778 N.E.2d 1285, 1289-90 (Ind. 2002) (quoting *Sanders v. State*, 765 N.E.2d 591, 592 (Ind. 2002)). “An available grounds for relief not raised at trial or on direct appeal is not available as a grounds for collateral attack.” *Canaan v. State*, 683 N.E.2d 227, 235 (Ind. 1997).

*Myers v. State*, 33 N.E.3d 1077, 1115-16 (Ind. Ct. App. 2015), *trans. denied*; accord *Wilson v. State*, 157 N.E.3d 1163, 1169 (Ind. 2020).

[12] Here, before she died, Stalling told police that “Maurice Green” shot her. At trial, the Defense argued that Stalling was referring to a different individual than the defendant, Maurice Amos. Georgia testified that she had known Amos for several years and “assumed” Amos’s last name was “Green[,] like his brothers.” Tr. Vol. III p. 681.

[13] Amos argues that Georgia testified falsely and that such testimony violated his due process rights. He contends that Georgia wrote letters to Amos while Amos was incarcerated at the Grant County Jail and that, because letters to inmates at the jail were required to state the inmate’s legal name, Georgia must have known that Amos’s last name was Amos, not Green. This argument was available but not raised on Amos’s direct appeal. Indeed, Amos argued in his direct appeal that Georgia’s testimony that she assumed Amos’s last name was Green “[did] not meet the minimum standards for first-hand knowledge required by [Evidence] Rule 602” and should have been excluded. Prior Case Appellant’s Br. p. 30. Amos, however, did not raise a due process argument based upon Georgia’s same testimony. Accordingly, that argument is a freestanding claim that is unavailable for post-conviction review.

## ***II. Amos’s trial counsel was not ineffective***

[14] Amos argues that his trial counsel was ineffective because his trial counsel failed to: investigate and interview Latosha Georgia; impeach Cletus Luster

based on Luster’s criminal history; and present witness testimony regarding potentially mitigating evidence during sentencing. We disagree.

[15] To prevail on his ineffective assistance of counsel claims, Amos must show that: (1) his counsel’s performance fell short of prevailing professional norms; and (2) his counsel’s deficient performance prejudiced his defense. *Gibson*, 133 N.E.3d at 682 (citing *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984))). A showing of deficient performance “requires proof that legal representation lacked ‘an objective standard of reasonableness,’ effectively depriving the defendant of his Sixth Amendment right to counsel.” *Id.* (quoting *Overstreet v. State*, 877 N.E.2d 144, 152 (Ind. 2007)). We strongly presume that counsel exercised “reasonable professional judgment” and “rendered adequate legal assistance.” *Id.* Defense counsel enjoys “considerable discretion” in developing legal strategies for a client. *Id.* This “discretion demands deferential judicial review.” *Id.* Finally, counsel’s “[i]solated mistakes, poor strategy, inexperience, and instances of bad judgment do not necessarily render representation ineffective.” *Id.*

[16] “To demonstrate prejudice, the defendant must show a reasonable probability that, but for counsel’s errors, the proceedings below would have resulted in a different outcome.” *Id.* “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694, 104 S. Ct. at 2068.

[17] Failure to satisfy either the deficient performance prong or the prejudice prong will cause the claim to fail. *Grinstead v. State*, 845 N.E.2d 1027, 1031 (Ind. 2006). Most ineffective assistance of counsel claims can be resolved by the prejudice inquiry alone. *Id.*

***A. Failure to investigate and interview Latosha Georgia***

[18] Returning to Georgia’s testimony that she assumed Amos’s last name was Green, Amos argues that his trial counsel was ineffective for failing to investigate Georgia’s knowledge of Amos’s last name.<sup>4</sup> At trial, several witnesses testified that they believed Amos’s last name was Green and that Amos went by the nickname Reesie. Cletus Luster testified that Stalling yelled out the name Reesie as Amos began shooting. Additionally, witnesses testified that Amos was the only person named Maurice in the area that evening; the State presented DNA evidence tying Amos to the scene of the crime; and Luster testified that Amos shot him and Stalling.

[19] The PC Court determined that trial counsel’s performance was not deficient, finding:

[Georgia’s] testimony could be reconciled as simply that she *previously* knew [Amos] as Maurice Green, but after his arrest and

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<sup>4</sup> Amos also argues that his trial counsel was ineffective for failing to investigate and interview Carla Smith, Amos’s probation officer, who also testified that she believed Amos’s last name was Green. The PC Court determined that Smith testified during the habitual offender portion, and that, because this was “*after* the jury had already concluded that Amos had committed the murder and shooting,” any alleged error by trial counsel did not prejudice Amos. Appellant’s App. Vol. II p. 110. We cannot say that the PC Court clearly erred by reaching this determination.

at the trial also knew him as Maurice Amos. Amos has not demonstrated that a vigorous cross-examination on this point would have led to a confession that Georgia was lying, or convinced the jury that her testimony was inconsistent.

Appellant's App. Vol. II p. 109. The PC Court further determined that Amos failed to demonstrate prejudice from his trial counsel's alleged errors based on the other evidence presented at trial.

[20] Amos fails to persuade us that his trial's counsel's performance was deficient. Moreover, we are not persuaded that, but for Amos's trial counsel's alleged errors, the outcome of the trial would have been any different. Accordingly, we cannot say that the PC Court's determination was clearly erroneous.

***B. Failure to impeach Cletus Luster with Luster's criminal history***

[21] During cross-examination, Cletus Luster denied being "known as a marijuana dealer[.]" Tr. Vol. II p. 41. Amos argues that his trial counsel was ineffective for failing to impeach Luster based on Luster's convictions for dealing in cocaine and possession of cocaine with intent to deliver.<sup>5</sup>

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<sup>5</sup> Amos also argues that his trial counsel was ineffective for failing to impeach Luster based on Luster's conviction for theft. Amos, however, did not raise this argument in his petition for post-conviction relief. "Issues not raised in the petition for post-conviction relief may not be raised for the first time on post-conviction appeal." *Jones v. State*, 151 N.E.3d 790, 805 (Ind. Ct. App. 2020) (quoting *Allen v. State*, 749 N.E.2d 1158, 1171 (Ind. 2001)), *trans. denied*; see also P.-C.R. 1(8) ("All grounds for relief available to a petitioner under this rule must be raised in his original petition."). Accordingly, Amos's argument regarding Luster's theft conviction is waived. Moreover, even if the argument were not waived, we find no prejudice to Amos based on other evidence regarding Luster's character that was brought to light at trial.

[22] The PC Court determined that Amos’s trial counsel did not err by failing to bring to light Luster’s cocaine-related convictions because Luster’s statement that he was not known as a marijuana dealer was “not inconsistent with him having convictions for cocaine dealing.” Appellant’s App. Vol. II p. 111. The PC Court further found that any error by Amos’s trial counsel did not prejudice Amos because: Luster’s convictions were “cumulative” of other evidence that Luster was a drug dealer; the purpose for Luster’s meeting with Amos was to sell Amos marijuana; and the State presented evidence that Luster initially lied to police about the circumstances of the shooting. *Id.* We fail to see how bringing Luster’s cocaine-related convictions to the attention of the jury would have made any difference in the outcome of the trial. Accordingly, the PC Court did not clearly err.

***C. Failure to present mitigating evidence***

[23] Lastly, Amos argues that his trial counsel was ineffective for failing to present potentially mitigating testimony during Amos’s sentencing hearing. We are not persuaded.

[24] In *Ritchie v. State*, our Supreme Court explained the circumstances in which trial counsel might be found ineffective for failing to present mitigating evidence at sentencing:

With the benefit of hindsight, a defendant can always point to some rock left unturned to argue counsel should have investigated further. . . . *Strickland* does not require counsel to investigate every conceivable line of mitigating evidence no matter how unlikely the effort would be to assist the defendant

at sentencing. This would interfere with the constitutionally protected independence of counsel at the heart of *Strickland*. Rather, we review a particular decision not to investigate by looking at whether counsel’s action was reasonable in light of all the circumstances. In other words, counsel has a duty to make a reasonable investigation or to make a reasonable decision that the particular investigation is unnecessary. A strategic choice not to present mitigating evidence made after thorough investigation of law and relevant facts is virtually unchallengeable, but a strategic choice made after less than complete investigation is challengeable to the extent that reasonable professional judgment did not support the limitations on the investigation. **Thus, the Court’s principal concern is not whether counsel should have presented more in mitigation but whether the investigation supporting their decision not to introduce mitigating evidence was itself reasonable.**

875 N.E.2d 706, 719-720 (Ind. 2007) (emphasis added; internal citations omitted).

[25] Amos argues that his trial counsel failed to present evidence of his traumatic life experiences and his caretaking responsibilities. Amos claims that certain witnesses should have been called to testify at the sentencing hearing regarding the deaths of Amos’s younger brothers, which resulted in Amos becoming emotionally withdrawn. One witness would have testified that he thought that Amos “needed some help” but that Amos “didn’t think that he needed it . . . .” PCR Tr. Vol. I p. 16. Amos further argues that witnesses should have been called to testify that Amos “took care of his own children as well as [] relatives’ children.” Appellant’s Br. p. 26.

[26] The same trial court judge who presided over Amos’s trial and sentencing hearing also presided over Amos’s PCR petition. The PCR Court determined that Amos’s trial counsel was not ineffective for failing to offer the testimony of Amos’s witnesses, stating:

While losing two family members due to shootings is without question traumatic, it is difficult to envision those circumstances as mitigating the fact that Amos himself in this incident shot two other individuals, killing one. Similarly, while the advice given Amos to seek counseling for his loss was likely good advice, it was apparently ignored by him. It also cannot be said that Amos’s loss of his brothers was the precipitating factor of his violence—Amos’s violent behavior both preceded and followed the death of his brothers. Amos fails to enlighten the Court as to the nature of an argument that counsel could have crafted to overcome the fact that he was a violent recidivist on probation that shot a handgun at least fifteen times at close range into an occupied car in the course of a drug transaction, murdering one woman and grievously injuring another man with the gunfire.

Appellant’s App. Vol. II p. 15.

[27] Amos fails to persuade us that the PC Court’s determination was clearly erroneous. The trial court found that Amos engaged in “an execution style shooting” and considered Amos’s criminal history, which included eleven misdemeanors, six probation violations, and five felonies. Tr. Vol. IV p. 874. These felonies included dealing in cocaine, domestic battery in the presence of a child, and battery with a deadly weapon. Amos was convicted of the latter offense—battery with a deadly weapon—after Amos shot two individuals. Amos violated his probation in that case by committing the instant offenses,



which involved Amos shooting two additional individuals. The trial court considered this probation violation and Amos’s criminal history “significant” aggravating factors. *Id.* at 873. The witness testimony Amos now identifies does not undermine our confidence in his sentence. Accordingly, we cannot say that the PC Court clearly erred by determining that Amos’s trial counsel was not ineffective.

### ***III. Amos’s appellate counsel was not ineffective***

[28] Amos’s final argument is that his appellate counsel was ineffective for failing to argue, in Amos’s petition for rehearing and petition for transfer, that the evidence was insufficient to support the jury’s finding that Amos was an habitual offender.<sup>6</sup> We disagree.

[29] “The standard for gauging appellate counsel’s performance is the same as that for trial counsel.” *Weisheit v. State*, 109 N.E.3d 978, 992 (Ind. 2018). Our Supreme Court has held that appellate ineffective assistance of counsel claims “generally fall into three basic categories: (1) denial of access to an appeal, (2) waiver of issues, and (3) failure to present issues well.” *Garrett v. State*, 992 N.E.2d 710, 724 (Ind. 2013).

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<sup>6</sup> Amos also argues that his appellate counsel was ineffective for failing to argue on direct appeal that the trial court’s denial of Amos’s motion to continue the jury trial violated Amos’s right to counsel of his choice. As we have explained in Section I, however, the PC Court found that Amos’s appellate counsel did make that argument, and the PC Court’s determination is not clearly erroneous.

[30] Amos’s argument falls into the second category of appellate ineffective assistance claims. As our Supreme Court has explained:

When evaluating a claimed deficiency in appellate representation due to an omission of an issue, a post-conviction court is properly deferential to appellate counsel’s choice of issues for appeal unless such a decision was unquestionably unreasonable. Such deference is appropriate because the selection of issues for direct appeal is one of the most important strategic decisions of appellate counsel. **Appellate counsel’s performance, as to the selection and presentation of issues, will thus be presumed adequate unless found unquestionably unreasonable considering the information available in the trial record or otherwise known to the appellate counsel.** In crafting an appeal, counsel must choose those issues which appear from the face of the record to be most availing. Experienced advocates since time beyond memory have emphasized the importance of winnowing out weaker arguments on appeal and focusing on one central issue if possible, or at most on a few key issues. **Thus, to prevail in such claim in post-conviction proceedings, it is not enough to show that appellate counsel did not raise some potential issue; instead, the defendant must show that the issue was one which a reasonable attorney would have thought availing.**

*Hampton v. State*, 961 N.E.2d 480, 491-92 (Ind. 2012) (emphases added; internal citations omitted). Additionally, even if appellate counsel’s performance was deficient, “to prevail, petitioner must demonstrate a reasonable probability that the outcome of the direct appeal would have been different.” *Id.* at 491 (citations omitted).

[31] Here, during the habitual offender phase of the trial, the State sought to prove that Amos was convicted of two prior, unrelated felonies: domestic battery in the presence of a child, a Class D felony, in 2007 under Cause No. 27D03-0706-FD-496 (“the 2007 felony”); and battery with a deadly weapon, a Class C felony, in 2011 under Cause No. 27C01-1005-FB-108.<sup>7</sup> Regarding the 2007 felony, the State offered the testimony of Carla Smith, Amos’s probation officer, who testified that Amos was convicted of that felony. The State also offered into evidence State’s Exhibit 246, which consisted of certified copies of: 1) the charging information, which charged Amos with, among other charges, domestic battery in the presence of a child, a Class D felony; 2) a guilty plea agreement to the 2007 felony, which was not signed by Amos; 3) a “Judgment of Conviction and Order of Sentence,” which mistakenly identifies the 2007 felony as a “Class D Misdemeanor”; and 4) the chronological case summary (“CCS”) for the 2007 felony case. The CCS states that, on October 9, 2007, “Defendant appears and pursuant to plea agreement, enters plea of guilty to the charge(s) of Count 1, Domestic Battery, Class D Felony . . . . Court imposed cost, 3 years suspended jail on Count 1, 3 years probation.” Prior Case Ex. Vol. V pp. 85, 87.

[32] Amos hired Attorney Briggs to represent him on direct appeal. Attorney Briggs argued that the evidence was insufficient to support Amos’s habitual offender enhancement because the plea agreement was not signed by Amos and because

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<sup>7</sup> Amos was convicted of two counts of battery with a deadly weapon in 2011, one for each victim.

the judgment of conviction identified the 2007 felony as a Class D misdemeanor. A panel of this Court ruled that the evidence was sufficient. *Amos*, No. 27C01-1211-MR-251, slip op. p. 14. Attorney Briggs did not re-raise the sufficiency argument in Amos’s petition for rehearing or petition for transfer. At the post-conviction evidentiary hearing, Attorney Briggs testified that she “felt there were stronger issues to raise in those petitions.” Ex. Vol. I p. 73.

[33] Amos argues that Attorney Briggs was ineffective for failing to re-raise the sufficiency of evidence argument in Amos’s petition for rehearing and petition for transfer. The PC Court determined that Attorney Briggs made a strategic decision that was not clearly deficient. The PC Court further found that Attorney Briggs’s decision resulted in no prejudice to Amos because “[n]either the Court of Appeals on rehearing nor the Supreme Court on transfer [were] likely to reverse based upon an ‘obvious mistake’ in the judgment of conviction easily reconcilable by the jury in reviewing the remaining documents related to the October, 2007 conviction.” Appellant’s App. Vol. II p. 117.

[34] Amos fails to persuade us that the PC Court clearly erred by determining that appellate counsel was not ineffective. At the time of Amos’s trial, the sentence of a person convicted of a felony could be enhanced by up to thirty years if the person had accumulated two prior unrelated felony convictions.<sup>8</sup> Amos argued

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<sup>8</sup> The habitual offender statute is codified at Indiana Code Section 35-50-2-8. The statute has been amended since Amos’s convictions; however, the pertinent language remains the same.

that the State presented insufficient evidence to support an habitual offender finding.

[35] Sufficiency of evidence claims “warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility.” *Powell v. State*, 151 N.E.3d 256, 262 (Ind. 2020) (citing *Perry v. State*, 638 N.E.2d 1236, 1242 (Ind. 1994)). “When there are conflicts in the evidence, the jury must resolve them.” *Young v. State*, 198 N.E.3d 1172, 1176 (Ind. 2022). We consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. *Powell*, 151 N.E.3d at 262 (citing *Brantley v. State*, 91 N.E.3d 566, 570 (Ind. 2018), *cert. denied*). When the State seeks to prove that a defendant is an habitual offender, “the State *must* introduce into evidence proper certified and authenticated records of the defendant’s prior felony convictions in order to prove beyond a reasonable doubt the existence of those prior convictions.” *Dexter v. State*, 959 N.E.2d 235, 238 (Ind. 2012).

[36] Here, the certified documents included in State’s Exhibit 246 clearly state that Amos pleaded guilty to and was convicted of the 2007 felony. While the judgment of conviction mistakenly identifies the 2007 felony as a misdemeanor, the jury resolved that evidentiary conflict against Amos. On direct appeal, this Court found the evidence sufficient to support the jury’s finding, and we find no indication that this Court or the Supreme Court were likely to reach a different result had the issue been pressed again. *Cf. Dexter v. State*, 991 N.E.2d 171, 175 (Ind. Ct. App. 2013) (transcript from guilty plea and sentencing hearing supported habitual offender enhancement despite the fact that the judgment of

conviction was unsigned by the trial court judge), *trans. denied; Harrison v. State*, 707 N.E.2d 767, 788 (Ind. 1999) (alleged errors in petition for rehearing did not render appellate counsel ineffective when petitioner failed to show that, had the alleged errors not been made, the court “would have ruled differently”).

Accordingly, we cannot say that the PC Court clearly erred by determining that Amos’s appellate counsel was not ineffective.

## **Conclusion**

[37] The PC Court’s denial of Amos’s petition for post-conviction relief was not clearly erroneous. Accordingly, we affirm.

[38] Affirmed.

Bailey, J., and Brown, J., concur.