MEMORANDUM DECISION

APPELLANT, PRO SE

Ishmell Neal Garrett
Michigan City, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Ellen H. Meilaender
Supervising Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Ishmell Neal Garrett,
Appellant-Petitioner

v.

State of Indiana,
Appellee-Respondent.

August 21, 2023

Court of Appeals Case No. 22A-PC-2528

Appeal from the Lake Superior Court

The Honorable Samuel L. Cappas, Judge
The Honorable Kathleen Sullivan, Magistrate

Trial Court Cause No. 45G04-1706-PC-3

Memorandum Decision by Judge Pyle

Chief Judge Altice and Judge Riley concur.

Pyle, Judge.

Statement of the Case

[1] Ishmell Neal Garrett ("Garrett"), pro se, appeals the post-conviction court's denial of his petition for post-conviction relief. Garrett argues that the post-conviction court erred by denying him post-conviction relief on his claims of ineffective assistance of trial counsel. Concluding that Garrett has failed to meet his burden of showing that the post-conviction court erred, we affirm the post-conviction court's judgment.

[2] We affirm.

Issue

> Whether the post-conviction court erred by denying post-conviction relief to Garrett.

Facts

[3] The facts of Garrett's underlying offenses, as set forth by this Court in Garrett's direct appeal, are as follows:

> Garrett married Jessica Brawley, who had a three-year-old daughter, A.G., from a previous relationship. Garrett was A.G.'s primary father figure. He signed A.G.'s birth certificate as her father, and she called him "Dad." Tr. p. 65. Garrett had three children from a prior relationship, including a daughter, Stephanie. In addition, Garrett and Jessica had four children after they married.
>
> When A.G. was younger, Garrett called her "baby" or "boo," among other nicknames. *Id.* at 70. As she got older, Garrett also

called her "sexy" or "jugs," in reference to her breasts. *Id.* at 70, 205. He did not have nicknames for any of the other children. He also bought her gifts as she got older, including movies and knives. Garrett did not buy similar gifts for his other children. Once, Garrett asked his half-sister, Shannon Lehmann, to tell his children that she had bought a DVD for A.G. when in fact he was the purchaser. Later, Garrett taught A.G. how to drive, but he did not teach any of his other children how to drive.

When A.G. was eleven, the family lived at a home on Colfax Street in Gary, Indiana. Garrett began groping A.G.'s breasts, both over and under her clothes. This happened too many times for A.G. to remember an exact count. Garrett also penetrated her vagina with his fingers numerous times. Eventually, Garrett forced her to submit to him performing oral sex on her. On several occasions during this period of time, A.G. woke up to find Garrett lying next to her, once with his pants down and his penis exposed.

Garrett attempted to joke with A.G. about his sexual activities with her; but, he also threatened her not to tell anyone else. He specifically told A.G. that she should not tell her mother about his molestations because "[her mother] wouldn't care and she would believe him over [A.G.]." *Id.* at 33. Garrett also repeatedly told her that they were not blood relatives "so he was not doing anything wrong." *Id.* at 65. A.G. was scared, confused, and hurt because she viewed Garrett as her father.

Lehmann, who considered herself to be A.G.'s aunt, also noticed that A.G.'s parents quit allowing A.G. to visit her during this period of time. Previously, A.G. was allowed to spend the night at Lehmann's house and go on trips with her. However, Stephanie continued to be allowed to spend the night with Lehmann, unless Lehmann also requested that A.G. be allowed to come over. These events "raised a red flag" to Lehmann. *Id.* at 148. Stephanie also noticed that A.G. was never allowed to go visit Lehmann or to spend the night at friends' homes.

When A.G. was twelve, the family moved to Kentucky. Garrett continued to fondle A.G.'s breasts and insert his fingers in her vagina. He also continued to force A.G. to submit to oral sex from him; and, eventually he began requiring her to perform oral sex on him.

In addition, Garrett's attitude toward A.G. changed. He stopped joking with her about his sexual activities with her. When she objected to engaging in sexual activities with him, he disregarded her objections and continued. A.G. noticed that Garrett became "way more controlling and possessive" as she got older. *Id.* at 38. Stephanie noticed that Garrett would "get mad" when A.G. attempted to go outside and play with other children, but the other children were allowed to go outside without restrictions. *Id.* at 183. He wanted to keep her with him all the time. Garrett would arrange to send Jessica to run errands so that he could be alone with A.G.

On one occasion while they lived in Kentucky, Garrett found a note A.G. had received from a friend at school. The friend stated that a boy thought A.G. was "cute." *Id.* at 39. Garrett became upset, and he and A.G. argued about the note. He called her a "slut." *Id.* at 40. Garrett had a trucking job at the time, and he took A.G. with him on a trip soon after they argued about the note. During the trip, while they were in the tractor-trailer, Garrett forced A.G. to submit to vaginal sexual intercourse for the first time, despite her repeated protests and crying.

After that incident, A.G. mostly stayed in her room, slept a lot, and ate less and less. She also began cutting her arm with a knife periodically and drinking alcohol. Garrett bought vodka or alcoholic lemonade for her, Jessica, and A.G.'s older siblings on several occasions. He continued to force her to submit to genital touching, oral sex, and "two or three" more incidents of vaginal intercourse in Kentucky. *Id.* at 92. On her thirteenth birthday, Garrett referred to the day as "our anniversary" and forced her to allow him to perform oral sex on her. *Id.* at 44.

When A.G. was thirteen, the family moved back to Gary, Indiana, to a small house on Hovie Street. A.G. slept in the front room of the house, and her siblings stayed at a relative's home nearby. Lehmann visited the house frequently, and she once saw A.G. and Garrett in bed together, with Garrett embracing A.G. Stephanie also saw A.G. and Garrett in bed together. Garrett did not lie down in bed with any of the other children.

Garrett continued to touch A.G.'s breasts over and under her clothes while they lived at the Hovie Street house. He also continued to insert his fingers in her vagina. Garrett repeatedly required A.G. to allow him to perform oral sex on her, and he forced her to perform oral sex on him. Because there were so many incidents of molestation, A.G. could not remember the exact number of times she was required to perform oral sex on Garrett. However, he frequently demanded oral sex from her in exchange for allowing her to go play with her siblings or to go other places. Garrett also had vaginal sexual intercourse with her, as many as "thirty" times during the period they lived in the house on Hovie Street. *Id.* at 102. On one occasion, Garrett attempted to insert his penis in A.G.'s anus, despite her crying and telling him no; but, he was interrupted only when Jessica called to say she was returning home from running errands.

A.G. threatened to tell her mother about Garrett's attempt to force her to submit to anal sex. Garrett responded that "he would talk to [Jessica] first and that she wouldn't believe [A.G.] and even if [A.G. told Jessica,] we had or she had nowhere to go." *Id.* at 53. A.G. thought that Jessica had once seen Garrett trying to force A.G. to give him oral sex, but nothing happened because Jessica fought with A.G. "all the time." *Id.* at 54. A.G. felt as though Jessica blamed her for Garrett's misconduct and she "had no one [else] to tell" or to turn to. *Id.* at 54.

Garrett also told A.G. several times that if she reported his sexual assaults, "they would separate us, separate the kids and I would never see my family again." *Id.* at 52. Garrett once also threatened to take A.G. "to the woods and chain [her] up and

[she] won't see nobody else and it will just be you and me." *Id.* at 53.

The family next moved to a house on Hobart Street in Gary, Indiana. Lehmann again saw Garrett in bed with A.G. Garrett continued to force A.G. to submit to vaginal sexual intercourse, perhaps as many as "twenty" times while they lived at the house on Hobart Street, and he continued to touch her breasts and vagina. *Id.* at 106.

The family next moved to Tennessee, the day after Lehmann called the police to express concerns about Garrett and A.G. In Tennessee, Garrett's conduct towards A.G. was "real bad" because Jessica had gotten a job and while she was at work, "everything was happening [at home]." *Id.* at 57. Garrett continued to perform oral sex on A.G., forced her to perform oral sex on him, continued to insert his fingers in her vagina, and forced her to submit to vaginal sexual intercourse about "fifteen" times. *Id.* at 110. Once, A.G.'s three or four-year-old brother saw Garrett attempting to coerce A.G. to perform oral sex on Garrett and became very upset. Garrett made A.G. go find her brother and calm him down while Garrett went to sleep.

Later, Lehmann reported Garrett to a Tennessee child welfare department agency while the family was living in that state, and the police went to their house. Garrett instructed all of the kids not to say anything, and he specifically threatened A.G. that if she said anything, she would never see her siblings again and would grow up "not knowing where anybody was." *Id.* at 127. Investigators questioned A.G. by herself for forty minutes, but she did not tell them anything because she "was really scared." *Id.* at 60.

The family then moved to Alabama when A.G. was fifteen. Garrett forced A.G. to submit to vaginal sexual intercourse twice while living there. The sexual assaults finally stopped because A.G. resisted Garrett and began to physically fight him. A.G.'s siblings were not aware that Garrett was molesting A.G., but

when Garrett and A.G. argued, Stephanie and her older brother began to intercede. During this period of time, Garrett and A.G. once argued when he was driving them home. When A.G. told Garrett that "[she] didn't love him like that," he became upset and pretended he was going to crash his truck into the house. *Id.* at 63. Stephanie saw Garrett drive the truck towards the carport at a high rate of speed, but he stopped just before hitting the house. Afterwards, Stephanie found A.G. lying on the truck's floorboard, "rocking back and forth, crying, asking [Stephanie] to help her." *Id.* at 196.

Next, the family moved back to Gary. A.G. had stopped cutting herself by then, but she had started to drink alcohol heavily and smoke marijuana. The Indiana Department of Child Services (DCS) became involved with the family and removed A.G. and one of her brothers from the home due to "deplorable living conditions and educational neglect." *Id.* at 351.

DCS initially placed A.G. and her brother in a youth home, with supervised visitation by her parents. A.G.'s therapist attended visitation and noticed that Garrett frequently had whispered conversations with A.G., in violation of the rules. Garrett did not have such conversations with Jessica or his son, who were also present. Furthermore, during meetings with the family to discuss possible reunification, the therapist noted that Garrett always sat next to A.G. rather than Jessica. Typically, parents sit together in those meetings.

Next, A.G. went to live with Lehmann's family. When A.G. first arrived at Lehmann's home, Garrett called A.G. and kept her "on the phone all the time," to the point that it disrupted Lehmann's family life. *Id.* at 172. In addition, A.G. was distressed by the calls and asked Garrett to leave her alone. The phone calls stopped only after Lehmann complained to DCS. In May 2012, A.G. disclosed to her therapist that Garrett had molested her. A.G. was still in therapy as of the time of trial, over two years after first disclosing Garrett's molestations.

> A.G. underwent a sexual assault examination by Dr. Edwin Udari. He determined that her hymen was damaged in a manner that was "suspicious for sexual abuse." *Id.* at 137.
>
> The State charged Garrett with three counts of child molesting, two as Class A felonies and one as a Class C felony, and two counts of sexual misconduct with a minor, one as a Class B felony and one as a Class C felony. A jury determined that he was guilty as charged.
>
> The trial court sentenced Garrett to forty-five years on each Class A felony conviction, to be served consecutively. The trial court further sentenced him to fifteen years for the Class B felony and seven years for each Class C felony, all to be served concurrently with one of the Class A felony convictions, for an aggregate sentence of ninety years.

Garrett v. State, No. 45A03-1501-CR-32, 2015 WL 4740375 at *1-4 (Ind. Ct. App. Aug. 11, 2015), *trans. denied*.

[4] Garrett filed a direct appeal and argued that: (1) there was insufficient evidence to support his convictions; and (2) his aggregate sentence was inappropriate. Our Court affirmed Garrett's convictions and sentence. *Id.* at *6, 8.

[5] Garrett filed a post-conviction petition in June 2017 and amended petitions in August 2018 and October 2018. In his final amended petition, Garrett raised a claim of ineffective assistance of trial counsel. Garrett argued, in relevant part, that his trial counsel, Steve Mullins ("Trial Counsel Mullins"), rendered ineffective assistance by failing to: (1) object, based on Indiana Evidence Rule 404(b), to the admission of evidence regarding acts of molestation that were

alleged to have occurred in other states; and (2) call certain witnesses to testify.[1] He also argued that the cumulative effect of trial counsel's errors had denied him a fair trial.

[6] The post-conviction court held a two-day post-conviction hearing in July and August 2022. During the hearing, Garrett offered into evidence the record from his direct appeal.[2] Garrett testified on his own behalf and called multiple witnesses. For example, Garrett called A.G. and his wife, Jessica, to testify. Garrett also called some of the witnesses whom he asserted that Trial Counsel Mullins should have called to testify at trial. These witnesses included, in relevant part: Garrett's sons, Dustin Garrett ("Dustin") and Anthony Garrett ("Anthony"); Garrett's mother, Mary Johnson ("Johnson"); and Garrett's brother-in-law, Anthony Anderton ("Anderton").

[7] Additionally, Garrett called Trial Counsel Mullins as a witness. Trial Counsel Mullins testified that he had been an attorney since 1981 and had defended "[h]undreds" of defendants in criminal trials, including in child molesting cases.

---

[1] In Garrett's post-conviction petition, he also asserted that his trial counsel had rendered ineffective assistance by failing to object to the seating of a juror, failing to challenge to the trial court's subject matter jurisdiction over acts of molestation that were alleged to have occurred in other states, and failing to properly impeach witnesses. Additionally, Garrett asserted a claim of newly discovered evidence. He does not, however, raise these claims in this post-conviction appeal.

[2] This direct appeal record, under cause number 45A03-1501-CR-32, included the trial transcript, appendix volumes, exhibit volume, all appellate briefs, the Court of Appeals memorandum decision, and his petition to transfer. Garrett had obtained this original direct appeal record from the Clerk of our Court for use during the post-conviction proceedings. The post-conviction court used the direct appeal record when ruling on Garrett's post-conviction petition and then returned the direct appeal record to our Clerk. Garrett did not request for this direct appeal record to be transferred to this appellate post-conviction cause for this appeal. Nevertheless, we will take judicial notice of the direct appeal record. *See* Ind. Evidence Rule 201.

(Tr. Vol. 2 at 180). Trial Counsel Mullins testified that there was no physical evidence and there were no eyewitnesses to corroborate the molestation allegations in Garrett's underlying case and that his trial defense was to attack the credibility of A.G. Trial Counsel Mullins also explained that he had to defend Garrett on only the allegations that had occurred in Indiana and that he had made a strategic decision not to object to evidence regarding acts of molestation that were alleged to have occurred in Kentucky, Tennessee, and Alabama. He testified that the allegations from the other states had not been substantiated, and he explained that he had felt that the "voluminous" or "outlandish" nature of the allegations showed that A.G. and the allegations were not credible. (Tr. Vol. 2 at 148, 150).

[8] Garrett's post-conviction counsel also questioned Trial Counsel Mullins about potential trial witnesses. Trial Counsel Mullins explained that he had asked Garrett for potential witnesses who had lived with him and "who [Garrett] thought would be a benefit" to his defense. (Tr. Vol. 2 at 146). Trial Counsel Mullins also stated that they had discussed the potential content of any proposed witnesses' testimony as well as their credibility. Trial Counsel Mullins testified that he recalled that Garrett had given him names of "family members" who lived in the house and that counsel had spoken to "some of the kids" who "were mature" but that they "had nothing to offer" to the defense. (Tr. Vol. 2 at 151, 152). Additionally, Trial Counsel Mullins testified that if there had been a witness who would have been "helpful on [Garrett's]

behalf[,]" then counsel "certainly would have . . . employed [that person] as a witness." (Tr. Vol. 2 at 152).

[9] Following the hearing, the post-conviction court issued an order denying post-conviction relief to Garrett. The post-conviction court concluded, in relevant part, as follows:

> 4. [Garrett] has alleged counsel ineffective for a myriad of reasons, the main crux of which is that testimony of continued abuse in Tennessee, Kentucky and Alabama was admitted without objection from the defense as uncharged crimes[.] However, counsel testified that it was a strategic decision to allow the plethora of allegations in because there was no substantiation of any of the allegations – either by witnesses, physical evidence or documentation by police or child services. The defense theory was that the extensive number of outlandish allegations demonstrated [A.G.'s] lack of credibility and undermined the entirety of the State's case. This Court cannot find that strategy unreasonable.
>
> * * * * *
>
> 6. [Garrett] alleged that [Trial Counsel] Mullins was ineffective for . . . failing to call a number of relatives and friends of [Garrett]. A review of the testimony of those relatives and friends, as presented at the post-conviction relief hearing[,] demonstrates that they had little, if anything, to testify to regarding the substance of the allegations. The only possible exception[] would be the testimony of Dustin Garrett . . . about an alleged recantation of the allegations by [A.G.] However, Dustin testified that he heard the recantation, but couldn't remember if it [had] occurred before or after his father's trial, but knew that he didn't tell anyone about it. . . . [Trial Counsel] Mullins, on the other hand, was adamant that no one told him of the alleged recantation, and [A.G.] was equally adamant that she

> never recanted. It is inconceivable that . . . Dustin . . . would [not] have brought the recantation to [Trial Counsel] Mullins' attention, if it had, in fact, occurred. The Court does not find the testimony of Dustin . . . to be credible.
>
> 7. The trial transcripts demonstrate the valiant effort on the part of [Trial Counsel] Mullins to undermine the credibility of [A.G.] The Court cannot find that his representation of [Garrett] fell below prevailing norms, or that [Garrett] was prejudiced thereby.
>
> * * * * *
>
> 11. Finally, [Garrett] alleged that the cumulative effect of allegations raised in the petition are so egregious as to have deprived [Garrett] of due process and a fair trial. [I]rregularities which standing alone do not amount to error do not gain the stature of reversible error when taken together. . . . This Court has already determined that the strategic decisions of trial counsel did not amount to ineffective assistance of counsel[.] . . . [Garrett's] invitation to weigh the cumulative effect of these issues does not morph the non-meritorious issues into a meritorious one.

(App. Vol. 2 at 31-33).

[10] Garrett now appeals.

Decision

[11] Garrett argues that the post-conviction court erred by denying him post-conviction relief. At the outset, we note that Garrett has chosen to proceed pro se. It is well settled that pro se litigants are held to the same legal standards as licensed attorneys. *Evans v. State*, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004), *trans. denied*. Thus, pro se litigants are bound to follow the established rules of

procedure and must be prepared to accept the consequences of their failure to do so. *Id.* "We will not become a party's advocate, nor will we address arguments that are inappropriate, improperly expressed, or too poorly developed to be understood." *Barrett v. State*, 837 N.E.2d 1022, 1030 (Ind. Ct. App. 2005), *trans. denied*.

[12] "[P]ost-conviction proceedings do not grant a petitioner a "super-appeal" but are limited to those issues available under the Indiana Post-Conviction Rules." *Shepherd v. State*, 924 N.E.2d 1274, 1280 (Ind. Ct. App. 2010), *trans. denied*. "In post-conviction proceedings, the petitioner bears the burden of establishing his claims by a preponderance of the evidence." *Isom v. State*, 170 N.E.3d 623, 632 (Ind. 2021), *reh'g denied*. "Where, as here, the petitioner is appealing 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 decision. *Id.* (cleaned up).

[13] In this post-conviction appeal, Garrett raises some of the claims that he raised in his post-conviction petition. Specifically, Garrett contends that his trial counsel rendered ineffective assistance by failing to object to the admission of evidence regarding acts of molestation that were alleged to have occurred in

other states and by failing to call certain witnesses to testify during his jury trial.[3]

[14] A claim of ineffective assistance of counsel requires a petitioner to show that: (1) counsel's performance was deficient by falling below an objective standard of reasonableness based on prevailing professional norms; and (2) counsel's performance prejudiced the defendant such that "'there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" *Davidson v. State*, 763 N.E.2d 441, 444 (Ind. 2002) (quoting *Strickland v. Washington*, 466 U.S. 668, 687 (1984), *reh'g denied*), *reh'g denied*, *cert. denied*. "A reasonable probability arises when there is a 'probability sufficient to undermine confidence in the outcome.'" *Grinstead v. State*, 845 N.E.2d 1027, 1031 (Ind. 2006) (quoting *Strickland*, 466 U.S. at 694). "Failure to satisfy either of the two prongs will cause the claim to fail." *French v. State*, 778 N.E.2d 816, 824 (Ind. 2002). "Indeed, most ineffective assistance of counsel claims can be resolved by a prejudice inquiry alone." *Id.* Therefore, if we can dismiss an ineffective assistance claim on the prejudice prong, we need not address whether counsel's performance was deficient. *Henley v. State*,

---

[3] Garrett also attempts to raise claims that he did not include in his post-conviction petition. Specifically, he asserts that his trial counsel rendered ineffective assistance by: (1) failing to investigate and prepare for trial; (2) referring to Garrett as a sexual predator during the trial; (3) failing to object to testimony regarding varying subjects; (4) failing to present evidence regarding A.G.'s alleged motive to lie. However, Garrett has waived these claims because he did not raise them in his post-conviction petition. *See Allen v. State*, 749 N.E.2d 1158, 1171 (Ind. 2001) ("Issues not raised in the petition for post-conviction relief may not be raised for the first time on post-conviction appeal."), *reh'g denied*, *cert. denied*. *See also* Ind. Post-Conviction Rule 1(8) ("All grounds for relief available to a petitioner under this rule must be raised in his original petition.").

881 N.E.2d 639, 645 (Ind. 2008). Moreover, isolated mistakes, poor strategy, inexperience, and instances of bad judgment do not necessarily render representation ineffective. *Reed v. State*, 866 N.E.2d 767, 769 (Ind. 2007). Because counsel is afforded considerable discretion in choosing strategy and tactics, a strong presumption arises that counsel rendered adequate assistance. *Id.*

[15] We first address Garrett's claim that his trial counsel rendered ineffective assistance by failing to object to the admission of evidence regarding acts of molestation that were alleged to have occurred in other states. During the post-conviction hearing, Garrett's counsel questioned Trial Counsel Mullins about this claim, and the State cross-examined counsel on it. Trial Counsel Mullins explained that he had made a strategic decision not to object to evidence regarding acts of molestation that were alleged to have occurred in Kentucky, Tennessee, and Alabama. He testified that the allegations from the other states had not been substantiated and that he had felt that the "voluminous" or "outlandish" nature of the allegations showed that A.G. and the allegations were not credible. (Tr. Vol. 2 at 148, 150).

[16] The post-conviction court noted that trial counsel had made a strategic decision to use the other allegations to help undermine A.G.'s credibility and the State's case and determined that trial counsel's strategic decision was not unreasonable. The post-conviction court, after reviewing the trial transcript, concluded that Trial Counsel Mullins had made a "valiant effort . . . to

undermine the credibility of [A.G.]" and that Garrett had failed to show deficient performance or prejudice in regard to his claim. (App. Vol. 2 at 32).

[17] We agree with the post-conviction court that Garrett has failed to show that his trial counsel rendered ineffective assistance when he made a strategic decision not to object to the evidence. "Few points of law are as clearly established as the principle that [t]actical or strategic decisions will not support a claim of ineffective assistance." *McCary v. State*, 761 N.E.2d 389, 392 (Ind. 2002) (cleaned up), *reh'g denied*. "Counsel is afforded considerable discretion in choosing strategy and tactics and we will accord that decision deference." *McCullough v. State*, 973 N.E.2d 62, 75 (Ind. Ct. App. 2012) (cleaned up), *trans. denied*. "The judicial scrutiny of counsel's performance is highly deferential and should not be exercised through the distortions of hindsight." *Talley v. State*, 736 N.E.2d 766, 769 (Ind. Ct. App. 2000). Our review of the record reveals that trial counsel's trial performance was clearly directed at implementing his deliberately chosen defense strategy. We will give that strategic decision its due deference, and we affirm the post-conviction court's denial of post-conviction relief on this claim. *See McCullough*, 973 N.E.2d at 75 (affirming the post-conviction court's denial of post-conviction relief to a petitioner on his claim that his trial counsel rendered ineffective assistance by failing to object to the victim's testimony regarding uncharged episodes of molestation where trial

counsel's chosen defense strategy included using the uncharged misconduct to challenge the victim's credibility).[4]

[18] Next, we turn to Garrett's claim that his trial counsel rendered ineffective assistance by failing to call certain witnesses to testify during his jury trial. "In the context of an ineffective assistance of counsel claim, the decision of what witnesses to call is a matter of trial strategy and appellate courts do not second-guess that decision." *Reeves v. State*, 174 N.E.3d 1134, 1141 (Ind. Ct. App. 2021), *trans. denied*. *See also Wrinkles v. State*, 749 N.E.2d 1179, 1200 (Ind. 2001) (stating that the decision of which witnesses to call is "the epitome of a strategic decision") (cleaned up), *cert. denied.* "When ineffective assistance of counsel is alleged and premised on the attorney's failure to present witnesses, it is incumbent upon the petitioner to offer evidence as to who the witnesses were and what their testimony would have been." *Lee v. State*, 694 N.E.2d 719, 722 (Ind. 1998) (cleaned up), *cert. denied*. "We will not find counsel ineffective for failure to call a particular witness absent a clear showing of prejudice." *Reeves*, 174 N.E.3d at 1141.

[19] On appeal, Garrett asserts that his trial counsel should have called his two sons, his mother, and his brother-in-law to testify at trial. He presented them as witnesses during the post-conviction hearing, and they generally testified that

[4] Moreover, even if we were to conclude that trial counsel's strategic decision constituted deficient performance, Garrett has not shown the requisite prejudice that there was a reasonable probability that the result of the trial would have been different.

they had no knowledge of any molestations that had occurred in the various houses where Garrett and his family had lived. During the post-conviction hearing, Garrett's son Dustin also testified that A.G. had stated that Garrett had not molested her, and Dustin testified that he had never told anyone about the alleged recantation.

[20] When testifying at the post-conviction hearing, Trial Counsel Mullins explained that he had asked Garrett for potential witnesses who had lived with him and "who [Garrett] thought would be a benefit" to his defense. (Tr. Vol. 2 at 146). Trial Counsel Mullins also stated that he and Garrett had discussed the potential content of any proposed witnesses' testimony as well as the witnesses' credibility. Trial Counsel Mullins testified that he recalled that Garrett had given him names of "family members" who lived in the house and that counsel had spoken to "some of the kids" who "were mature" but that they "had nothing to offer" to the defense. (Tr. Vol. 2 at 151, 152). Trial Counsel Mullins testified that if there had been a witness who would have been "helpful on [Garrett's] behalf[,]" then counsel "certainly would have . . . employed [that person] as a witness." (Tr. Vol. 2 at 152). Additionally, Trial Counsel Mullins testified that Dustin had never informed him that A.G. had recanted her allegations against Garrett.

[21] The post-conviction court denied post-conviction relief on Garrett's claim that his trial counsel had rendered ineffective assistance by failing to call certain witnesses to testify during his jury trial. In relevant part, the post-conviction court concluded that Garrett's proposed witnesses "had little, if anything, to

testify to regarding the substance of the allegations[,]" and the court determined that Dustin's testimony was not credible. (App. Vol. 2 at 32). We will not reweigh a post-conviction court's determination of witness credibility. *See Conley v. State*, 183 N.E.3d 276, 282 (Ind. 2022).

[22] The record reveals that Trial Counsel Mullins had called Garrett as a witness in his own defense at the jury trial and that Garrett had denied all allegations of molestation against him. Furthermore, Trial Counsel Mullins' post-conviction testimony shows that either counsel had determined that Garrett's proposed witnesses had nothing to offer to Garrett's defense or that Garrett had not given counsel some of the names. Ultimately, Trial Counsel Mullins made a strategic decision about what witnesses to call to testify, and we will not second-guess that decision. *See Reeves*, 174 N.E.3d at 1141. *See also Wrinkles*, 749 N.E.2d at 1200 (explaining that the decision of which witnesses to call is "the epitome of a strategic decision"). Accordingly, we affirm the post-conviction court's denial of post-conviction relief on Garrett's claim of ineffective assistance of trial counsel.[5]

[5] Garrett also argues that trial counsel's deficient performance resulted in cumulative error that prejudiced him. Because we have concluded that there was no error, we also conclude that there was no cumulative error.

[23] Affirmed.

Altice, C.J., and Riley, J., concur.