

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

Chaunsey L. Fox,
Appellant-Petitioner

v.

State of Indiana,
Appellee-Respondent



March 18, 2024

Court of Appeals Case No.
23A-PC-1699

Appeal from the St. Joseph Superior Court
The Honorable Jeffrey Sanford, Judge

Trial Court Cause No.
71D03-2206-PC-16

Memorandum Decision by Judge Riley
Judges Brown and Foley concur.

Riley, Judge.

STATEMENT OF THE CASE

- [1] Appellant-Petitioner, Chaunsey Fox (Fox), appeals the post-conviction court's denial of his petition for post-conviction relief.
- [2] We affirm.

ISSUES

- [3] Fox presents this court with three issues, which we consolidate and restate as:
- (1) Whether Trial Counsel rendered ineffective assistance pertaining to a statement Fox made before he was criminally charged in this matter; and
 - (2) Whether Trial Counsel rendered ineffective assistance in conducting discovery regarding two of the State's witnesses' federal criminal cases.

FACTS AND PROCEDURAL HISTORY

- [4] The facts underlying Fox's conviction for felony murder as found by this court on direct appeal are as follows:

On the night of March 9, 2009, South Bend Police Department officers were dispatched to investigate a report of a shooting. They arrived at Eddie Williams' ("Williams") house and found his body in the backyard. The body was on the ground near a car, and the car's engine was still running. Williams had been shot once in the head.

A witness reported seeing men run away from the scene through an alley. The men wore masks, and the witness saw at least two guns. Officers searched the alley that night and found a handgun, which was later determined to be the murder weapon. Officers also found several gloves and pieces of black cloth which had been used as masks. The next day, officers searched the alley in daylight and found a pistol-grip shotgun in a trash can thirty to forty feet from where the handgun was found.

The gloves and cloth pieces were sent to a lab for DNA testing. The police also sent to the lab DNA samples that they collected from various individuals over the course of the investigation. DNA found on one of the masks and one of the gloves matched a sample collected from Derek Fields (“Fields”). The police had interviewed Fields in July 2009, before the results of the DNA testing were known, and he had denied any involvement in the shooting. After the DNA match was discovered, Fields continued to deny any involvement in the shooting.

In June 2011, Fox was incarcerated in the St. Joseph County Jail on a charge unrelated to the current case. He contacted Detective James Taylor (“Detective Taylor”). Fox claimed to have information about Williams’ homicide and wanted favorable treatment on his pending charge.

Detective Taylor and another officer interviewed Fox on June 20, 2011. The interview was recorded. Fox claimed that Jason White (“Jason”) shot Williams. He told Detective Taylor that Jason arrived at his house immediately after the shooting. He stated Jason told him that he and his cousin Bruce White (“Bruce”) had intended to rob Williams, but Jason shot Williams when he resisted. He further said that Jason was angry at Williams because Williams had sold Jason some crack cocaine, and Jason believed the cocaine was adulterated and of poor quality. He also told Detective Taylor that Jason said he and Bruce had a lookout, but Fox denied knowing who the lookout

was and denied being present at the shooting. Detective Taylor then asked Fox if he knew a Derek Fields, and Fox said he had heard of him and had spoken to him on the phone but did not know him personally. Finally, Fox described with specificity the handgun that was used in the shooting and said it belonged to Jason. A description of the handgun had not been released to the public.

Later, Fox asked to speak with the officers again. On July 6, 2011, Detective Taylor conducted a second interview with Fox, which was also recorded. Fox's attorney ("Trial Counsel") was also present. Fox admitted to the officers that he had been present during the shooting. He repeated that Jason was angry at Williams for selling him poor quality cocaine and had recruited Fox to assist in the robbery. Fox said he was a lookout, and Jason and Bruce ambushed Williams. He told Detective Taylor that Bruce had a pistol-grip shotgun, describing with specificity the shotgun that the officers had discovered the day after the murder. He further said Jason and Bruce wore masks, but he only put his hood up. In addition, he reiterated that Jason had the handgun and shot Williams when Williams resisted being robbed, and then the three men ran away.

Fox denied that anyone else participated in the shooting besides Jason, Bruce, and himself. Detective Taylor then told Fox that the evidence showed that someone else was also there and[] said that he could not help Fox unless Fox told the truth. At that point, Fox admitted that there was a fourth participant, but he claimed not to know that person's identity. The parties then took a break from the interview.

When the interview resumed, a deputy prosecutor entered the interview room at Fox's request. The deputy prosecutor said on the record that in exchange for Fox's information, the State would not charge him with murdering Williams if: (1) he was truthful, (2) he testified for the State against other individuals, if

called upon, (3) he was not the shooter, and (4) he did not carry a gun during the crime. The deputy prosecutor also said he would consider a deal in Fox's pending case. After the deputy prosecutor left, Fox maintained that he still did not know the fourth person, claiming the individual attempted to hide his identity from Fox prior to and during the robbery. Fox further said he would be unable to identify the person in a lineup because so much time had passed since that night. The State continued its investigation into the matter.

While he was incarcerated in the county jail, Fox apparently told several of his fellow inmates that he shot Williams. In addition, Fox told fellow inmate Shawn Fox ("Shawn"—no relation to Fox) that Derek Fields was with him at the time of the shooting. He also told the inmates that when he spoke with the police, he tried to place the blame for the murder on other people. After Fox's July 6, 2011, interview, several of the inmates contacted police officers and told them about Fox's statements.

In early 2012, Fields was incarcerated and facing unrelated federal charges. Fields provided a general cleanup statement regarding crimes he had been involved in, during which he admitted that he had participated in Williams' murder. He initially said that Fox and Jason were with him, but he later amended his statement to say that only he and Fox participated in the murder. Fields further admitted he carried a shotgun and said Fox shot Williams with the handgun. Fields also said that he and Fox had been friends for several years prior to the murder.

Fox v. State, 997 N.E.2d 384, 386-88 (Ind. Ct. App. 2013) (name parentheticals and title added), *trans. denied*.

[5] On December 20, 2011, the State filed an Information, charging Fox with murder, attempted robbery, and felony murder. Trial Counsel, who had been

representing Fox in an unrelated robbery case when Fox made his July 6, 2011, statement, was appointed to represent Fox. Trial Counsel had forty-five years of legal experience and had been a public defender on major felony cases in St. Joseph County for twenty-five years. On February 28, 2012, Fox filed a combined motion to dismiss/motion to suppress, arguing that the State had breached the deal made at Fox's July 6, 2011, police interview that Fox would not be prosecuted for Williams' murder if he fulfilled the State's conditions (the non-prosecution agreement). Fox sought to have the murder charges against him dismissed, or in the alternative, to have his July 6, 2011, statement suppressed.

[6] On April 9 and 10, 2012, the trial court held evidentiary hearings on Fox's motion to dismiss/motion to suppress. Fox's position was that he had been truthful during the July 6, 2011, interview and that the trial court had the authority to decide if he had breached the non-prosecution agreement. The State argued that there was a valid non-prosecution agreement that Fox had breached by lying about Fields' participation in the offenses and about only being a lookout during the offenses. Detective Taylor, Fields, Shawn, and Jackie Parker (Parker), another inmate who had been housed with Fox and who had come forward about Fox's participation in Williams' murder, testified at the hearing about what Fox had told them about how Williams was killed. Trial Counsel questioned Fields about his pending federal charge and the federal cleanup statements or proffers Fields had provided in his federal case. Fields admitted that he had changed his story multiple times and that he had

told federal authorities about one other murder he had participated in, as well as about other crimes unrelated to Williams' death. Fields knew that he was facing ten years on his federal gun charge, but, although no promises had been extended to him, he expected to receive consideration on his federal case in exchange for his cooperation in Fox's prosecution. Fields also testified that, after he had been charged in the federal handgun case, he learned that the federal authorities had been led to him by Fox, who had provided a tip about someone else who was also staying at the home where Fields lived. Shawn had a pending B felony attempted robbery charge which he knew carried a maximum penalty of twenty years. Shawn was under investigation for a federal bank robbery but had not yet been charged. Shawn had made no evidence proffer to federal authorities. The State had made no promises for Shawn's testimony in the instant proceedings, but he hoped for consideration in exchange for his cooperation.

[7] As the parties awaited a ruling on Fox's motion to dismiss/motion to suppress, preparation for trial continued. Trial Counsel sought discovery from the State of additional materials regarding Fields' evidence proffer to federal authorities in Fields' federal gun case. Trial Counsel had received a copy of the portions of Fields' videorecorded proffer in which Fields had discussed Williams' murder. Trial Counsel requested a copy of the remainder of Fields' federal evidence proffer, a copy of Fields' federal charges, and a copy of Fields' federal plea agreement. The State tendered the evidence it had in its possession, including a copy of Fields' federal plea agreement. At an October 18, 2012, pretrial

hearing, the State acknowledged that two items had not been disclosed to Fox: (1) the remainder of Fields' federal proffer in which he discussed other, unrelated crimes which were still pending, and (2) a sentencing motion which had been filed in Fields' federal case which had been sealed. The deputy prosecutor represented to the trial court that a federal agent had reviewed the portions of Fields' recorded federal proffer that had not been disclosed and found nothing relevant to this case.

[8] On January 10 and 24, 2013, the trial court entered orders denying Fox's motion to dismiss/motion to suppress. On March 4, 2013, the trial court convened Fox's five-day jury trial. Fields, Shawn, and Parker all provided testimony implicating Fox in Williams' murder. By the time of Fox's trial, Fields had pleaded guilty in his federal case and had received a sentence of time served and two years of probation. In response to questioning by Trial Counsel, Fields acknowledged that he had admitted in his federal proffer to participating in two murders for which he would not be charged and that, without a plea agreement, he had faced a possible ten-year sentence on the federal charge. Fields also acknowledged that his federal plea agreement was contingent on his testimony in Fox's murder trial. Trial Counsel questioned Fields about the fact that he had lied about Jason's involvement and had initially agreed to testify against Jason, who was an enemy, before retracting his statement. Fields admitted that he held Fox personally responsible for his federal handgun possession conviction. Shawn still had a state B felony case pending and had not yet been charged with any federal crimes. Shawn

expected to make a plea deal with the State after Fox's trial was concluded. Trial Counsel questioned Shawn about the fact that he had agreed to testify in four criminal matters, including Fox's.

[9] Fox took the stand and provided testimony consistent with his June 20, 2011, interview in which he claimed not to be involved in Williams' murder. Fox explained that he changed his story between his June 20 and July 6, 2011, police interviews after Trial Counsel had stated that it would be better if he had been at the scene of Williams' murder, otherwise his testimony would be hearsay. Fox testified that he concluded that he had to have first-hand knowledge of the murder and, therefore, told Detective Taylor that he was the lookout. Fox also testified that Trial Counsel did not encourage him to lie about the facts or to change his story unless it was so as to tell the truth. In his closing argument, Trial Counsel told the jury that Fields was lying so that he would not face the consequences of his participation in two murders and that Fields was untrustworthy, as he had changed his story in his federal proffers. Trial Counsel also reminded the jury that Shawn faced the possibility of a federal bank robbery charge.

[10] At the conclusion of the evidence, the jury found Fox not guilty of murder but guilty of attempted robbery and felony murder. The trial court entered judgment of conviction for felony murder only. On April 8, 2013, the trial court held Fox's sentencing hearing. At the beginning of the hearing, Trial Counsel moved to set aside the jury's verdict based on the non-prosecution

agreement, which motion was denied. The trial court sentenced Fox to sixty-five years.

[11] Fox pursued a direct appeal. Fox argued, among other things, that the trial court should have granted his pre- and post-trial motions seeking to enforce the non-prosecution agreement and that information about Fields' and Shawn's federal cases had been wrongfully withheld in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). This court rejected Fox's arguments and affirmed his convictions. In a footnote to its decision on the *Brady* issue, the court observed that "[t]here is also no evidence that Fox made any efforts to obtain documents from federal authorities. During a pretrial hearing, Fox told the trial court he was aware that he could subpoena such documents. However, he never pursued such a remedy." *Fox*, 997 N.E.2d at 392 n.4.

[12] On June 16, 2022, Fox filed his petition for post-conviction relief, raising claims of Trial Counsel ineffectiveness. On November 4, 2022, the post-conviction court held a hearing on Fox's petition. Trial Counsel testified that, before giving the July 6, 2011, statement, Fox told him that he had nothing to do with Williams' murder and that he wanted to provide information about the murder in order to receive consideration on his unrelated robbery case. Trial Counsel told Fox that it was not a good idea to give a voluntary statement because "in most circumstances it can only hurt you rather than help you." (PCR Transcript p. 10). According to Trial Counsel, if he had known Fox was involved in Williams' death, he would have advised him not to give a statement. Before the July 6, 2011, interview, Trial Counsel spoke with the

police and confirmed that Fox was not a suspect in Williams' murder. Trial Counsel did not seek use immunity or a non-prosecution agreement prior to Fox's July 6, 2011, statement because Fox had told him that he was not involved in Williams' murder and Trial Counsel did not anticipate that Fox would implicate himself. Likewise, Trial Counsel did not inform Fox of the elements of felony murder prior to Fox giving his July 6, 2011, statement because Fox had told Trial Counsel that he was not involved in Williams' murder. Trial Counsel believed that he had a "wink and a nod" agreement with the State that if Fox supplied valuable information about Williams' murder, the State would give his cooperation consideration in Fox's unrelated robbery case. (PCR Tr. p. 15). After Fox implicated himself at the July 6, 2011, interview, Trial Counsel stopped the interview and had the deputy prosecutor state the non-prosecution agreement on the record. In light of the non-prosecution agreement and the parties' assumption that Fox would tell the truth, Trial Counsel testified at the post-conviction hearing that the parties did not contemplate use immunity for Fox's statement because it was not necessary. As to his attempts to procure information from federal authorities about Fields' federal case, Trial Counsel observed that the footnote in Fox's direct appeal opinion was "not correct[.]" as he had "made very concerted efforts to obtain federal records[.]" (PCR Tr. p. 27).

[13] Fox testified at the post-conviction hearing that Trial Counsel never told him about the disadvantages of giving a statement. According to Fox, at his July 6, 2011, statement, the police stopped the interview, and Trial Counsel stepped

outside to talk to the deputy prosecutor. When Trial Counsel returned, he purportedly told Fox, “It’s all hearsay. They don’t believe nothing you say, and it’s better if you was there.”¹ (PCR Tr. p. 42). Fox acknowledged on cross-examination that he had not been confused about the terms of the non-prosecution agreement.

[14] The parties submitted proposed findings of fact and conclusions thereon. On June 21, 2023, the post-conviction court filed its Order denying Fox relief. The post-conviction court found that Fox could not raise an ineffective assistance of counsel claim regarding Trial Counsel’s performance relating to his July 6, 2011, interview with police, as charges had not yet been filed against Fox, and, thus, his Sixth Amendment right to counsel had not yet attached. As to Fox’s claim that Trial Counsel was ineffective for failing to obtain additional evidence from federal authorities, the post-conviction court concluded that Fox had failed to establish that he was prejudiced by Trial Counsel’s performance.

[15] Fox now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. Standard of Review

[16] Fox challenges the evidence supporting the post-conviction court’s denial of relief. Proceedings on a petition for post-conviction relief are civil in nature and

¹ The record of Fox’s direct appeal, which contained a DVD of Fox’s July 6, 2011, interview, was incorporated into the post-conviction record. However, the DVD itself was not transmitted on appeal. As a result, the exact nature of this purported statement is not before us.

are limited to issues that were unknown at trial or that were unavailable for direct appeal. *Gibson v. State*, 133 N.E.3d 673, 681 (Ind. 2019). The defendant bears the burden to establish his claims for relief by a preponderance of the evidence. *Id.* A defendant whose petition has been denied appeals from a negative judgment, and, therefore, he must show that “the evidence, as a whole, unmistakably and unerringly points to a conclusion contrary to the post-conviction court’s decision.” *Id.* (quoting *Ben-Yisrayl v. State*, 738 N.E.2d 253, 258 (Ind. 2000)). If a defendant fails to meet this rigorous standard of review, we will affirm the denial of relief. *Id.*

II. *Trial Counsel*

[17] Fox argues that Trial Counsel rendered him ineffective assistance. We evaluate such claims pursuant to the standards set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). In order to establish a claim of ineffective assistance of counsel, a petitioner must establish “1) that counsel’s performance was deficient based on prevailing professional norms; and 2) that the deficient performance prejudiced the defense.” *Weisheit v. State*, 109 N.E.3d 978, 983 (Ind. 2018) (citing *Strickland*, 466 U.S. at 687). Our review of counsel’s performance is “highly deferential.” *Id.* We determine whether, upon considering all the circumstances, counsel’s actions were reasonable under prevailing professional norms. *Id.* (citing *Strickland*, 466 U.S. at 668). In determining whether a petitioner was prejudiced by his counsel’s performance, we consider whether the petitioner established that, but for counsel’s professional errors, there is a reasonable probability that “the result of the proceeding would have been

different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.* (quoting *Strickland*, 466 U.S. at 694). We indulge a “strong presumption that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.*

A. *July 6, 2011, Statement*

[18] Fox’s first claims of ineffective assistance of Trial Counsel relate to his July 6, 2011, statement to police in which he incriminated himself by admitting that he had acted as a lookout for those who actually killed Williams. Fox asserts that, prior to him making the July 6, 2011, statement, Trial Counsel should have 1) advised him that he did not have use immunity for his statement, 2) advised him of the elements of felony murder, and 3) advised him “of the illusory nature of the [S]tate’s oral promise not to prosecute.” (Appellant’s Br. p. 10).

[19] However, in order for Fox to bring these claims, it was necessary for his right to the effective assistance of counsel to have attached at the time of the July 6, 2011, interview. The Sixth Amendment provides that “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence.” U.S. Const. amend VI. “[I]t has been firmly established that a person’s Sixth and Fourteenth Amendment right to counsel attaches only at or after the time that adversary judicial proceedings have been initiated against him.” *Kirby v. Illinois*, 406 U.S. 682, 688 (Ind. 1972) (declining to extend Sixth Amendment protections to a post-arrest, pre-arraignment lineup). The filing of the criminal charge

is the starting point of our whole system of adversary criminal justice. For it is only then that the government has committed itself to prosecute, and only then that the adverse positions of government and defendant have solidified. It is then that a defendant finds himself faced with the prosecutorial forces of organized society[] and immersed in the intricacies of substantive and procedural criminal law. It is this point, therefore, that marks the commencement of the ‘criminal prosecutions’ to which alone the explicit guarantees of the Sixth Amendment are applicable.

Id. at 689-90.

[20] We find the case of *McNeil v. Wisconsin*, 501 U.S. 171 (1991), to be instructive. In *McNeil*, the defendant was arrested and charged with armed robbery. *Id.* at 173. McNeil was appointed counsel at his initial appearance in the armed robbery case. *Id.* After being assigned counsel, McNeil was approached in jail by officers from another police department investigating a murder, attempted murder, and armed burglary in which McNeil was a suspect. *Id.* In a series of interviews which took place without his counsel in the armed robbery case being present, McNeil implicated himself in the murder, attempted murder, and armed burglary. *Id.* at 173-74. He was then charged with those crimes and was eventually convicted. *Id.* at 174. On appeal, he argued that his request for counsel in the armed robbery case extended to the murder case. *Id.* at 174-75. In rejecting this argument, the *McNeil* court observed that a defendant’s Sixth Amendment right to counsel is offense specific and does not attach “until a prosecution is commenced, that is, ‘at or after the initiation of adversary judicial criminal proceedings—whether by way of formal charge, preliminary hearing,

indictment, information, or arraignment.” *Id.* at 175 (quoting *United States v. Gouveia*, 467 U.S. 180, 188 (1984), in turn quoting *Kirby*, 406 U.S. at 689).

[21] Here, no charges had been filed against Fox when he made his July 6, 2011, statement, and, therefore, he had no Sixth Amendment right to counsel in this case at that juncture. *See id.* The fact that Trial Counsel represented Fox in an unrelated robbery case did not extend Fox’s Sixth Amendment right to Williams’ murder case. *Id.* As a result, Fox cannot raise claims of ineffective assistance of counsel based on Trial Counsel’s performance relative to the July 6, 2011, statement. *See Sweeny v. State*, 704 N.E.2d 86, 105-06 (Ind. 1998) (rejecting Sweeny’s ineffective assistance of counsel claims relating to his counsel’s failure to procure use immunity for incriminating statements made to police prior to the filing of charges because Sweeny’s Sixth Amendment right had not yet attached).

[22] Fox does not address the authority relied upon by the post-conviction court in concluding that his right to the effective assistance of counsel had not attached when he made the July 6, 2011, statement. Instead, he argues that his Fifth Amendment due process right attached during the investigative stage of this case and that he is entitled to the effective assistance of counsel under Article 1, section 13 of the Indiana Constitution. However, Fox did not raise any Fifth Amendment or state constitutional arguments below, and, thus, those arguments are waived. *See Ellis v. State*, 194 N.E.3d 1205, 1217 (Ind. Ct. App. 2022) (finding Ellis’ constitutional claims raised for the first time on appeal was waived), *trans. denied*. In addition, although Fox invokes the Fifth Amendment

and Article 1, section 13, in contravention to the Indiana Appellate Rules of Procedure, he provides us with no citation to legal authority demonstrating that the right to effective assistance of counsel is extended to pre-charge statements through either constitutional provision. *See* Ind. Appellate Rule 46(A)(8)(a) (arguments must be supported by citation to authority).

[23] However, even if Fox's right to counsel had attached, Fox has not demonstrated that he is entitled to relief based on Trial Counsel's performance pertaining to the July 6, 2011, interview. Fox was not a suspect in Williams' murder prior to giving the July 6, 2011, statement, and he had informed Trial Counsel that he was not involved. Trial Counsel's failure to warn Fox that he did not have use immunity or regarding the elements of felony murder did not constitute deficient performance, where Trial Counsel could not have anticipated that Fox would implicate himself. After Fox implicated himself by placing himself at the scene of Williams' murder, Trial Counsel stopped the interview and had the deputy prosecutor put the non-prosecution agreement on the record. Contrary to Fox's assertions on appeal, Trial Counsel was not confused about whether Fox had use immunity, and Trial Counsel's allusion to a "wink and a nod" agreement was a reference to consideration that Fox might get from the State in his robbery case, not to any putative use immunity agreement. (PCR Tr. p. 15). Fox does not explain on appeal how Trial Counsel's performance was deficient for failing to advise him about use immunity and felony murder where the non-prosecution agreement meant that Fox would not be charged for Williams' murder. Through no fault of Trial

Counsel, Fox breached that agreement.² Fox does not provide us with any authority holding that counsel is ineffective for failing to anticipate that his client would be untruthful in giving a statement to the police, and we are aware of none.

[24] Fox's argument that Trial Counsel should have warned him about the "illusory" nature of the non-prosecution agreement is no more persuasive, as it is also unsupported by legal authority. (Appellant's Br. p. 16). In addition, we observe that, contrary to Fox's assertions on appeal that the non-prosecution agreement was voidable at the State's complete discretion, the parties submitted the issue to the trial court which held an evidentiary hearing on whether Fox had breached the non-prosecution agreement. The fact that the trial court, and subsequently this court, concluded that Fox breached the agreement did not render that agreement illusory. Accordingly, Fox has failed to meet his burden on appeal to demonstrate that the evidence leads "unmistakably and unerringly" away from the post-conviction court's decision. *Gibson*, 133 N.E.3d at 681.

² Fox contends that Trial Counsel encouraged him to put himself at the scene of Williams' murder in order to get a better deal from the State. However, Fox's trial testimony established that it was Fox's decision to state that he was a lookout, and Trial Counsel testified at the post-conviction hearing that if he had known that Fox was involved in Williams' murder, he would have advised Fox not to make a statement. Fox's contention is unavailing, as we only consider the evidence supporting the post-conviction court's judgment. *Hall v. State*, 849 N.E.2d 466, 468 (Ind. 2006).

B. *Federal Discovery*

[25] Fox argues that Trial Counsel was ineffective for failing to procure additional discovery from federal authorities pertaining to Fields' and Shawn's federal criminal cases. Fox contends that Trial Counsel should have used the procedures he outlines on appeal to obtain documents and testimony regarding the charges Fields and Shawn faced, the substance of their immunized proffers, and their plea agreements.

[26] We start by addressing the factual basis of Fox's argument. By the time of Fox's trial, Fields had pleaded guilty in his federal handgun case and had been sentenced. There is nothing in the record suggesting that Fields ever faced any federal charges apart from the handgun charge. The State provided Trial Counsel with copies of Fields' plea agreement and the portion of his proffer that related to Fox. Fields' federal case had apparently been sealed, and none of the procedures outlined by Fox on appeal address procuring evidence from a sealed federal case. Shawn had not yet been charged with any federal offenses, had made no proffer, and did not have a plea agreement for any federal case. Therefore, Fox's argument that Trial Counsel's performance was deficient for failing to procure these documents enjoys limited support in the record.

[27] The post-conviction court concluded that Fox failed to demonstrate that he was prejudiced by Trial Counsel's performance in conducting discovery relating to these witnesses. Trial Counsel cross-examined Fields at trial about the fact that his federal plea agreement was contingent on his testimony at Fox's trial, that Fields, who faced a possible ten-year sentence on his federal charge, had

received time served and two years of probation, and that, as a result of his federal proffer, Fields was not being charged with two murders. Therefore, Trial Counsel placed before the jury Fields' motive to testify against Fox to receive extremely favorable treatment in his federal case. Trial Counsel further attacked Fields' credibility by eliciting testimony that Fields held Fox personally responsible for incurring the federal handgun charge and that Fields had been more than willing, at least initially, to implicate an innocent man, Jason, in his proffer. Although there could be no prejudice to Fox in light of the fact that Shawn had no federal charges, we observe that Trial Counsel placed before the jury the fact that after Fox's trial Shawn expected to make a deal with the State on his state B felony charge and that Shawn had agreed to testify in three other cases in addition to Fox's. In his closing remarks, Trial Counsel reminded the jury that Shawn faced the possibility of a federal bank robbery charge. Given that Trial Counsel effectively put before the jury that Fields had received a generous benefit in his federal case for his testimony and attacked his and Shawn's credibility in other ways, we conclude, as did the post-conviction court, that Fox did not establish that there is a reasonable probability that, but for Trial Counsel's purported errors, "the result of the proceeding would have been different." *Weisheit*, 109 N.E.3d at 983.

[28] On appeal, Fox claims that being able to review Fields' and Shawn's proffer statements and establishing the benefits of their plea agreements "was vital to the defense" and that Trial Counsel's failure to do so prejudiced him. (Appellant's Br. p. 19). However, as we have already concluded, the factual

premise of that argument is faulty, and Fox fails to offer any argument that the result of his trial would have been different if Trial Counsel had acted in the manner he proposes. Accordingly, Fox has failed to meet his burden of persuasion on this issue, and we do not disturb the post-conviction court's judgment. *See Gibson*, 133 N.E.3d at 681.

CONCLUSION

[29] Based on the foregoing, we hold that the evidence supports the post-conviction court's determination that Trial Counsel rendered Fox effective assistance.

[30] Affirmed.

[31] Brown, J. and Foley, J. concur

ATTORNEY FOR APPELLANT

Ross G. Thomas
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Robert M. Yoke
Deputy Attorney General
Indianapolis, Indiana