

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



---

### APPELLANT PRO SE

Bruce E. Foster  
Pendleton, Indiana

### ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General of Indiana

J.T. Whitehead  
Deputy Attorney General  
Indianapolis, Indiana

---

## IN THE COURT OF APPEALS OF INDIANA

---

Bruce E. Foster,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

April 30, 2021

Court of Appeals Case No.  
20A-PC-1380

Appeal from the Monroe Circuit  
Court

The Honorable Christine Talley  
Haseman, Judge

Trial Court Cause No.  
53C03-1412-PC-2250

**Najam, Judge.**

## Statement of the Case

[1] Bruce E. Foster appeals the post-conviction court’s denial of his petition for post-conviction relief. Foster raises the following two issues for our review:

1. Whether Foster’s trial counsel was ineffective for not challenging the sufficiency of the State’s evidence in support of its allegation that Foster was a habitual offender.
2. Whether Foster’s trial counsel was ineffective for not moving to have a certain juror removed for cause.

[2] We affirm.

## Facts and Procedural History

[3] The facts underlying Foster’s convictions for murder and auto-theft, his adjudication as a habitual offender, and his sentence were stated by our Court on direct appeal:

On the morning of June 7, 2011, [Angela] Holder drove her daughter Anastasia (“Anna”) to school. At approximately 9:30 to 10:30 a.m., neighbor A.J. Strole, who knew Foster, witnessed him standing on a balcony and attempting to “jimmy” a second-story window to Holder’s apartment with a wooden-handled knife. Foster and Holder had been in a romantic relationship but were apparently no longer involved. When Holder arrived home, Foster dropped down from the balcony and approached Holder as she was walking up to her apartment’s door. Foster, who was visibly upset, said, “you dumbass bitch you got me out here doing this stupid ass shit” just as Holder opened the door. Holder gave a large backpack to Foster, who opened it and said, “no bitch this ain’t all my shit[,] barged his way in the door[,]”

turned[,] and locked the door[.]” Strole then heard six to eight “thumps” against the wall. Foster emerged and drove off in Holder’s car.

Anna arrived home from school around 3:00 p.m. Anna had forgotten her key and had tried, in vain, to contact Holder via text message and telephone. Anna called her grandmother Sherry Runyon, who soon arrived with her sister. The trio went shopping and while shopping, Runyon received a telephone call from her husband that police had found Holder’s purse in Cascades Park at approximately 3:00 p.m. The trio returned to Holder’s apartment and secured a key from the manager’s office. When Anna unlocked the door, the door would barely open, and, upon looking inside, she saw her mother’s body and screamed. Holder had been stabbed seven times in the chest with a single-edged knife, causing her death, in addition to ten times in the extremities. The forensic pathologist determined that Holder died no later than two hours after 10:00 a.m. On June 8, 2011, Foster called Detective William Jeffers of the Bloomington Police Department, and Detective Jeffers recorded the conversation. On June 15, 2011, a knife was found in Cascades Park, and swabs taken from the knife were determined to contain Holder’s DNA.

Also on June 8, 2011, the State charged Foster with murder and Class D felony auto theft and alleged that he is a habitual offender. On June 18, 2012, a jury found Foster guilty of auto theft but failed to reach a verdict on the murder count. A second jury trial was held on the murder and habitual offender counts. During the second trial, the State presented evidence based on Foster’s mobile telephone records indicating activity on the morning of June 7, 2011, at or near the areas in Cascade Park where Holder’s purse and the knife were found. On December 10, 2012, the second jury found Foster guilty of murder and of being a habitual offender. The trial court sentenced Foster to sixty-five years of incarceration for murder (enhanced thirty years

by virtue of his habitual offender status) and ordered the sentence to be served consecutive[] to his three-year sentence for auto theft.

*Foster v. State*, No. 53A01-1301-CR-36, 2014 WL 683993, at \*1-2 (Ind. Ct. App. Feb. 20, 2014) (alterations in original; citations to the record omitted), *trans. denied*. We affirmed Foster’s convictions and sentence on direct appeal.

[4] Thereafter, Foster filed an amended petition for post-conviction relief. In relevant part, Foster asserted that he had been denied his constitutional right to effective counsel when his trial counsel failed to challenge the sufficiency of the State’s evidence supporting the habitual offender allegation and also when his trial counsel failed to move for the for-cause removal of a juror. After a fact-finding hearing, the post-conviction court found:

IV. Each document [identifying a prior conviction and sentence] included in each of the five exhibits . . . admitted into evidence . . . contained on the back a self-authenticating certification of the Monroe County Clerk. Individual copies were distributed to the jurors but these copies did not contain the certification.

V. Although [she] initially objected to the jury viewing the documents without their certification[s], Defense Counsel made a strategic decision to withdraw [her] objection because [she] felt the jur[ors] seeing the official seal would simply bolster the credibility and weight of the exhibits. . . .

VI. During voir dire, prospective juror[] Caron[] was questioned by the Court because she had indicated on a questionnaire that she was biased due to having previous

knowledge of the case. Upon further questioning[,] it was determined that she had been confused about which case she would be hearing as a juror, and that she had no prior knowledge and would not be biased in the instant case. . . .

VII. During voir dire it was revealed that the judge knew Ms. Caron previously as she was a former director of . . . a local drug treatment facility. Upon questioning by the defense, Ms. Caron indicated that she currently has no contact with the courts, she has been the [d]irector of . . . a company that establishes drug assessment tests, that she worked at the [drug treatment facility] fifteen to seventeen years ago, and before that she worked in the mental health field. She indicated that in these positions she had no contact with the Prosecutor's Office . . . . On page 164 of the transcript she was asked by the Court, " . . . do you have any reservation about your ability to serve as a fair and impartial juror?" and her response was, "No, I do not."

Appellant's App. Vol. II at 44-45. Based on those facts, the post-conviction court concluded:

VI. The five felony convictions [offered in support of the habitual offender allegation] had offense dates and sentencing dates that were separated as required . . . except for State's Exhibits 102 and 103. The date of the offense and the sentencing date set out in Exhibit 103 fall between the date of the offense and the sentencing date of Exhibit 102. Therefore[,] the jury could have considered either Exhibit 102 or 103 as one of the two prior offenses for the Habitual Offender finding, but not both. They need not have considered either of th[ose] offenses as there was evidence of three other offenses, of which they only needed two. There was ample evidence presented . . . that the Petitioner was a Habitual Offender[;] thus[,] the representation . . . did not fall below an objective standard for failing to raise this issue at trial or on appeal.

VII. The documents submitted [in support of the habitual offender allegation] were all properly certified . . . . Although copies of the exhibits were distributed to the jury and the copies did not include the certification, the exhibits were properly authenticated prior to being admitted . . . and published . . . .

VIII. Counsel had a legitimate strategic reason for not insisting that the jury view the certifications, specifically that the certifications would add to the credibility of the exhibit[s]. . . . Trial counsel's performance did not fall below an objective standard . . . .

IX. Juror Caron had indicated . . . that she might be biased . . . . However, upon questioning, she retracted that statement as she realized she was mistaken about which case she was being considered for as a juror. . . .

X. It was revealed during voir dire that Juror Caron and the judge were acquainted with each other. On questioning it was established that the nature of this acquaintance involved Ms. Caron's prior work with a local drug treatment facility.

\* \* \*

XII. This court has weighed the nature and extent of the relationship . . . and has determined that they knew each other professionally from many years before the trial in a way that was unrelated to the case then before the court. The relationship was disclosed in a timely manner. Juror Caron indicated that she could remain impartial. Juror Caron was questioned extensively by defense counsel. Defense counsel stated [to the post-conviction court] that she felt that Ms. Caron would make a good juror for Defendant.

XIII. . . . [T]here is no evidence that there is anything about the relationship between the Judge and Juror Caron that would cause the juror to be biased toward one side or the other. The Court concludes that there is no issue regarding bias of Juror Caron due to her previously knowing the Judge. Therefore, the fact that trial counsel did not move to strike her for this alleged bias does not fall below an objective standard.

*Id.* at 46-48. Accordingly, the post-conviction court denied Foster’s petition. This appeal ensued.

## **Discussion and Decision**

### ***Standard of Review***

[5] Foster appeals from the post-conviction court’s denial of his petition for post-conviction relief and asserts that he was denied the effective assistance of trial counsel. As our Supreme Court has explained:

Post-conviction proceedings do not provide criminal defendants with a “super-appeal.” *State v. Hollin*, 970 N.E.2d 147, 150 (Ind. 2012). Rather, they provide a narrow remedy to raise issues that were not known at the time of the original trial or were unavailable on direct appeal. *Id.* “Issues available but not raised on direct appeal are waived . . . .” *Wilkes v. State*, 984 N.E.2d 1236, 1240 (Ind. 2013) (internal quotation omitted). Further, the petitioner in a postconviction proceeding bears the burden of establishing grounds for relief by a preponderance of the evidence. Ind. Post-Conviction Rule 1(5); *Fisher v. State*, 810 N.E.2d 674, 679 (Ind. 2004). “When appealing from the denial of post-conviction relief, the petitioner stands in the position of one appealing from a negative judgment.” *Fisher*, 810 N.E.2d at 679. To prevail from the denial of post-conviction relief, a petitioner must show that the evidence as a whole leads

unerringly and unmistakably to a conclusion opposite that reached by the post-conviction court. *Weatherford v. State*, 619 N.E.2d 915, 917 (Ind. 1993).

\* \* \*

To establish a post-conviction claim alleging violation of the Sixth Amendment right to effective assistance of counsel, a defendant must establish the two components set forth in *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). *See Williams v. Taylor*, 529 U.S. 362, 390, 120 S. Ct. 1495, 146 L. Ed. 2d 389 (2000). “First, a defendant must show that counsel’s performance was deficient.” *Strickland*, 466 U.S. at 687, 104 S. Ct. 2052. This requires a showing that counsel’s representation fell below an objective standard of reasonableness and that counsel made errors so serious that counsel was not functioning as “counsel” guaranteed to the defendant by the Sixth Amendment. *Id.* “Second, a defendant must show that the deficient performance prejudiced the defense.” *Id.* This requires a showing that counsel’s errors were so serious as to deprive the defendant of a fair trial, meaning a trial whose result is reliable. *Id.* To establish prejudice, a defendant must show that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694, 104 S. Ct. 2052. A reasonable probability is one that is sufficient to undermine confidence in the outcome. *Id.*

*Garrett v. State*, 992 N.E.2d 710, 718-19 (Ind. 2013).

[6] Here, Foster asserts that the post-conviction court’s judgment is erroneous for two reasons. First, he argues that his trial counsel was ineffective for not challenging the sufficiency of the State’s evidence in support of the habitual



offender allegation. Second, he asserts that his counsel was ineffective for not moving to have Juror Caron removed for cause based on her prior relationship with the trial judge. We address each issue in turn.

***Issue One: Sufficiency of the Evidence Supporting  
the Habitual Offender Allegation***

[7] Foster first asserts that his trial counsel ineffectively failed to challenge the sufficiency of the State’s evidence in support of the habitual offender allegation. Specifically, Foster asserts that the records of his prior convictions were not properly certified and, further, that they did not sufficiently identify him as they did not include photographs or fingerprints of him. But Foster’s arguments are misplaced. The records were certified, although his trial counsel strategically chose to have copies published to the jury that did not include those certifications, and the records unambiguously identified Foster by name, date of birth, and social security number, which is sufficient.

[8] Nonetheless, Foster also argues that his trial counsel failed to object to the State’s submission of two overlapping offenses in support of the habitual offender allegation. At the time of his offenses, Indiana Code Section 35-5-2-8(c) required the State to support a habitual offender allegation with a showing of two prior, unrelated felony convictions, which required a showing that the second offense “was committed after sentencing” for the first offense and that the instant offense “was committed after sentencing” for the second offense.

- [9] The State offered evidence of five prior offenses to show Foster was a habitual offender. Foster asserts that the post-conviction court correctly found that two of those offenses were overlapping such that one had been committed prior to sentencing on the other, which reduced the number of available prior offenses from five to four. He then asserts on appeal that two other offenses are also overlapping as he “was charged” for one offense “while serving time” on the other. Appellant’s Br. at 14-15.
- [10] But Foster’s reading of the statute is not correct. Even if the State charged Foster for one offense while he was “serving time” on another, those facts do not implicate the statute so long as the latter offense was committed after the prior offense’s sentencing date, which Foster does not address on appeal. And, in any event, he acknowledges that, if we were to accept his argument here, it would still be “true that Foster has at least two [other] prior unrelated felonies . . . .” *Id.* at 16. We therefore affirm the post-conviction court’s denial of his petition with respect to counsel’s performance during the habitual offender stage of the trial.

### ***Issue Two: Juror Bias***

- [11] Foster next asserts that the post-conviction court erred when it denied his petition on the ground that his trial counsel had deficiently failed to request the removal of Juror Caron for cause. But the post-conviction court found based on the record that Juror Caron’s prior relationship with the trial judge was remote in time and only in a professional capacity. The post-conviction court further found that Juror Caron, after being questioned by defense counsel for

potential bias, expressly informed the court and the parties that she could remain impartial. Based on those facts, the post-conviction court concluded that Foster's trial counsel had not rendered deficient performance by not pursuing Juror Caron's removal for potential bias.

[12] Foster's argument on this issue simply seeks to have this Court disregard the post-conviction court's findings, which are supported by the record. We will not disregard those findings or reweigh the evidence. Foster has not met his burden to show that the post-conviction court's judgment on this issue is contrary to law, and we affirm the post-conviction court's denial of Foster's petition for post-conviction relief.

[13] Affirmed.

Pyle, J., and Tavitas, J., concur.