MEMORANDUM DECISION

APPELLANT PRO SE

Harry Spicer
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IN THE COURT OF APPEALS OF INDIANA

Harry Spicer,
Appellant-Petitioner,

v.

State of Indiana,
Appellee-Respondent

July 6, 2023

Court of Appeals Case No. 22A-PC-1694

Appeal from the Dearborn Circuit Court

The Honorable James D. Humphrey, Judge

Trial Court Cause No. 15C01-2003-PC-5

Memorandum Decision by Judge Crone
Judge Brown and Senior Judge Robb concur.

Crone, Judge.

Case Summary

[1] Harry Spicer, pro se, appeals the denial of his petition for post-conviction relief (PCR). We affirm.

Facts and Procedural History

[2] In 2007, Spicer pled guilty to class B felony conspiracy to manufacture methamphetamine in cause 15D02-0610-FB-14 (FB-14). He received a fifteen-year sentence, with twelve years suspended to probation.

[3] On April 4, 2014, Spicer was charged with class A felony conspiracy to deal methamphetamine in cause 15C01-1404-FA-35 (FA-35). The relevant alleged facts supporting the FA-35 charge are that Spicer participated in providing pseudoephedrine to Vernis Newton, who used the pseudoephedrine to manufacture methamphetamine, a small portion of which Newton used to "pay" his pseudoephedrine providers. Spicer became involved in the enterprise through his association with Lisa Ellis and Spicer's brother, who were also providers. More detailed facts may be found in *Spicer v. State*, No. 15A04-1504-CR-148, 2015 WL 7075698, at *1-2 (Ind. Ct. App. Nov. 13, 2015) (*Spicer 1*), and *Spicer v. State*, No. 15A01-1512-CR-2205, 2017 WL 393266, at *1-3 (Ind. Ct. App. Jan. 30, 2017) (*Spicer 2*), *trans. denied*.

[4] On April 8, 2014, the State charged Spicer with violating his probation in FB-14 due to his FA-35 charge. On that same date, the court appointed attorney Justin Bartlett to represent Spicer in FA-35. In January 2015, attorney Blaine Burgess, Bartlett's colleague, began working on Spicer's FB-14 probation revocation

case. Burgess represented Spicer in a March 3, 2015 hearing on the matter. Spicer's probation was revoked on March 10, 2015, and he appealed.

[5] On March 12, 2015, Burgess filed his appearance in FA-35. Burgess was substituted for Bartlett prior to the four-day jury trial held in early October 2015. Spicer was found guilty in FA-35. Meanwhile, a panel of this Court affirmed the probation revocation and the execution of Spicer's previously suspended FB-14 twelve-year sentence. *Spicer 1*, 2015 WL 7075698, at *4. At a November 18, 2015 hearing, the trial court ordered a forty-year executed sentence for Spicer's FA-35 conviction and specified that it be served in the Department of Correction consecutive to the twelve-year sentence Spicer was serving for his FB-14 probation revocation. Spicer appealed his FA-35 conviction and sentence. In a memorandum decision, another panel of this Court affirmed the trial court. *Spicer 2*, 2017 WL 393266, at *7.

[6] In March 2020, Spicer filed a pro se PCR petition. The court held an evidentiary hearing in August 2021. Proposed findings and conclusions were filed. In an eleven-page order issued in June 2022, the court denied Spicer's petition. He appeals that order.

Discussion and Decision

[7] "Post-conviction proceedings are civil proceedings in which a defendant may present limited collateral challenges to a conviction and sentence." *Bautista v. State*, 163 N.E.3d 892, 896 (Ind. Ct. App. 2021) (quoting *Gibson v. State*, 133 N.E.3d 673, 681 (Ind. 2019), *cert. denied* (2020)). "A defendant who files a

petition for post-conviction relief 'bears the burden of establishing grounds for relief by a preponderance of the evidence.'" *Id.* (quoting Ind. Post-Conviction Rule 1(5)). "Because the defendant is appealing from the denial of post-conviction relief, he is appealing from a negative judgment[.]" *Id.* "Thus, the defendant must establish that the evidence, as a whole, unmistakably and unerringly points to a conclusion contrary to the post-conviction court's decision." *Id.* (quoting *Wilkes v. State*, 984 N.E.2d 1236, 1240 (Ind. 2013)). "In other words, the defendant must convince this Court that there is no way within the law that the court below could have reached the decision it did." *Id.* "We review the post-conviction court's factual findings for clear error, but do not defer to its conclusions of law." *Wilkes*, 984 N.E.2d at 1240.

[8] Spicer has brought this appeal pro se, "but this does not mean that we will treat his brief any differently than we would if he were represented by counsel." *Receveur v. Buss*, 919 N.E.2d 1235, 1238 n.4 (Ind. Ct. App. 2010), *trans. denied*. "Indeed, it has long been the rule in Indiana that pro se litigants without legal training are held to the same standard as trained counsel and are required to follow procedural rules." *Id.* (italics omitted). "We will not become an 'advocate for a party, or address arguments that are inappropriate or too poorly developed or expressed to be understood.'" *Lowrance v. State*, 64 N.E.3d 935, 938 (Ind. Ct. App. 2016) (citation omitted), *trans. denied* (2017).

Section 1 – Spicer has not demonstrated ineffective assistance of counsel.

[9] On appeal from the denial of his PCR petition, Spicer raises multiple ineffective assistance allegations. "The right to effective counsel is rooted in the Sixth Amendment of the United States Constitution." *Taylor v. State*, 840 N.E.2d 324, 331 (Ind. 2006). "A defendant claiming a violation of the right to effective assistance of counsel must establish the two components set forth in *Strickland v. Washington*, [466 U.S. 668 (1984)]." *Perez v. State*, 748 N.E.2d 853, 854 (Ind. 2001). "First, the defendant must show that counsel's performance was deficient." *Id*. "This requires a showing that counsel's representation fell below an objective standard of reasonableness, and that the errors were so serious that they resulted in a denial of the right to counsel guaranteed the defendant by the Sixth Amendment." *Id*. (citations omitted). "There is a strong presumption that counsel rendered effective assistance and made all significant decisions in the exercise of reasonable professional judgment, and the burden falls on the defendant to overcome that presumption." *Peaver v. State*, 937 N.E.2d 896, 900 (Ind. Ct. App. 2010), *trans. denied* (2011).

[10] "Second, the defendant must show that the deficient performance prejudiced the defense." *Perez*, 748 N.E.2d at 854. "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*. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id*. "Although the two parts of the *Strickland* test are separate

[inquiries], a claim may be disposed of on either prong." *Grinstead v. State*, 845 N.E.2d 1027, 1031 (Ind. 2006). "*Strickland* declared that the 'object of an ineffectiveness claim is not to grade counsel's performance. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, ... that course should be followed.'" *Id*. (quoting *Strickland*, 466 U.S. at 697).

[11] Spicer asserts that he was not consulted about the defense theory or strategy and that he was denied the right to testify in FA-35 in 2015. Spicer claims that he was not permitted an opportunity to review audio or video discovery and hypothesizes that Burgess did not review the discovery. Spicer contends that his appointed counsel, Burgess, "had just passed the Bar Examination, and had never tried a case prior to this substitution to" Spicer's case. Appellant's Br. at 13. Spicer faults Burgess for an out-of-context statement and for not challenging the admission of certain cell phone and text message evidence. In addition, he maintains that Burgess should have objected to "bolstering" comments regarding a State's witness and inflammatory statements about the "blight" of methamphetamine. *Id.* at 17, 18.[1] On top of his other allegations, Spicer takes issue with his counsel's failure to object to the State "leading its witnesses" and failure to "file any pre-trial motions in limine or preliminary jury instructions[.]" *Id.* at 20, 22. We address each assertion in turn.

[1] Spicer makes a passing reference to his counsel's alleged failure to object to prior crimes evidence yet never mentions (let alone develops) the issue again. Appellant's Br. at 17. We will not create an argument for an appellant. *See Lowrance*, 64 N.E.3d at 938.

[12] Spicer's own testimony during the post-conviction hearing belies his assertions that his appointed attorney did not consult with him and barred him from testifying. Spicer testified that he met with Burgess more than once, "told him what happened," and stressed that he "wasn't even in the State of Indiana" when the alleged crime occurred. PCR Tr. Vol. 2 at 11. They discussed jurisdictional issues and potential witnesses, including Newton, Ellis, and Spicer's brother. *Id*. at 13-14, 18. Spicer also advised his counsel to "check" the statement of witness Ellis and shared with counsel his doubts about the veracity of Ellis's testimony. *Id*. at 16, 20. When asked whether he and Burgess ever discussed whether he should testify, Spicer answered: "[Burgess] said if I wanted to testify it was totally up to me." *Id*. at 14-15. When asked if he ever told his attorney that he wished to testify, Spicer replied, "No, I didn't say either way." *Id*. at 15. Spicer has not shown that Burgess performed deficiently in consulting with his client. And, Spicer has not shown prejudice in how Burgess dealt with Spicer's right to testify. *See Correll v. State*, 639 N.E.2d 677, 682 (Ind. Ct. App. 1994) (finding that if petitioner fails to demonstrate that his trial counsel "forbade his testifying" at trial, he cannot establish that he was prejudiced by counsel's action).

[13] As for Spicer's claim that he was precluded from reviewing audio or video discovery, he first raises this contention in his appellate brief rather than in his PCR petition. Appellant's Br. at 12-13. "Issues not raised in a petition for post-conviction relief may not be raised for the first time on appeal." *Emerson v. State*, 812 N.E.2d 1090, 1098-99 (Ind. Ct. App. 2004). "The failure to raise an alleged

error in the petition waives that right to raise the issue on appeal." *Id.* at 1099. Because Spicer did not raise this issue in his PCR petition or during the post-conviction hearing, the court made no finding thereon, and the issue is waived. Moreover, there is no dispute that Spicer was provided with a stack of discovery documents measuring two or three inches. PCR Tr. Vol. 2 at 26.

[14] To the extent that Spicer alleges that Burgess "had not reviewed the discovery," Appellant's App. Vol. 2 at 248, his allegation is based upon speculation rather than fact. He makes much of the contradictory testimony of Ellis and Detective Norman Rimstidt. Both testified that Ellis did not mention Spicer during a February 13, 2014 interview, which primarily discussed Spicer's brother. When asked why she did not mention Spicer until a March interview, Ellis stated that she had been "strung out" and "high" during the February interview. Trial Tr. Vol. 1 at 167-68. However, on the next day of trial, the State played a short snippet of the February interview, in which Ellis had mentioned the name Harry. Detective Shane McHenry, who also had been present during the February interview, testified that Ellis's reference to Harry was to Spicer. Far from prejudicing Spicer's case, this inconsistency in Ellis's testimony, and the revelation that she had been on drugs, likely helped with Burgess's portrayal of Ellis as an unreliable witness.

[15] We next address Spicer's contention that Burgess had "just passed" the bar examination and "never tried a case" prior to being substituted into Spicer's case "only fourteen" days before the trial. Appellant's Br. at 13, 14. Spicer presented no independent verification for his assertion that Burgess had just

passed the bar examination. Indeed, Spicer's own testimony was that Burgess passed the bar in December 2014, approximately ten months before the trial in FA-35, thus contradicting the "just passed" contention. As for Burgess's experience, Spicer admitted that Burgess represented him in March 2015 in the probation revocation matter, which was several months before the FA-35 trial. Spicer presented no evidence as to Burgess's other experience. In granting the substitution order submitted in September 2015, the court noted Burgess's statement that he had been the primary attorney in Spicer's case since January 2015 and had attended all hearings on Spicer's behalf in 2015. This was not a situation where a lawyer unfamiliar with the defendant or case was assigned to work on it two weeks before trial. Rather, given his familiarity with Spicer's cases, Burgess was the logical attorney to represent him in the FA-35 trial. Unsupported allegations, without more, cannot form the basis of a successful ineffective assistance claim.

[16] In faulting Burgess for not "travers[ing] any testimony as to cell tower records," Spicer takes issue with what he terms a shocking comment from his counsel. Appellant's Br. at 17. We include the comment below but provide fuller context. After Detective Rimstidt testified on recall as to how cell data could be used to track a person, cross examination unfolded as follows:

> Q. [by Burgess] Good morning, Detective Rimstidt.
>
> A. [Detective Rimstidt] Good morning.

> Q. *I'll tell you what, I'm impressed, this … I don't know about you guys, that was impressive.* In what we just saw … State's Exhibit "62," that tracks movements from Lisa Ellis' phone. Correct?
>
> A. That's correct.
>
> Q. Did you prepare a similar diagram based off [Spicer's] movements?
>
> A. No, I did not.
>
> Q. And, that was because you didn't have the Verizon records. Right?
>
> A. I did not have the Verizon records for Harry Spicer.

Trial Tr. Vol. 1 at 235 (emphasis added).

[17] Counsel has wide latitude in selecting trial strategy and tactics, which we afford great deference. *Ward v. State*, 969 N.E.2d 46, 51 (Ind. 2012). "*Strickland* does not guarantee perfect representation, only a 'reasonably competent attorney.'" *Woodson v. State*, 961 N.E.2d 1035, 1041-42 (Ind. Ct. App. 2012) (quoting *Harrington v. Richter*, 562 U.S. 86, 110 (2011)), *trans. denied*. "[E]ven the finest, most experienced criminal defense attorneys may not agree on the ideal strategy or the most effective way to represent a client. Isolated mistakes, poor strategy, inexperience, and instances of bad judgment do not necessarily render representation ineffective." *Smith v. State*, 765 N.E.2d 578, 585 (Ind. 2002) (citation omitted). Read within context, Burgess's comment, italicized above,

was not shocking but rather a strategic highlighting of evidence that could have been, but was not, sought by the State. This is neither deficient performance nor prejudicial.

[18] In a related argument, Spicer posits that Burgess's failure to lodge hearsay, authentication, or Sixth Amendment objections when the State introduced text messages between Ellis, Newton, and Spicer constituted ineffective assistance. When a petitioner claims ineffective assistance of counsel based on counsel's failure to object, the petitioner must show that a "proper objection would have been sustained." *Id.*

[19] Briefly, Spicer's own texts were not hearsay pursuant to Indiana Evidence Rule 801(d)(2)(A) (statement offered against opposing party and made by the party). The texts of Ellis and Newton, his coconspirators, were not hearsay pursuant to Indiana Evidence Rule 801(d)(2)(E) (statement offered against opposing party made by party's coconspirator during and in furtherance of conspiracy). Authentication of the text messages as business records was accomplished via testimony and an affidavit from Verizon Wireless in keeping with Indiana Evidence Rules 803(6) (records of a regularly conducted activity) and 901(a). Trial Ex. Vol. 1 at 32; Trial Tr. Vol. 1 at 69-70. The Sixth Amendment disallows the admission of statements "made with the primary purpose to create 'an out-of-court substitute for trial testimony.'" *Cardosi v. State*, 128 N.E.3d 1277, 1288 (Ind. 2019) (quoting *Michigan v. Bryant*, 562 U.S. 343, 358 (2011)). There is no indication that the texts sent to and from Ellis, Newton, and Spicer were made with the primary purpose of creating substitutes for trial testimony.

In sum, Spicer has not shown that objections on any of these grounds would have been sustained. Therefore, he has failed to show that Burgess was deficient for not objecting.

[20] Spicer also faults his counsel for not objecting during the prosecutor's opening statement to what Spicer characterizes as improper vouching, bolstering, irrelevant, and/or inflammatory comments.

> It is well settled that the purpose of an opening statement is to inform the jury of the charges and the contemplated evidence. Its scope and content are within the sound discretion of the trial judge and a cause will not be reversed unless a clear abuse of discretion is shown.

Vanyo v. State, 450 N.E.2d 524, 526 (Ind. 1983) (internal citations omitted).

[21] During his opening statement, the prosecuting attorney described Ellis as "forthcoming" and noted that her story had remained consistent. Trial Tr. Vol. 1 at 9-10. While a prosecutor "may not personally vouch for a witness," *Ryan v. State*, 9 N.E.3d 663, 671 (Ind. 2014), a prosecutor can make reasonable conclusions based on his own analysis of the evidence during closing statements. *Neville v. State*, 976 N.E.2d 1252, 1260 (Ind. Ct. App. 2012), *trans. denied*. Given their isolated nature within a seven-plus-page opening statement, any prejudice was minimal to nil. Thus, even if an objection had been made, the likelihood of it being sustained was slim. *Cf. Splunge v. State*, 526 N.E.2d 977, 981 (Ind. 1988) (on direct appeal, an irregularity in opening statements is

not cause for reversal unless some prejudice results to defendant), *cert. denied* (1989). As such, ineffective assistance has not been shown.

[22] The prosecutor began his lengthy opening statement as follows:

> the production of methamphetamine is a blight on our society, not only does it ruin the lives of those who become addicted to it, the manufacture of the product with household items that can be purchased at Wal-Mart is extremely … dangerous. It becomes an explosive toxic material that's destructive to the environment and to the health of those who live near the production of it. This case is based on an investigation ….

Trial Tr. Vol. 1 at 4. The next several pages of the prosecuting attorney's opening statement lay out what the State planned to prove. Within the context of the entire opening statement, we cannot see how the prosecutor's initial brief explanation of the serious crime of methamphetamine production warranted objection, the failure of which to lodge would constitute ineffective assistance of counsel. We are similarly unmoved by Spicer's contention that his counsel should have objected when a detective sergeant testified as to how methamphetamine labs can be dangerous. In a case involving the conspiracy to manufacture methamphetamine, we find it difficult to fathom how detailed evidence regarding methamphetamine production could be disallowed. Again, Spicer has not demonstrated deficient performance or prejudice in his counsel's decision not to raise meritless objections.

[23] Spicer attempts a one-sentence argument that Burgess "failed to stop the prosecution from leading its witnesses." Appellant's Br. at 20. However, Spicer

provides no examples whatsoever, and it is not our job to flesh out his argument. We find this argument waived. Similarly, Spicer includes a one-sentence comment that Burgess did not file pretrial motions in limine or preliminary jury instructions. Spicer makes no argument that, but for the lack of either pretrial motions in limine or preliminary instructions, there is a reasonable probability that the result of the proceeding would have been different. As such, he has not demonstrated *Strickland*'s prejudice prong.

[24] Spicer has not established that the evidence, as a whole, unmistakably and unerringly points to a conclusion contrary to the post-conviction court's regarding ineffective assistance of counsel.

Section 2 – A belated, unsubstantiated allegation that an appointed attorney did not meet a standard outlined by the Indiana Public Defender Commission does not merit reversal, particularly absent demonstrated ineffective assistance of counsel.

[25] In what he deems an issue of first impression, Spicer argues that his conviction should be "vacated because his trial counsel was unqualified to try a level A felony" pursuant to Standards for Indigent Defense Services in Non-Capital Cases. Appellant's Br. at 22. He claims that Burgess was not an active trial practitioner with sufficient years and breadth of experience to have handled his case. We find no reversible error.

[26] In addressing Spicer's claim, we are guided by our supreme court's discussion, in *Johnson v. State*, 948 N.E.2d 331 (Ind. 2011), of the history and purposes of the Indiana Public Defender Commission and its standards:

> More than a century before *Gideon v. Wainwright*, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963), this Court held that indigent criminal defendants had a right to counsel provided at public expense. *Webb v. Baird*, 6 Ind. 13, 18-19 (1854). Historically, Indiana trial court judges appointed indigent defense counsel and mandated their compensation from their respective county treasuries. *Standards for Indigent Def. Servs. in Non-Capital Cases* Standard A cmt., at 1-3 (Ind. Pub. Defender Comm'n 2008), available at http://www.in.gov/judiciary/pdc/publications.html (last visited June 6, 2011). One of the inherent problems with this system was the lack of defense counsel's independence from the court; because defense counsel's employment relied upon the judge, it was thought that counsel might be reluctant to represent his or her client as vigorously as necessary for fear of alienating the judge.…
>
> In 1989, the General Assembly created the Indiana Public Defender Commission ("Commission"), Pub.L. No. 284-1989, 1989 Ind. Acts 1982, 1982-92, which began a series of reforms to improve indigent defense services. The Commission's original mission was to make recommendations concerning providing indigent counsel in capital cases, most of which were adopted by this Court in Indiana Criminal Rule 24. *See generally* Norman Lefstein, *Reform of Defense Representation in Capital Cases: The Indiana Experience and Its Implications for the Nation*, 29 Ind. L.Rev. 495 (1996).
>
> In 1993, the General Assembly authorized the Commission to offer state reimbursement to counties for the costs of indigent defense in noncapital cases, provided the counties complied with

standards established by the Commission. Pub.L. No. 238-1993, 1993 Ind. Acts 4449, 4451-52. To qualify, a county must establish a county public defender board, which appoints indigent defense counsel at public expense for all persons financially unable to obtain a lawyer without substantial hardship to themselves or their families. I.C. §§ 33-40-7-1 to -12; *Standards for Indigent Def. Servs. in Non-Capital Cases*, *supra*, Standards A-B, at 1-4. Appointed counsel must satisfy certain experiential and training requirements, which vary depending on the seriousness of the charge, and appointed counsel's caseload must be limited to a specified amount. *Standards for Indigent Def. Servs. in Non-Capital Cases*, *supra*, Standards E-F, J-K, M, at 8-10, 13-19, 23-24. The Commission's standards also govern appointed counsels' compensation. *Id.* Standards G-I, L, at 10-13, 20-23. Counties that comply with these standards are reimbursed for 40% of their indigent defense costs for noncapital cases. I.C. § 33-40-6-5(a)(2). Unlike the capital defense program under Criminal Rule 24, *the noncapital program is optional*, though the Commission reports that it has approved comprehensive plans for 58 of Indiana's 92 counties, and 50 of those counties are eligible for reimbursement. Ind. Pub. Defender Comm'n, *Annual Report 2009-2010*, at 7-8 (2010), *available at* http://www.in.gov/judiciary/pdc/publications.html (last visited June 6, 2011).

Indiana's reform of public defender services has been lauded by the American Bar Association and legal scholars alike. Undoubtedly, one of the most important reforms for noncapital cases was ensuring the independence of defense counsel by transferring the duty to appoint counsel from judges to county public defender boards.... Such independence protects the integrity of the attorney-client relationship.

….

> Although indigent defense counsel must have professional independence, judges cannot take a complete "hands-off" approach and totally rely on a bureaucratic agency[.]…
>
> *In reforming our public defender system, the General Assembly intended for the trial judge to retain some authority with regard to indigent defense counsel.* For example, a county's decision to adopt the Commission's standards and seek reimbursement "does not prevent a court from appointing counsel other than counsel provided for under the board's plan for providing defense services to an indigent person when the interests of justice require." I.C. § 33-40-7-10(a). And a judge can make a written request to the state public defender to have a qualified attorney appointed if the judge determines either "(1) that an attorney provided under the county public defender board's plan is not qualified or available to represent the person; or (2) that in the interests of justice an attorney other than the attorney provided for by the county defender board's plan should be appointed." I.C. § 33-40-7-10(b).

Id. at 336-38 (footnotes omitted, some citations omitted, and emphases added), *cert. denied* (2012).

[27] Spicer points us to nowhere in the record where he raised any concern about Burgess's qualifications to the trial court. Had Spicer done so, the judge, if he had determined that the interests of justice required, could have requested that a different attorney or co-counsel be provided. *See* Ind. Code § 33-40-7-10. Moreover, on direct appeal, Spicer was silent as to Burgess's qualifications. *See Spicer 2*, 2017 WL 393266 (addressing evidentiary sufficiency and sentencing issues). Instead, Spicer first mentioned this concern, about his counsel allegedly not meeting the optional standards, in a footnote within his PCR petition. And

for support, Spicer offers only his self-serving claim regarding when Burgess passed the bar and no evidence as to his attorney's trial experience.

[28] As a general rule, "most free-standing claims of error are not available in a postconviction proceeding because of the doctrines of waiver and res judicata." *Timberlake v. State*, 753 N.E.2d 591, 597-98 (Ind. 2001), *cert. denied* (2002). "If an issue was known and available, but not raised on direct appeal, it is waived." *Id.* at 598. The standards on which Spicer wishes to hang his hat originated thirty years ago, and Spicer alleged that he learned of his counsel's experience prior to trial. Thus, this issue was clearly available yet not raised upon direct appeal. Hence, it is waived.

[29] We might be inclined to overlook such waiver if Spicer had demonstrated that Burgess provided ineffective assistance of counsel. As discussed in detail in Section 1, Spicer has not met that burden. We are not persuaded that, absent a showing of ineffective assistance, reversal of a non-capital conviction is warranted solely because recommended standards for appointed counsel *possibly* were not met. We affirm the post-conviction court's order denying Spicer's PCR petition.

[30] Affirmed.

Brown, J., and Robb, Sr.J., concur.