MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

John Arthur Bridges, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 7, 2023

Court of Appeals Case No. 22A-PC-2858

Appeal from the Allen Superior Court

The Honorable Steven O. Godfrey, Judge

Trial Court Cause No. 02D06-1702-PC-16

Memorandum Decision by Judge Bailey
Judges Tavitas and Kenworthy concur.

Bailey, Judge.

Case Summary

[1] John A. Bridges, Jr. ("Bridges") appeals the post-conviction court's denial, following a bench trial, of his amended petition for post-conviction relief ("PCR"). We affirm.

Issues

[2] Bridges raises the following issues:

I. Whether the post-conviction court clearly erred when it denied Bridges' claims that his trial counsel was ineffective.

II. Whether the post-conviction court clearly erred when it denied Bridges' claims that his appellate counsel was ineffective.

III. Whether the trial court clearly erred when it denied Bridges' claim that the State suppressed exculpatory evidence in violation of *Brady v. Maryland*.

IV. Whether the trial court abused its discretion when it denied Bridges' request to discover a confidential informant's entire police file.

Facts and Procedural History

[3] Following a bench trial on June 16-17, 2014, Bridges was found guilty of dealing in cocaine, as a Level 2 felony;[1] dealing in a narcotic drug, as a Level 4 felony;[2] dealing in a narcotic drug, as a Level 5 felony;[3] dealing in a narcotic drug, as a Level 5 felony;[4] and dealing in marijuana, hash oil or hashish, as a Level 6 felony.[5] On July 2, 2015, he was sentenced to twenty-five years in the Department of Correction with twenty years executed and five years suspended. On August 5, 2015, Bridges appealed, alleging insufficient evidence to support his convictions, and a panel of this Court affirmed his convictions. *Bridges v. State*, No. 02A04-1507-CR-1046, 2016 WL 1583766 (Ind. Ct. App. April 20, 2016), *trans. denied*.

[4] On direct appeal, this Court summarized the facts supporting the convictions as follows:

> On January 20, 2015, Emily Begnene made a controlled buy of heroin. She was acting as a confidential informant and was supervised by Detective Shane Heath of the Fort Wayne Police Department's Vice and Narcotics Division. Police drove Begnene to 3025 Plaza, Allen County. Begnene met Bridges and purchased over a gram of heroin from him. Bridges' girlfriend,

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[1] Ind. Code § 35-48-4-1 (2014).

[2] I.C. § 35-48-4-1(c) (2014).

[3] I.C. § 35-48-4-1(a)(1) (2014).

[4] I.C. § 35-48-4-1(a)(1) (2014).

[5] I.C. § 35-48-4-10(a), (b) (2014).

Yolanda McGee, was present during the sale. The heroin purchased was a brown powdery substance.

On January 30, 2015, Begnene made a second controlled buy of heroin, again supervised by Detective Heath. Police drove Begnene to meet Bridges at 814 Lake Avenue, Apartment 3, Allen County, where Bridges and McGee resided. McGee was also present during this controlled buy. The heroin purchased was a grayish-blue substance. After this buy, police brought Begnene back to the station, where she identified Bridges in a photo array as the person from whom she had purchased heroin on both occasions.

Based on the controlled buys, Detective Heath obtained a search warrant to search Bridges' apartment at 814 Lake Avenue. Bridges and McGee lived at the apartment but were not listed on the lease. The legal tenant was Christina Sims, who allowed Bridges to live at the apartment in exchange for drugs and rent payment.

On February 3, 2015, Fort Wayne police executed the search warrant. After police breached the door, Bridges and McGee exited the apartment. Bridges was wearing only boxer shorts, so he asked Detective Heath to bring him his pants from a chair in the living room. Detective Heath found Bridges' wallet, identification, and $1,300.00 in cash in the pants' pocket. On the same chair, police discovered a size 5X hoodie jacket, which was proportional to the size of Bridges' pants. Police found in the pocket of the jacket a baggie containing substances determined to be cocaine and heroin. The drugs were packaged in a manner common for distribution.

The search also uncovered other incriminating items. A container of plastic baggies and a scale that tested positive for cocaine residue were found in a desk drawer.[] Three clear

> plastic baggies were found with the corners removed. Detectives found a total of 90.8 grams of marijuana in a baggie in the bathroom toilet bowl and in a jar beside the chair where the other drugs and clothing were found. A loaded firearm was found under the mattress in the bedroom where Bridges had been sleeping. Detective Jamie Masters found a smartphone with a telephone number corresponding to the number Begnene had called to set up both controlled buys from Bridges.

Id. at *1.

[5] On February 6, 2017, Bridges filed a pro se petition for PCR. Bridges subsequently obtained counsel, who filed amended PCR petitions on August 18, 2020, and August 25, 2021. Bridges also filed a motion to compel discovery in which he sought "the entire file on CI 1988," i.e., Begnene. App. at 80. Following a hearing on the motion, the court denied it. The court conducted evidentiary hearings on the issues raised in Bridges' PCR action on April 19, 2021, June 14, 2021, and March 28, 2022.

[6] On November 4, 2022, the post-conviction court issued its written order in which it made findings of fact and conclusions thereon. In addition to the facts summarized by this Court in the direct appeal, the post-conviction court's factual findings included the following:

> 6. At trial, the CI (Begnene) identified Mr. Bridges as the person who twice sold heroin to her in controlled buys. Before trial, the CI had identified 814 Lake Avenue, Apartment 3, as the location of the second controlled buy, and this information was used to obtain the search warrant

that led to the discovery of heroin, cocaine, and cash in Mr. Bridges'[] jacket.

7. Detective Heath had repeatedly seen a [red] Nissan automobile, said by the CI to be driven by the drug dealer known to her as "B.I.," at the locations of the controlled drug buys. Tr. [at] 143-144.[6] [Detective] Heath accordingly asked Detective Kirby to stop the car and identify the driver because the driver was suspected of drug dealing based on the controlled buys; Kirby proceeded to do so, and Mr. Bridges was identified as the driver. [Bridges' trial a]ttorney, [Bart] Arnold, unsuccessfully moved to suppress the evidence of the pretrial identification of Mr. Bridges as the driver. On appeal, [Bridges'] attorney, [Mark] Thoma[,] did not argue that this evidence should not have been admitted.

8. Evidence that Mr. Bridges had sold drugs on other occasions, and had paid rent in the form of drugs, was admitted at trial. Attorney Arnold did not object to this evidence. Additional evidence of Mr. Bridges'[] involvement with drugs, not alleged to have been objectionable, was Mr. Bridges'[] statement when interviewed that he could get a big heroin dealer and could buy an ounce of heroin right then.

9. The CI disclosed to Detective Heath the cell phone number she had called to set up the drug deals. Detective Heath obtained Mr. Bridges'[] cell phone before interviewing him. Mr. Bridges disclosed his cell phone

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[6] As the post-conviction court did, we refer to the transcript from the criminal trial as "Tr." and the transcript from the post-conviction hearings as "PCR-Tr."

number during routine booking.[7] Detective Heath testified that Mr. Bridges'[] cell phone number was the same as that called by the CI. Attorney Arnold objected to the evidence of Mr. Bridges'[] disclosure of the number, but not to the remaining evidence regarding the number.

10. The search warrant affidavit states that the CI was seen entering 814 Lake Avenue through the rear door, and that "[t]he entrance for apartment #3 is the only door at the rear of the residence." Petitioner's Exhibit A at 1, 3. It says nothing about whether apartment 3 is the only apartment that can be entered by way of that door, but it goes on to specify how, after entering through that door, apartment 3 can be identified:

> Once inside of the back door, the stairs go straight up. Upon reaching the second level, apartment #3 is straight ahead. It is marked with a #3.

Id. The affidavit does not state that the CI was a paid informant and does not disclose that the CI had "shorted" Detective Heath $100 on the first controlled buy in order to pay off a drug debt, both of which are true. PCR Tr. [at] 64-79. Attorney Arnold did not object to the admission of the evidence obtained by means of the search warrant.

11. At the final pretrial hearing on May 20, 2015, Mr. Bridges expressed dissatisfaction with attorney Arnold and inquired about the possibility of representing himself at trial. The Court acknowledged Mr. Bridges'[] right to represent himself, but declined to continue the trial set for

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[7] Bridges' motion to suppress evidence of the telephone number Bridges supplied at booking was granted.

> June 16 and 17 in order to allow Mr. Bridges to prepare to represent himself. Then, claiming that he had no other choice, Mr. Bridges agreed to proceed to trial represented by attorney Arnold. Attorney Thoma did not argue on appeal that Mr. Bridges'[] right to represent himself had been violated.
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> 12. After Mr. Bridges'[] sentencing[,] the prosecutor learned, and informed attorney Arnold [in November of 2015], that the CI had been paid for testifying. Attorney Arnold testified that he had no reason to question the CI's veracity based on being paid; that he did not think the courts or juries seemed to care that CIs were paid; and that being paid to testify was no different from being paid to do a controlled buy "if they tell you[,]" although he did not "like that we did not know that." [PCR Tr.] at 58. Detective Heath testified without contradiction that he did not suggest that the CI "would only get paid if she testified a certain way that was [to his] satisfaction." *Id*. at 92.

Appealed Order at 3-5 (record citations omitted, other than those for quotations).

[7] The post-conviction court denied Bridges' petition for PCR, and this appeal ensued.

Discussion and Decision

Standard of Review

[8] The general rules regarding the review of a ruling on a petition for post-conviction relief are well established:

> "The petitioner in a post-conviction proceeding bears the burden of establishing grounds for relief by a preponderance of the evidence." *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." *Id*. To prevail on appeal 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). Further, the post-conviction court in this case made findings of fact and conclusions of law in accordance with Indiana Post-Conviction Rule 1(6). Although we do not defer to the post-conviction court's legal conclusions, "[a] post-conviction court's findings and judgment will be reversed only upon a showing of clear error—that which leaves us with a definite and firm conviction that a mistake has been made." *Ben-Yisrayl v. State*, 729 N.E.2d 102, 106 (Ind. 2000) (quotation omitted).

Hollowell v. State, 19 N.E.3d 263, 268-69 (Ind. 2014). The post-conviction court "'is the sole judge of the weight of the evidence and the credibility of witnesses.'" *Williams v. State*, 160 N.E.3d 563, 576 (Ind. Ct. App. 2020) (quoting *Woods v. State*, 701 N.E.2d 1208, 1210 (Ind. 1998)), *trans. denied*.

Assistance of Trial Counsel

[9] Bridges asserts that his trial counsel provided ineffective assistance. We review such claims under the two components set out in *Strickland v. Washington*, 466 U.S. 668 (1984). *Wentz v. State*, 766 N.E.2d 351, 360 (Ind. 2002).

> First, the defendant must show that counsel's performance was deficient. 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. Second, the defendant must show that the deficient performance prejudiced the defendant. 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. A reasonable probability is a probability sufficient to undermine confidence in the outcome.

Id. (citations omitted). To prove ineffective assistance of trial counsel due to a failure to object, "a defendant must prove that an objection would have been sustained if made and that he was prejudiced by the failure." *Wrinkles v. State*, 749 N.E.2d 1179, 1192 (Ind. 2001).

[10] We will not second-guess trial counsel's strategy and tactics unless they are so unreasonable that they fall outside objective standards. *Lee v. State*, 91 N.E.3d 978, 983 (Ind. Ct. App. 2017), *trans. denied*. Isolated mistakes, poor strategy, inexperience, and instances of bad judgment do not necessarily render representation ineffective. *Wentz*, 766 N.E.2d at 361. Moreover, "[a]lthough the performance prong and the prejudice prong are separate inquiries, failure to satisfy either prong will cause the claim to fail." *Baer v. State*, 942 N.E.2d 80, 91 (Ind. 2011) (citation omitted). Thus, "[i]f we can easily dismiss an ineffective assistance claim based upon the prejudice prong, we may do so without addressing whether counsel's performance was deficient." *Id*.

[11] Bridges raises five specific claims of ineffective assistance of trial counsel. We address each in turn.

1. Failure to object to identification of Bridges at the traffic stop.

[12] Bridges' trial counsel moved to suppress evidence obtained from the stop of Bridges' car on the grounds that "there was no Constitutional reason … to make the stop at that point in time," and the trial court denied that request. Tr. at 58. However, Bridges asserts that his counsel was nevertheless ineffective for failing to specifically object on the ground that the stop was improperly based on the officers' identification of Bridges as the person who exited a common door leading to three different apartments.

[13] The Fourth Amendment to the United States Constitution "permits an officer to initiate a brief investigative traffic stop when he has [reasonable suspicion; that is,] 'a particularized and objective basis for suspecting the particular person stopped of criminal activity.'" *Kansas v. Glover*, 140 S. Ct. 1183, 1187 (2020) (quoting *United States v. Cortez*, 449 U.S. 411, 417-18 (1981)). Reasonable suspicion may be established on the basis of the collective knowledge of law enforcement officers. *Griffith v. State*, 788 N.E.2d 835, 840 (Ind. 2003).

[14] Detective Heath had repeatedly seen the red Nissan automobile, said by the CI to be driven by the drug dealer known to her as "B.I.," at the locations of the controlled drug buys. The officers observed Bridges leave the apartment building where the second controlled buy had occurred, get into the Nissan, and drive away in it. Detective Heath asked Detective Kirby to stop the Nissan and identify the driver because the driver was suspected of drug dealing based on the controlled buys. Those facts provided a particularized and objective basis

for suspecting that the driver of the Nissan was involved in the criminal activity of drug dealing. Thus, Detective Kirby's subsequent stop of the Nissan was based on reasonable suspicion, and the identification of Bridges as the driver did not result from any illegality. Any objection on that basis would not have been sustained.

[15] Furthermore, even if such an objection could have been sustained, Bridges has failed to show he was prejudiced by the lack of the objection since there was sufficient other evidence identifying Bridges as the drug dealer. Specifically, the CI, Begnene, identified Bridges at trial when testifying about the controlled drug buys in which she engaged with Bridges. *See Bridges*, 2016 WL 1583766 at *3.

[16] Bridges has failed to show his trial counsel was ineffective for failure to object to evidence that officers identified Bridges by witnessing him exiting a common door leading to three different apartments, as such an objection would not have been sustained and, in any case, was not prejudicial. *See Wrinkles*, 749 N.E.2d at 1192.

2. Failure to object to evidence of other bad acts.

[17] Bridges maintains that his trial counsel was ineffective for failing to object to testimony regarding his prior drug transactions, as that evidence was inadmissible under Rule of Evidence 404(b). That rule provides, in relevant part, that "[e]vidence of a crime, wrong or other act is not admissible to prove a person's character in order to show that on a particular occasion the person

acted in accordance with the character." Ind. Evidence Rule 404(b)(1). The purpose of this rule in the criminal context is to prevent a jury from "infer[ring] that a defendant's past criminal act suggests present guilt." *Sims v. Pappas*, 73 N.E.3d 700, 708 (Ind. 2017). However, we presume no such dangerous inference in the context of a bench trial; on the contrary, we "generally presume that in a proceeding tried to the bench a court renders its decisions solely on the basis of relevant and probative evidence." *Konopasek v. State*, 946 N.E.2d 23, 28 (Ind. 2011). Here, Bridges has pointed to no reason why that "judicial-temperance presumption" does not apply, and we find that it does. *See id*.

[18] Thus, even if the evidence of Bridges' prior drug transactions was erroneously admitted, as the post-conviction court found, the admission was not prejudicial because the trial court did not rely on the improperly admitted evidence. Rather, there was sufficient other evidence establishing Bridges' guilt beyond a reasonable doubt of the charged drug dealing. *See Bridges*, 2016 WL 1583766 at *3-4 (finding sufficient evidence, *not including* evidence of prior drug transactions, to support Bridges' convictions). Bridges has failed to show his trial counsel was ineffective for failing to object to the evidence of his prior drug transactions since he suffered no prejudice from the failure to object. *See Wrinkles*, 749 N.E.2d at 1192.

3. Failure to object to Detective Heath's identification of Bridges' cellular telephone number.

[19] Bridges contends that his trial counsel was ineffective for failing to object to Detective Heath's testimony associating Bridges' cellular telephone number

with the cellular telephone admitted into evidence; he asserts his counsel should have objected to the same on foundation and authentication grounds. However, Bridges has failed to show the required prejudice from such a failure. Even if trial counsel had objected to Detective Heath's testimony and that objection had been sustained, there was other substantial evidence identifying Bridges' cell phone and its number, including the CI's disclosure of the cell phone number she called to set up the drug deals, Detective Heath's testimony that the cell phone was collected from Bridges' apartment, and the cell phone itself, which—as the post-conviction court noted—easily could have been called by dialing the cell phone number provided by the CI.

[20] Moreover, even if there had been no evidence at all of Bridges' cell phone and number, there was ample other evidence that supported his convictions, including the CI's identification of Bridges as the person from whom she bought the drugs during both controlled buys, the corroborating evidence from officers who observed the controlled buys, and the evidence found with Bridges in the apartment. Because Bridges has failed to show prejudice from his counsel's failure to object to Detective Heath's testimony associating Bridges' cell phone number with the cell phone found in Bridges' apartment, he has failed to show his trial counsel was ineffective on that ground.

4. Failure to object to evidence found pursuant to the search warrant.

[21] Bridges maintains that the search warrant for the apartment was invalid because the probable cause affidavit was missing essential information identifying the

apartment to be searched and regarding the CI's credibility. He asserts that his trial counsel was ineffective for failing to object on those specific grounds to the admission of evidence found pursuant to the search warrant.

[22] A probable cause affidavit must include "material facts" known to law enforcement. *State v. Vance*, 119 N.E.3d 626, 632 (Ind. Ct. App. 2019), *trans. denied*. A fact is material if it "cast[s] doubt on the existence of probable cause.'" *Query v. State*, 745 N.E.2d 769, 772 (Ind. 2001).

> When material information is omitted from a probable cause affidavit, such omission will invalidate a warrant if (1) the police omitted facts with the intent to make the affidavit misleading or with reckless disregard for whether it would be misleading, and (2) the affidavit supplemented with the omitted information would have been insufficient to support a finding of probable cause. [*Ware v. State*, 859 N.E.2d 708,] 718 [(Ind. Ct. App. 2007), *trans. denied*]. We have recognized that omissions from a probable cause affidavit are made with reckless disregard "if an officer withholds a fact in his ken that '[a]ny reasonable person would have known that this was the kind of thing the judge would wish to know.'" *Gerth v. State*, 51 N.E.3d 368, 375 (Ind. Ct. App. 2016) (quoting *Wilson v. Russo*, 212 F.3d 781, 788 (3rd Cir. 2000)).

Vance, 119 N.E.3d at 632.

[23] An objection to the admission of evidence found in the apartment based on the probable cause affidavit's alleged lack of specificity of the address to be searched would not have been sustained. The affidavit contained the specific address to be searched. And, as the post-conviction court found, it also

contained specific information that unambiguously informed the officers executing the warrant that, to enter apartment 3, they had to go through the only door at the rear of the residence. The affidavit further provided these very specific instructions regarding the location of the apartment to be searched, i.e., apartment 3:

> Once inside of the back door, the stairs go straight up. Upon reaching the second level, apartment #3 is straight ahead. It is marked with a #3.

Appealed Order at 5. It is hard to imagine how the affidavit could have described the apartment to be searched more specifically. The post-conviction court did not err when it concluded that any objection on the grounds that the affidavit insufficiently described the place to be searched would not have been sustained.

[24] Bridges also contends that his counsel was ineffective for failing to object to the lack of information in the probable cause affidavit relevant to the CI's credibility; specifically, that she was a paid informant and that she "shorted" Detective Heath $100 on the first controlled buy. However, Bridges has not shown why being paid would have made the CI's information regarding Bridges' identity or the location of the drug deals any less reliable. And, while the CI's dishonesty in "shorting" the detective $100 on the first controlled buy is certainly relevant to her credibility, Bridges again fails to show how such dishonesty would have made the CI's information regarding Bridges' identity or the location of the drug deals any less reliable. The post-conviction court did

not clearly err when it determined that the affidavit would have been sufficient to show probable cause even if the information about the CI had been included. Because Bridges has failed to show prejudice from his counsel's failure to object to the omission of facts regarding the CI, he has failed to show his trial counsel was ineffective on that ground.

5. Impact of alleged cumulative trial counsel ineffectiveness.

[25] Finally, Bridges asserts that his trial counsel's errors, viewed cumulatively, amount to ineffective assistance of counsel.

> Generally, trial errors that do not justify reversal when taken separately also do not justify reversal when taken together. However, in the context of ineffective assistance of counsel, a reviewing court also assesses whether the cumulative prejudice accruing to the accused as a result of counsel's errors has rendered the result unreliable, necessitating reversal under *Strickland*'s second prong.

Weisheit v. State, 109 N.E.3d 978, 992 (Ind. 2018) (quotations and citations omitted).

[26] As previously discussed, Bridges has failed to show that any of the alleged trial court errors prejudiced him. And he has provided no additional argument showing how those nonprejudicial alleged errors, when taken together, rendered the convictions unreliable and thereby caused him prejudice. The post-conviction court did not clearly err in ruling that trial counsel did not provide ineffective assistance.

Assistance of Appellate Counsel

[27] Bridges also raises two ineffective assistance of appellate counsel claims.

> To show that counsel was ineffective for failing to raise an issue on appeal thus resulting in waiver for collateral review, the defendant must overcome the strongest presumption of adequate assistance, and judicial scrutiny is highly deferential. *Ben-Yisrayl v. State*, 738 N.E.2d 253, 260-61 (Ind. 2000). To evaluate the performance prong when counsel waived issues upon appeal, we apply the following test: (1) whether the unraised issues are significant and obvious from the face of the record and (2) whether the unraised issues are "clearly stronger" than the raised issues. *Timberlake v. State*, 753 N.E.2d 591, 605-06 (Ind. 2001). If the analysis under this test demonstrates deficient performance, then we evaluate the prejudice prong which requires an examination of whether "the issues which ... appellate counsel failed to raise, would have been clearly more likely to result in reversal or an order for a new trial." *Bieghler* [*v. State*], 690 N.E.2d [188,] 194 [(Ind. 1997)] (citation omitted).

Henley v. State, 881 N.E.2d 639, 645 (Ind. 2008). As with an ineffective assistance of trial counsel claim, a failure to satisfy either the performance prong or the prejudice prong will cause the ineffective assistance of appellate counsel claim to fail, and if we can easily dismiss the claim based upon the prejudice prong alone, we may do so. *Id*.

[28] Bridges first alleges that his appellate counsel was ineffective for failing to raise a challenge to the identification of Bridges on the grounds that the stop of his vehicle was not supported by reasonable suspicion as required by the Fourth Amendment to the United States Constitution. However, as we discussed in

some detail above, there was reasonable suspicion to stop the Nissan, which led to the identification of Bridges as the driver. Thus, if appellate counsel had raised that issue, it would not have been clearly more likely to result in reversal or an order for a new trial. Bridges has shown no prejudice from the failure to raise the alleged Fourth Amendment issue.

[29] Bridges next asserts that his appellate counsel was ineffective for failing to raise a claim that the trial court's alleged denial of his right to represent himself was unconstitutional. However, the trial court did not deny Bridges the right to represent himself; rather, it simply informed him that, if he did so, the court would not continue the trial in order for Bridges to do additional preparation for trial. Thus, as the post-conviction court found, Bridges' claim is actually that his appellate counsel should have raised the claim that the trial court erroneously denied him a right to a continuance.

[30] Such a claim would have failed. The denial of a non-statutory request for a continuance is committed to the trial court's discretion and will be reversed only upon a showing of abuse of discretion and resulting prejudice. *Maxey v. State*, 730 N.E.2d 158, 160 (Ind. 2000). Continuances sought shortly before trial to hire a new attorney or represent oneself are disfavored because they cause substantial loss of time for jurors, lawyers, and the court and may impede sound judicial administration. *See Lewis v. State*, 730 N.E.2d 686, 689 (Ind. 2000) (holding it is within a trial court's discretion to deny a last-minute continuance to hire new counsel); *Minneman v. State*, 466 N.E.2d 438, 440-41 (Ind. 1984) (holding it was within the trial court's discretion to deny a last-

minute continuance in order to prepare for self-representation where multiple continuances had already been granted and defense counsel was prepared to proceed with the trial as scheduled).

[31] Here, at the final pretrial hearing on May 20, 2015, Bridges sought a continuance in order to prepare to represent himself at the trial that was scheduled to begin in less than one month, although the trial had already been continued multiple times, and both defense counsel and the prosecution were prepared to proceed with the trial as scheduled. The trial court acted within its discretion when it denied that request. *See Minneman*, 466 N.E.2d at 440-41. Therefore, Bridges' appellate counsel did not provide ineffective assistance by failing to raise such a claim, as it would not have been clearly more likely to result in reversal or a new trial. *See Henley*, 881 N.E.2d at 645.

Suppression of Exculpatory Evidence

[32] Bridges raises a free-standing claim[8] that the State violated his due process rights by failing to disclose all exculpatory evidence to the defense.

> In *Brady v. Maryland*, the United States Supreme Court held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). In order to prevail on a *Brady*

[8] Bridges' counsel did not learn of the newly discovered information about the CI being paid to testify until his appeal was already pending. Thus, his *Brady* claim based on that evidence is properly raised in his PCR action. *See, e.g.*, *Myers v. State*, 33 N.E.3d 1077, 1114-16 (Ind. Ct. App. 2015), *trans. denied*.

> claim, the defendant must establish: "(1) that the prosecution suppressed evidence; (2) that the evidence was favorable to the defense; and (3) that the evidence was material to an issue at trial." *Stephenson v. State*, 864 N.E.2d 1022, 1056-57 (Ind. 2007) (quoting *Conner v. State*, 711 N.E.2d 1238, 1245-46 (Ind. 1999)). Under *Brady*, evidence is considered material if the defendant establishes a reasonable probability that the result of the proceeding would have been different had the State disclosed the evidence. *Stephenson*[], 864 N.E.2d 1022.

Myers v. State, 33 N.E.3d 1077, 1114 (Ind. Ct. App. 2015), *trans. denied*; *see also Kyles v. Whitley*, 514 U.S. 419, 434 (1995) ("The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence."). The United State Supreme Court has further held that "the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police."). *Kyles*, 514 U.S. at 437.

[33] Here, although Detective Heath apparently paid the CI $100 on June 16, 2015, for her testimony at Bridges' criminal trial, the Prosecutor's office did not learn about the payment for the CI's testimony until approximately November of 2015. Bridges' trial counsel testified in the post-conviction court that the Prosecutor had "just found out" in approximately November of 2015 that the CI had been paid to testify in Bridges' case, and the Prosecutor soon thereafter informed trial counsel of the same. PCR Tr. at 50-51. Detective Heath testified that he did not tell the CI that she "would only get paid if she testified a certain way that was to [his] satisfaction." *Id*. at 92. And Bridges' trial counsel further

testified that "all confidential informants around here are paid," and the courts and juries do not "seem to care that [the CIs] get paid." *Id*. at 58. Trial counsel stated his opinion that the pay to CIs is so low that it "doesn't go much toward the veracity." *Id*.

[34] That evidence supports the post-conviction court's finding that the alleged exculpatory evidence was not material because, even if the trial court had been informed that the CI was paid to testify, that evidence "falls short of creating a reasonable probability that the outcome of the trial would have been different." Appealed Order at 12. Bridges' assertions to the contrary are requests that we reweigh the evidence and judge witness credibility, which we may not do. *See Williams*, 160 N.E.3d at 576.

Denial of Discovery Request

[35] Bridges maintains that the post-conviction court erred when it denied his discovery request seeking the entire police file on CI Begnene. Post-conviction proceedings are "governed by the same rules applicable in civil proceedings[,] including pre-trial and discovery procedures." *Pannell v. State*, 36 N.E.3d 477, 493 (Ind. Ct. App. 2015) (quotation and citation omitted), *trans. denied*. Our standard of review in discovery matters is limited to determining whether the trial court abused its discretion. *Hale v. State*, 54 N.E.3d 355, 357 (Ind. 2016). The trial court abuses its discretion when its decision is against the logic and effect of the facts and circumstances before the court. *Id*. "Due to the fact-sensitive nature of discovery matters, the ruling of the trial court is cloaked in a

strong presumption of correctness on appeal." *Hinkle v. State*, 97 N.E.3d 654, 664 (Ind. Ct. App. 2018) (quotation and citation omitted), *trans. denied*.

[36] While the same rules of trial procedure apply in post-conviction proceedings, post-conviction discovery "should be appropriately narrow and limited," rather than a fishing expedition "to investigate possible claims, not vindicate actual claims." *Id.* at 665; *see also Roache v. State*, 690 N.E.2d 1115, 1132 (Ind. 1997) ("[T]here is no postconviction right to 'fish' through official files for belated grounds of attack on the judgment, or to confirm mere speculation or hope that a basis for collateral relief may exist.") (quoting *State v. Marshall*, 148 N.J. 89, 690 A.2d 1, 92 (N.J. 1997) (internal quotations and citations omitted)). Thus, in *Roache*, our Supreme Court upheld the post-conviction court's denial of a motion for discovery where the discovery request sought the State's entire criminal file rather than "specific information in the State's files that supports [the PCR petitioner's] claims of ineffective assistance of counsel." *Id*. at 1133; *see also Pannell*, 36 N.E.3d at 493 ("A second opportunity to discover the same evidence [available to a PCR petitioner in his prior criminal trial] will typically be precluded.").

[37] As in *Roache*, Bridges' discovery request sought broad discovery of the CI's police file rather than only that information relevant to Bridges' case, the latter of which already had been submitted to the post-conviction court. The trial court did not abuse its discretion when it denied that request because it sought "irrelevant" information. PCR Tr. at 102. *See* Evid. R. 26(B)(1) (providing parties may obtain discovery regarding any non-privileged matter "which is

relevant to the subject-matter involved in the pending action"); *Lott v. State*, 690 N.E.2d 204, 210 (Ind. 1997) (holding the evidence of payments to a confidential informant in other cases was "not material").

Conclusion

[38] The post-conviction court did not clearly err in denying Bridges' ineffective assistance of trial and appellate counsel claims because Bridges failed to show any prejudice from his counsels' alleged errors. The post-conviction court also did not err when it denied Bridges' *Brady* claim, as he failed to show the alleged exculpatory evidence was material to an issue at trial. And, finally, the post-conviction court did not abuse its discretion when it denied Bridges' discovery request for the entire police file on the CI, as Bridges failed to show that evidence of payment to the CI in other cases was relevant.

[39] Affirmed.

Tavitas, J., and Kenworthy, J., concur.