MEMORANDUM DECISION

APPELLANT PRO SE

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ATTORNEYS FOR APPELLEE

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IN THE COURT OF APPEALS OF INDIANA

Jeffrey Leonard,
Appellant-Petitioner,

v.

State of Indiana,
Appellee-Respondent.

April 30, 2021

Court of Appeals Case No. 20A-PC-987

Appeal from the Hamilton Superior Court

The Honorable Michael A. Casati, Judge

Trial Court Cause No. 29D01-1912-PC-10290

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Petitioner, Jeffrey Leonard (Leonard), appeals the post-conviction court's denial of his petition for post-conviction relief.

[2] We affirm.

ISSUES

[3] Leonard presents three issues for our review, which we restate as follows:

(1) Whether Leonard's arrest was supported by probable cause;
(2) Whether Leonard's trial counsel provided effective assistance of counsel when he failed to move to suppress Leonard's post-arrest statements; and
(3) Whether Leonard's guilty plea was voluntarily and knowingly made.

FACTS AND PROCEDURAL HISTORY

[4] At approximately 12:55 p.m. on February 29, 2016, Lieutenant Michael Taylor (Officer Taylor) of the Fishers Police Department initiated a traffic stop of a vehicle for speeding and failing to signal. While Officer Taylor's lights and siren were activated, the officer noticed the passenger, later identified as Leonard, reach down and raise his hips off the seat as if to conceal an item. The driver of the vehicle, later identified as Jonita Robinson (Robinson), continued to drive for about another mile before coming to a stop. Upon approaching the vehicle on the driver's side, Officer Taylor observed Robinson visibly shaking and breathing heavily. After requesting Robinson to exit the vehicle, Officer Taylor approached the passenger side, where Leonard

explained that he and Robinson had travelled to Indianapolis to look at a car and stop at a friend's house. Upon returning to his police vehicle, Officer Taylor started to draft a warning for the traffic infractions and requested the presence of a canine officer. As he was writing the warning, Officer Taylor was informed that Robinson held a driver's license that had been previously suspended, and that Leonard was a lifetime habitual traffic offender.

[5] Officer Taylor requested Leonard to exit the vehicle, after which Leonard consented to a search of his person. Leonard claimed to have $200 in small bills, but officers later located $3,994.00 folded and banded together. Based on their training and experience, the officers opined that the money was held in a way consistent with drug trafficking even though Leonard insisted that his vehicle was not a "drug truck." (PCR Exh. C at 32). A canine officer arrived and gave a positive alert on the vehicle. The officers detained Leonard and Robinson and read Leonard his *Miranda* rights while explaining that he was only being detained for the purpose of a vehicle search. While the vehicle was being searched, Robinson admitted that she had lied about the reason for travelling to Indianapolis and clarified that Leonard had met with an unknown female.

[6] During the search of the vehicle, the officers located a black digital scale with residue in the passenger compartment where Leonard had been sitting. When an officer voiced his belief that, based on his training and experience, the residue was heroin, Leonard responded that he had tried to buy heroin but had been unable to make the "connection." (PCR Exh. C at 32-33).

[7] The officers transported Leonard and Robinson to the station to conduct a strip search. At the station, Robinson admitted to having heroin concealed in her underwear and informed the officers that Leonard had handed it to her when they were being pulled over. She removed a clear plastic bag with an off-white substance that weighed twenty-seven grams. Leonard admitted to purchasing between four and five ounces of heroin a week and giving an ounce of heroin to Robinson to conceal in her underwear when they were stopped.

[8] On June 2, 2016, the State filed an Information, charging Leonard with dealing in a narcotic drug, a Level 2 felony. On September 14, 2017, Leonard pleaded guilty as charged in exchange for the State's agreement to cap his sentence to fifteen years. The trial court accepted Leonard's plea of guilty and sentenced him to the Department of Correction for fifteen years.

[9] On December 10, 2019, Leonard filed a petition for post-conviction relief, asserting that his trial counsel had been ineffective for failing to move for the suppression of his post-arrest statements and that his plea had not been entered knowingly and voluntarily. On February 20, 2020, the post-conviction court conducted an evidentiary hearing and issued its findings of fact and conclusions thereon, denying post-conviction relief.

[10] Leonard now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Probable Cause for Arrest*

[11] Leonard first contends that the trial court abused its discretion in finding that the officers had sufficient probable cause to stop him and subsequently to arrest him. Disregarding the fact that Leonard entered into a plea agreement with the State, the issue of probable cause was known and available to be raised during a direct appeal, and therefore, the claim is not available as a freestanding claim of error in a post-conviction proceeding. *See Sanders v. State*, 765 N.E.2d 591, 591 (Ind. 2002).

II. *Ineffective Assistance of Trial Counsel*

A. *Standard of Review*

[12] Post-conviction proceedings are civil proceedings in which the defendant must establish his claims by a preponderance of the evidence. *Wilkes v. State*, 984 N.E.2d 1236 (Ind. 2013). Postconviction proceedings do not offer a super appeal; rather, subsequent collateral challenges to convictions must be based on grounds enumerated in the post-conviction rules. *Id*. at 1240. Those grounds are limited to issues that were not known at the time of the original trial or that were not available on direct appeal. *Id*. Issues available but not raised on direct appeal are waived, while issues litigated adversely to the defendant are *res judicata*. *Id*. Claims of ineffective assistance of counsel and juror misconduct may be proper grounds for post-conviction proceedings. *Id*.

[13] Because Leonard is appealing from the denial of post-conviction relief, he is appealing from a negative judgment and bears the burden of proof. *Id*. Thus, he must establish that the evidence, as a whole, unmistakably and unerringly

points to a conclusion contrary to the post-conviction court's decision. *Id*. In other words, Leonard 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. *Id*. We will not reweigh the evidence or judge the credibility of witnesses, and will consider only the probative evidence and reasonable inferences flowing therefrom that support the post-conviction court's decision. *Graham v. State*, 941 N.E.2d 1091, 1096 (Ind. Ct. App. 2011), *aff'd on reh'g*, 947 N.E.2d 962 (Ind. Ct. App. 2011).

B. *Ineffective Assistance of Trial Counsel*

[14] Leonard argues that the post-conviction court erred in finding that he was not denied the effective assistance of trial counsel. We review claims of ineffective assistance of counsel under the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). To prevail on a claim of ineffective assistance of counsel, a petitioner must demonstrate both that his counsel's performance was deficient and that the petitioner was prejudiced by the deficient performance. *Ben–Yisrayl v. State*, 729 N.E.2d 102, 106 (Ind. 2000) (citing *Strickland*, 466 U.S. at 687, 104 S.Ct. 2052), *cert. denied* (2001). A counsel's performance is deficient if it falls below an objective standard of reasonableness based on prevailing professional norms. *French v. State*, 778 N.E.2d 816, 824 (Ind. 2002). To establish prejudice, the petitioner 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. Isolated poor strategy, inexperience, or bad tactics does not necessarily constitute ineffective assistance. *Clark v. State*, 668 N.E.2d 1206, 1211 (Ind. 1996), *cert. denied* (1997). When considering a claim of ineffective assistance of counsel, we strongly presume "that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Morgan v. State*, 755 N.E.2d 1070, 1073 (Ind. 2001). "[C]ounsel's performance is presumed effective, and a defendant must offer strong and convincing evidence to overcome this presumption." *Williams v. State*, 771 N.E.2d 70, 73 (Ind. 2002). The *Strickland* standard is not limited to the trial or appellate phases in criminal proceedings, but also applies when defendants allege ineffective assistance during the guilty plea phase. *Padilla v. Kentucky*, 559 U.S. 356, 373, 130 S.Ct. 1473, 176 L.Ed.2d 284 (2010) ("[W]e have long recognized that the negotiation of a plea bargain is a critical phase of litigation for purposes of the Sixth Amendment right to effective assistance of counsel.").

[15] Because Leonard was convicted pursuant to a guilty plea, we analyze his claims under *Segura v. State*, 749 N.E.2d 496 (Ind. 2001), *disapproved of on other grounds in Bobadilla v. State*, 117 N.E.3d 1272 (Ind. 2019). *Segura* identifies two main types of ineffective assistance of counsel claims with regard to guilty pleas: failure to advise the defendant on an issue that impairs or overlooks a defense and incorrectly advising the defendant about penal consequences. *Manzano v. State*, 12 N.E.3d 321, 326 (Ind. Ct. App. 2014), *trans. denied; cert. denied*, 575 U.S. 1044, 135 S.Ct. 2376, 192 L.Ed.2d 177 (2015). Leonard's claim, that his trial counsel failed to advise him on an issue that overlooked a possible defense,

appears to fall into the first category. To establish a claim of ineffective assistance of trial counsel following a guilty plea where the alleged error is one that would have affected a defense, the petitioner must show a reasonable probability of success on the merits. *Segura*, 749 N.E.2d at 503. In other words, to show prejudice, Leonard must prove that "a defense was indeed overlooked or impaired and that the defense would have likely changed the outcome of the proceeding." *Maloney v. State*, 872 N.E.2d 647, 650 (Ind. Ct. App. 2007).

[16] Leonard contends that his trial counsel was ineffective for failing to file a motion to suppress his post-arrest statements to the officers "obtained after his illegal arrest." (Appellant's Br. p. 25). Law enforcement "may not initiate a stop for any conceivable reason[;]" they must have at least reasonable suspicion lawbreaking occurred. *Finger v. State*, 799 N.E.2d 528, 532 (Ind. 2003). Nor can police rely on a "mere 'hunch,' simply suggesting a person committed a crime before making a *Terry* Stop, like a traffic stop. *Navarette v. California*, 572 U.S. 393, 397, 134 S.Ct. 1683, 188 L.Ed.2d 680 (2014) (quoting *Terry v. Ohio*, 392 U.S. 1, 27, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968)). To be sure, "[s]uch a stop 'must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity.'" *Robinson v. State,* 5 N.E.3d 362, 367 (Ind. 2014) (quoting *Armfield v. State*, 918 N.E.2d 316, 319 (Ind. 2009)). Reasonable suspicion requires more than an officer's own subjective belief a person might be violating the law. *See Terry*, 392 U.S. at 21–22, 88 S.Ct. 1868. In other words, the stopping officer must be able to articulate some

facts that provide a particularized and objective basis for believing a traffic violation occurred. *See State v. Keck*, 4 N.E.3d 1180, 1184 (Ind. 2014).

[17] Here, Officer Taylor initiated a traffic stop on the basis that the vehicle was speeding and failed to signal. While Officer Taylor's lights and siren were activated, the Officer noticed the passenger, later identified as Leonard, reach down and raising his hips off the seat as if to conceal an item. During his initial encounter, the officer observed Leonard and Robinson to be visibly nervous, they gave inconsistent statements about their travel plans, and neither possessed a valid driver's license. Officer Taylor requested Leonard to exit the vehicle, after which Leonard consented to a search of his person. Officers located $3,994.00 folded and banded together and, based on their training and experience, the officers opined that the money was held in a way consistent with drug trafficking. An exterior sniff of the vehicle by a canine officer alerted to the presence of narcotics inside the vehicle.

[18] A police encounter transforms from a stop to a custodial situation upon the existence of probable cause, which arises when, at the time of the arrest, the arresting officer has knowledge of facts and circumstances, which would warrant a person of reasonable caution to believe that the defendant committed the criminal act in question. *Thomas v. State*, 81 N.E.3d 621, 626 (Ind. 2017). The amount of evidence necessary to satisfy the probable cause requirement for a warrantless arrest is evaluated on a case-by-case basis. *Id*. Rather than requiring a precise mathematical computation, probable cause is grounded in notions of common sense. *Id*. At this point during the investigation, and based

on the vehicle's extended stopping time, the occupants' movements during and after the stop, neither party possessing a driver's license, and the canine officer indicating a presence of narcotics, the officers had knowledge of facts and circumstances warranting a person of reasonable caution to believe Leonard had committed a criminal act. With probable cause established, Leonard was handcuffed, placed in the backseat of a police vehicle, and read his *Miranda* rights. *See Kelly v. State*, 997 N.E.2d 1045, 1053 (Ind. 2013) (Before a law enforcement officer may subject someone to custodial interrogation, the officer must advise him of his *Miranda* rights—that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. If the officer does not so advise the individual, the prosecutor cannot use any statements the individual does make against him in court). Only after being advised of his *Miranda* rights and acknowledging that he understood those rights, Leonard proceeded to make statements admitting to the possession and distribution of heroin.

[19] Accordingly, as Leonard's detention was supported by probable cause and he was given his *Miranda* rights prior to making his statements, we cannot conclude that a motion to suppress his post-arrest statements would have been successful. Therefore, we conclude that Leonard's trial counsel was not ineffective for failing to file a motion to suppress the statements.

III. *Plea Agreement*

[20] Leonard contends that because his trial counsel wrongly advised him that there were no grounds to file a motion to suppress his post-arrest statements, he entered into the plea agreement. Like a trial, the guilty-plea process presents dangers for attorneys to commit errors. One potential pitfall is incorrectly advising clients as to consequences of pleading guilty. Because Leonard characterizes the validity of his plea agreement within the parameters of an ineffective assistance of counsel claim, we review his claim pursuant to the standard set forth under *Bobadilla*: "the prejudice inquiry is a subjective test, turning upon whether that particular defendant's special circumstances support his claim that, had he been properly advised, he would have rejected the plea and insisted on going to trial." *Bobadilla*, 117 N.E.3d at 1287. "The ultimate result at trial (conviction versus acquittal) is not the determinative factor in these prejudice inquiries." *Id*. As noted, "defendants cannot establish prejudice in these situations by merely claiming, 'Had I been advised correctly, I would have gone to trial.' Defendants must produce evidence supporting such claims." *Id*. at 1286. However, as we determined previously, trial counsel was not ineffective for failing to petition to suppress Leonard's post-arrest statements. Therefore, as trial counsel properly advised Leonard, he cannot now claim prejudice.

CONCLUSION

[21] Based on the foregoing, we hold that the post-conviction court properly denied Leonard's petition for post-conviction relief.

[22] Affirmed.

[23] Mathias, J. and Crone, J. concur