MEMORANDUM DECISION

APPELLANT PRO SE

Ronell L. Roberts
Michigan City, 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

Ronell L. Roberts,
Appellant-Petitioner,

v.

State of Indiana,
Appellee-Respondent.

April 14, 2023

Court of Appeals Case No. 22A-PC-688

Appeal from the Cass Circuit Court

The Honorable Daniel C. Banina, Judge

Trial Court Cause No. 09C01-1807-PC-5

Memorandum Decision by Judge Brown
Judges Bailey and Weissmann concur.

Brown, Judge.

[1] Ronell L. Roberts appeals the post-conviction court's denial of his petition for post-conviction relief. We affirm.

Facts and Procedural History

[2] The relevant facts as discussed in Roberts's direct appeal follow:

> In May 2016, Roberts and his wife Hollie rented a room in a single-family residence owned by Paula Lamb. Two weeks later, Logansport police received an anonymous complaint concerning drug activity and suspicious odors emanating from the house. Officers James Klepinger and Jason Shideler went to the house and spoke with Lamb, who invited them in and informed them that she lived there with her daughter and her daughter's fiancé and that she had rented a room to "Nello" and Hollie. Per the officers' request, Lamb escorted them to the rented room upstairs. As they approached the room, they detected the odor of marijuana. When Lamb opened the door, the odor was significantly stronger. Burnt marijuana cigarette butts were on a plate on the headboard of the bed, and Roberts and Hollie were sitting on the bed. Roberts reported that he had been renting the room for about two weeks.
>
> Police searched the room and found several personal items, including clothing, identification, a handbag, and two cell phones. They also discovered two velvet bags inside a dresser drawer. Inside the purple bag, they found nine individually knotted baggies, four of which were later found to contain an equally sized off-white rock substance, and five of which contained even smaller portions of the same substance. In the same purple bag, police found a separate baggie containing a large rock of the same substance. Subsequent testing showed the rocks to be cocaine. Also inside the purple bag were a digital scale, razor blades, and several empty baggies. Inside the green velvet bag, police discovered a plastic bag containing twenty-four individually wrapped bags of a green substance determined to be marijuana.

> Officers obtained a search warrant for the two phones and determined which phone was Roberts's by using contact information and a reference to the user as "Nello." The phone determined to be Roberts's contained a close-up photo of Roberts as well as photos of marijuana.
>
> The State charged Roberts with level 2 felony dealing in cocaine (at least ten grams); level 4 felony cocaine possession (at least ten grams); and class A misdemeanor dealing in marijuana. The State requested permission to conduct a videotaped deposition of forensic scientist Kimberly Ivanyo, who had conducted the lab tests on the suspected illegal substances, to be used at trial. The trial court granted the State's request, and Roberts appeared in person and by counsel at the deposition. During his subsequent jury trial, Roberts objected to the admission of Ivanyo's deposition, as well as her certificate of analysis regarding the weight and composition of the substances tested. He also objected to the admission of text messages extracted from his cell phone. The jury convicted him as charged, and the trial court vacated his conviction for level 4 felony cocaine possession.

Roberts v. State, No. 09A05-1702-CR-283, slip op. at 2-4 (Ind. Ct. App. July 31, 2017) (citations to record omitted), *trans. denied*. On appeal, Roberts challenged the trial court's admission of certain text messages extracted from his cell phone as well as Ivanyo's deposition testimony concerning the weight of the cocaine and argued the evidence was insufficient to support his convictions. *Id*. at 4, 12. This Court affirmed.

[3] In July 2018, Roberts filed a petition for post-conviction relief, and the post-conviction court summarily denied his petition. *See Roberts v. State*, 19A-CR-1452, slip op. at 2 (Ind. Ct. App. April 1, 2020). Following an appeal, the State

conceded the court erred in summarily denying Roberts's petition, and this Court remanded with instructions to reinstate the petition. *Id*. at 2, 6.

[4] On August 27, 2021, Roberts filed an amended petition for post-conviction relief alleging he received ineffective assistance of trial and appellate counsel. He alleged his trial counsel failed to properly and adequately investigate the case and depose witnesses in a timely manner and raise "probable cause issues," issues of "illegal search and seizures," "issues regarding hearsay," "issues regarding possible cross-contamination and or possible tampering with evidence," and "violation of due process and fundamental error." Appellant's Appendix Volume II at 40. He further alleged his trial counsel failed to impeach State witnesses, "present a proper defense," properly raise "Motion to Suppress Evidence issues," "challenge the evidence entry into the trial," properly present co-defendant's recorded statement, properly argue "conflict of interest" and the "Collective Action Doctrine," "present as evidence into trial 911 dispatch reports and recordings," and "present prosecutorial misconduct." *Id*. He alleged his appellate counsel failed to: "properly investigate"; "properly raise and properly argue . . . prosecutorial misconduct" and "illegal search and seizure"; "argue abuse of discretion of the court"; "raise every possible meritorious error[s] that are clearly stronger than the issues raised"; and argue "probable cause issues," "Motion To Suppress Evidence issues," and the "Collective Action Doctrine." *Id*. at 41.

[5] The post-conviction court held a hearing over two days in October and December 2021 at which Roberts's trial counsel, Attorney Andrew Achey, and

appellate counsel, Attorney Mark Leeman, testified. The court took the matter under advisement. Roberts submitted proposed findings of fact and conclusions of law.[1] On March 4, 2022, the post-conviction court issued an order denying Roberts's amended petition for post-conviction relief. The court found that "[m]ost of the allegations of the Petition for Post-Conviction Relief are allegations that were or could have been presented on his Appeal" and that Roberts did not demonstrate his trial or appellate counsel were deficient. Appellant's Appendix Volume I at 27.

Discussion

[6] Roberts is proceeding *pro se* and is held to the same standard as trained counsel. *See Evans v. State*, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004), *trans. denied*. The petitioner bears the burden of establishing grounds for relief by a preponderance of the evidence, and we will not reverse the judgment unless the evidence as a whole unerringly and unmistakably leads to a conclusion opposite that reached by the post-conviction court. *Fisher v. State*, 810 N.E.2d 674, 679 (Ind. 2004).

[7] Roberts asserts the post-conviction court erred when it did not adopt his proposed findings of fact and conclusions of law. He argues "his motion to

---

[1] Roberts's proposed findings and conclusions stated in part that Roberts "was an overnight guest and he has an expectation of privacy in the bedroom that he spent the night at," "[Roberts] states that the evidence in his case implicates another culprit his co-defendant Hallie," Hallie "was given a plea-agreement for possession of marijuana and maintaining a common nuisance for the drugs found in her bedroom," "trial counsel Andrew A. Achey, failed to: properly and adequately investigate, the case and represent [him] and depose witnesses in a timely manner," and "Appellant Counsel Mark K. Leeman, failed to properly investigate, properly raise and properly argue [his] case." Appellant's Appendix Volume II at 69-71.

suppress has never been ruled on to this day and that his trial counsel was ineffective . . . for depriving him of [a] fair trial and due process of law [and] failed to object to [a] motion filed [and] not being ruled on before jury trial." Appellant's Brief at 43-44. He argues his counsel was ineffective by failing to argue the probable cause illegal search and seizure issues and the motion to suppress evidence. He argues he is innocent and asks this Court to release him into society.

[8] To the extent that Roberts raised or raises freestanding claims, such arguments are waived. *See Lambert v. State*, 743 N.E.2d 719, 726 (Ind. 2001) (holding post-conviction procedures do not provide a petitioner with an opportunity to present freestanding claims that contend the original trial court committed error), *reh'g denied*, *cert. denied*, 534 U.S. 1136, 122 S. Ct. 1082 (2002). To the extent Roberts does not cite to the record or present cogent argument, his claims are waived. *See Cooper v. State*, 854 N.E.2d 831, 834 n.1 (Ind. 2006) (holding the defendant's contention was waived because it was supported neither by cogent argument nor citation to authority).

[9] To prevail on a claim of ineffective assistance of counsel, a petitioner must demonstrate both his counsel's performance was deficient by falling below an objective standard of reasonableness based on prevailing professional norms and the petitioner was prejudiced. *French v. State*, 778 N.E.2d 816, 824 (Ind. 2002) (citing *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052 (1984)). To meet the appropriate test for prejudice, the petitioner must show there is a reasonable probability that, but for counsel's unprofessional errors, the result of

the proceeding would have been different. *Id.* Failure to satisfy either prong will cause the claim to fail. *Id*. Counsel's performance is presumed effective, and a petitioner must offer strong and convincing evidence to overcome this presumption. *Williams v. State*, 771 N.E.2d 70, 73 (Ind. 2002). Reasonable strategy is not subject to judicial second guesses. *Burr v. State*, 492 N.E.2d 306, 309 (Ind. 1986). We "will not lightly speculate as to what may or may not have been an advantageous trial strategy as counsel should be given deference in choosing a trial strategy which, at the time and under the circumstances, seems best." *Whitener v. State*, 696 N.E.2d 40, 42 (Ind. 1998). In order to prevail on a claim of ineffective assistance due to the failure to object, the petitioner must show a reasonable probability that the objection would have been sustained if made. *Passwater v. State*, 989 N.E.2d 766, 772 (Ind. 2013).

[10] As for appellate counsel, ineffective assistance claims fall into three basic categories: (1) denial of access to an appeal; (2) waiver of issues; and (3) failure to present issues well. *Garrett v. State*, 992 N.E.2d 710, 724 (Ind. 2013). 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. *Id.* 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. *Id.* 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. *Id*.

[11] With respect to Roberts's claim the post-conviction court erred in not adopting his proposed conclusions that his trial and appellate counsel failed to properly investigate his case, Roberts asked Attorney Achey about his investigation, and he replied "[g]enerally speaking I can tell you I would review the Police Report, any Discovery . . . the State would provide to me," "I would then meet with the client," "you were in jail at the time, I remember having many discussions with you in person," "I would have treated you just like I treat all of my other clients," and "I would have reviewed the law, I would have reviewed the facts, discussed the law and the facts with you and then we would have laid out a strategy moving forward." Transcript Volume II at 53. When asked "[d]id you investigate whether or not [I] rented, leased or live[d] at the residence," Attorney Achey responded affirmatively and testified, "as I sit here today, thinking through everything I do not think you owned or rented the property, I think you may have been an overnight guest." *Id*. at 53-54. When asked "did . . . you . . . check to see if there was any rent receipts and if there was any lease contracts and things of that nature," he answered "I do not recall," and when asked "[i]s it true that [I] told you that [I] did not live there" and "was just an overnight guest," he replied "I don't know." *Id*. at 54.

[12] Roberts further asked Attorney Achey if he deposed any witnesses, and he answered "I don't think we took any depositions in your case but I cannot

recall" and "I may have tried to depose Hollie Roberts . . . and she was a co-defendant" but there was "a Motion to Quash . . . [and] she had a pending criminal case." *Id.* When asked if he deposed Lamb, he replied "I didn't need to depose her because I had her phone number and I had access to her and had a few different discussions with her . . . in the days leading up to the [t]rial and even prior to that." *Id.* Attorney Achey testified, "throughout the whole life of your case even right up to [t]rial, I was trying to negotiate as well as prepare for [t]rial so I was running your case essentially on two different tracks trying to get you a good deal on one hand and then . . . preparing for [t]rial on another." *Id.* at 55. When asked if he was aware of "any backdoor plea agreements," he testified "[t]he only thing that I remember . . . is that Hollie[']s] . . . case was pending at the time" and "I was not aware of any offer or any backdoor deal that was made to Hollie to testify against you, or to help the State's case or anything like that." *Id.* at 56. When later asked "[w]hy didn't you challenge the probable cause of [my] arrest," he answered "[b]ecause . . . after reviewing the Police Report I thought there was probable cause for your arrest," and when asked "[w]hy didn't you challenge the probable cause of . . . the search of the house," and he replied "[f]or the same reasons." *Id.* at 60. Roberts asked, "as [an] overnight guest, wouldn't I . . . have had . . . [an] expectation of privacy," he replied "possibly and that's why we ultimately filed the Motion to Suppress to have a hearing on the issue." *Id.* at 61.

[13] Similarly, when Roberts asked Attorney Leeman "did you do any follow up . . . investigations . . . after you took it over from Mr. Andrew Achey," he

answered: "Yes. I [] have a specific recollection of doing what I do in every case which is to read the entire record, that means the transcript and the appendix, I listen to the Exhibits, I reviewed the Exhibits too, I read the Exhibits and then I also called Mr. Achey and . . . I spoke to him, too." *Id*. at 152. He testified "I was looking at my file this morning, you and I [] corresponded back and forth much more than most of my Appellant clients." *Id*. Roberts has not offered strong and convincing evidence to overcome the presumption that his trial or appellate counsel's performance in investigating and preparing for his case was effective.

[14] To the extent Roberts raises the motion to suppress, the post-conviction court's order provided that, the day before trial, Roberts's attorneys filed the motion arguing the homeowner lacked the authority to open the door of the room rented by Roberts or to grant consent to the police to search the room and that the trial court stated it would listen to the evidence and then make a determination. The post-conviction court found that, later during the trial, Attorney Achey raised the motion to suppress and objected to any testimony from the police regarding entering the room occupied by Roberts, "[t]he Judge sustained an objection for leading questions but did not sustain an objection based on the Motion to Suppress," and "[a]fter a lecture from the Judge to the lawyers about making objections . . . , testimony resumed with no further reference to the Motion to Suppress or a direct ruling by the Judge on the Motion to Suppress." Appellant's Appendix Volume I at 25. The post-conviction court also found that, throughout his petition, the post-conviction

hearing, and his proposed findings and conclusions, Roberts "asserts that he did not rent a room from the homeowner as alleged in the Motion to Suppress" but rather "asserts that his wife had rented a room at the home and he was a mere overnight guest." *Id*. at 26. In his proposed findings, Roberts stated he told an officer "that he didn't live there but that he only came by there from time to time to visit and he only spent the night there last night," the officer asked him for consent to search the bedroom, and he told the officer "that he couldn't give him consent to do that because he didn't live there." Appellant's Appendix Volume II at 58. The post-conviction court found that Roberts's contentions contradict the assertions in his motion to suppress. It stated "[i]t is also important to note that at the time the police encountered [Roberts] . . . , it was the homeowner that opened the door and allowed the police into the room" and that the police "did not open a closed door on their own accord." Appellant's Appendix Volume I at 26. The post-conviction court's findings are supported by the record. We cannot say that Roberts has overcome the strong presumption of adequate assistance or demonstrated that the evidence as a whole unerringly and unmistakably leads to a conclusion opposite that reached by the post-conviction court.

[15] For the foregoing reasons, we affirm the post-conviction court.

[16] Affirmed.

Bailey, J., and Weissmann, J., concur.