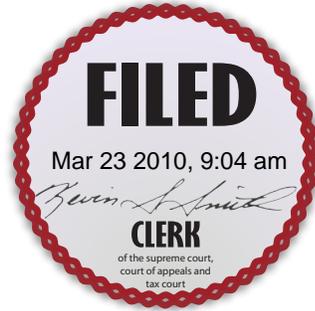


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



APPELLANT PRO SE:

GEORGE BOX
Michigan City, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

GEORGE BOX,)
)
 Appellant-Defendant,)
)
 vs.) No. 45A03-0912-PC-559
)
 STATE OF INDIANA,)
)
 Appellee-Plaintiff.)

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Clarence D. Murray, Judge
Cause No. 45G02-0809-PC-8

March 23, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

George Box, *pro se*, appeals the post-conviction court's denial of his *pro se* petition for post-conviction relief. Box raises four issues, which we consolidate and restate as whether Box was denied effective assistance of trial counsel. We affirm.

The relevant facts as discussed in Box's direct appeal follow:

Box was sitting on the porch of Joshua Williams' parents' house with Williams and several others from the neighborhood. Box and Williams knew each other from the neighborhood, had been in each other's homes, and had never had any problems with each other. At some point, Box left the porch stating he would return.

When he returned, Box started shooting at Williams. The first shot struck Williams in the knee. Box moved closer to the porch and continued to shoot, striking Williams three times in the chest and once in the head. Two shots lacerated William's (sic) carotid artery, and either would have been fatal. Box claimed Williams had a gun in his lap pointed in his direction and he believed Williams was going to shoot him. However, Box acknowledged Williams neither raised the gun nor moved it. No gun was found on Williams after the incident. Two witnesses testified Box said something about a "mother" or his "mama" before shooting Williams. (Tr. at 146-47, 217.) Another witness testified Box mumbled something about "money" after he stopped shooting. (*Id.* at 195-196.) Box testified no words were exchanged during the incident. After Box stopped shooting, he walked away from the house. Box later turned himself in to the police and admitted he had just shot someone.

Box v. State, No. 45A05-0706-CR-300, slip op. at 2 (Ind. Ct. App. March 12, 2008).

After a jury trial, Box was convicted of murder. Id. On appeal, Box raised the issue of whether the trial court erred in refusing to give a jury instruction on voluntary manslaughter. Id. This court affirmed. Id.

In September 2008, Box filed a petition for post-conviction relief and argued that he received ineffective assistance of trial counsel and appellate counsel. After a hearing, the post-conviction court denied Box's petition for post-conviction relief.

Before discussing Box's allegations of error, we note that although Box is proceeding *pro se*, such litigants are held to the same standard as trained counsel and are required to follow procedural rules. Evans v. State, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004), trans. denied. We also note the general standard under which we review a post-conviction court's denial of a petition for post-conviction relief. 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); Ind. Post-Conviction Rule 1(5). When appealing from the denial of post-conviction relief, the petitioner stands in the position of one appealing from a negative judgment. 810 N.E.2d at 679. On review, 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. Id. Further, the post-conviction court in this case entered findings of fact and conclusions thereon in accordance with Indiana Post-Conviction Rule 1(6). Id. "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." Id. In this review, we accept findings of fact unless clearly erroneous, but we accord no deference to conclusions of law. Id. The post-conviction court is the sole judge of the weight of the evidence and the credibility of witnesses. Id.

The issue is whether Box was denied effective assistance of trial counsel. 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 v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984), reh'g denied), reh'g denied, cert. denied, 534 U.S. 830, 122 S. Ct. 73 (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 meet the appropriate test for 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. A reasonable probability is a probability sufficient to undermine confidence in the outcome. Perez v. State, 748 N.E.2d 853, 854 (Ind. 2001). Failure to satisfy either prong will cause the claim to fail. French, 778 N.E.2d at 824. Most ineffective assistance of counsel claims can be resolved by a prejudice inquiry alone. Id.

To the extent that Box suggests that his trial counsel was ineffective, Box fails to put forth a cogent argument or cite to the record.¹ Consequently, these issues are waived.

¹ We note that Box did not include the applicable standard of review in his appellant's brief which is required by Ind. Appellate Rule 46(A)(8)(b) ("The argument must include for each issue a concise statement of the applicable standard of review; this statement may appear in the discussion of each issue or under a separate heading placed before the discussion of the issues."). We also note that Box's summary of argument did not provide "a succinct, clear, and accurate statement of the arguments made in the body of the brief," as required by Ind. Appellate Rule 46(A)(7). Rather, Box's summary of argument consisted of the following: "1. Because three witnesses testified to seeing the appellant shoot,

See, e.g., Cooper v. State, 854 N.E.2d 831, 834 n.1 (Ind. 2006) (holding that the defendant’s contention was waived because it was “supported neither by cogent argument nor citation to authority”); Smith v. State, 822 N.E.2d 193, 202-203 (Ind. Ct. App. 2005) (“Generally, a party waives any issue raised on appeal where the party fails to develop a cogent argument or provide adequate citation to authority and portions of the record.”), trans. denied; Shane v. State, 716 N.E.2d 391, 398 n.3 (Ind. 1999) (holding that the defendant waived argument on appeal by failing to develop a cogent argument); see also Ind. Appellate Rule 46(A)(8)(a) (“The argument must contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on, in accordance with Rule 22.”).

For the foregoing reasons, we affirm the post-conviction court’s denial of Box’s petition for post-conviction relief.

Affirmed.

NAJAM, J., and VAIDIK, J., concur.

the appellant was ruled guilty of murder. 2. Because police failed to turn in a second weapon found on a witness on a potential crime scene, the appellant was found guilty of murder.” Appellant’s Brief at 6.