



## STATEMENT OF THE CASE

Daniel D. Dailey appeals from the post-conviction court's denial of his petition for post-conviction relief. Dailey raises a single issue for our review, namely, whether the court erred when it denied his petition.

We affirm.

## FACTS AND PROCEDURAL HISTORY

On September 12, 2007, the State charged Dailey with criminal recklessness, as a Class A misdemeanor, after Dailey "accelerated and operated his vehicle in such a manner as to cause it to slide sideways, and spun the vehicle twice, then slid sideways back in the direction of the Skate Park." Appellant's App. at 12. On October 31, Dailey pleaded guilty. The court "determine[d] said plea [was] entered freely, knowingly, [and] of his own voluntary act," and it sentenced Dailey to a one-year sentence suspended to formal probation. *Id.* at 6.

On October 27, 2008, the State filed a petition to revoke Dailey's probation.<sup>1</sup> On November 3, Dailey filed his petition for post-conviction relief, arguing that he had not entered his guilty plea knowingly and voluntarily. The court held a hearing on Dailey's petition on December 17, after which the court denied the petition. This appeal ensued.

## DISCUSSION AND DECISION

Dailey appeals from the post-conviction court's denial of his 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. Ind. Post-Conviction Rule 1(5); *Saylor v. State*, 765 N.E.2d 535, 547 (Ind. 2002). In reviewing the judgment

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<sup>1</sup> Dailey has not included a copy of the State's petition in the Appellant's Appendix.

of a post-conviction court, appellate courts consider only the evidence and reasonable inferences supporting the judgment. Conner v. State, 711 N.E.2d 1238, 1245 (Ind. 1999). The post-conviction court is the sole judge of the evidence and the credibility of the witnesses. 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. Saylor, 765 N.E.2d at 547. 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.

As an initial matter, we note that Indiana Post-Conviction Rule 1 § 6 requires that a post-conviction court “make specific findings of fact[] and conclusions of law on all issues presented.” Ind. Post-Conviction Rule 1 § 6. Our Supreme Court has made clear that “[i]t is the duty of the trial judge to relate the facts on which he makes his determination (conclusion) that the petitioner is or is not entitled to the relief he seeks.” Stephenson v. State, 864 N.E.2d 1022, 1051 (Ind. 2007) (quotation and citation omitted; alteration original). Here, however, the Chronological Case Summary does not indicate that the post-conviction court entered findings of fact and conclusions of law, and Dailey has not included such a document in the Appellant’s Appendix. We therefore presume that the court did not enter findings and conclusions in accordance with Rule 1 § 6. Nonetheless, we review a post-conviction court’s failure to enter specific findings of fact and conclusions of law under the harmless error standard. Id.

Dailey’s sole contention on appeal is that the trial court erred when it denied his petition for post-conviction relief because he testified that he did not knowingly and voluntarily plead guilty. Dailey continues that his testimony was “[t]he only evidence at

the post-conviction relief hearing,” and, therefore, the evidence unmistakably leads to a conclusion opposite that reached by the post-conviction court. Appellant’s Brief at 4. We cannot agree.

While the post-conviction court did not enter specific findings on its assessment of Dailey’s testimony, the court was, apparently, not persuaded by his statements. As such, Dailey’s request on appeal is merely a request for this court to reweigh the evidence, namely, his testimony. We will not do so. See Fisher, 810 N.E.2d at 679.

Further, while it is conceded by the State that “malfunctioning recording equipment” during Dailey’s guilty plea hearing prevented that hearing from being recorded, see Appellee’s Brief at 6, the fact that the transcript of Dailey’s guilty plea was not available is of no moment in our review of the post-conviction court’s judgment. As our Supreme Court has made clear:

The fact that the record of a guilty plea hearing can neither be found nor reconstructed does not of itself require granting post-conviction relief. Rather, as with any claim made in a petition for post-conviction relief, a claim that the petitioner’s conviction was obtained in violation of federal or state constitutional safeguards, see Ind. Post-Conviction Rule 1(1)(a)(1), 1(1)(b), must be proven by a preponderance of the evidence.

Hall v. State, 849 N.E.2d 466, 470 (Ind. 2006). Dailey’s attempts to distinguish Hall are not persuasive, and he has not carried his burden of proof that he is entitled to post-conviction relief. Accordingly, we must affirm the post-conviction court’s judgment.

Affirmed.

FRIEDLANDER, J., and VAIDIK, J., concur.