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ATTORNEYS FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

**STEPHEN T. OWENS**  
Public Defender of Indiana

**GREGORY F. ZOELLER**  
Attorney General of Indiana

**JEFFREY R. WRIGHT**  
Deputy Public Defender  
Indianapolis, Indiana

**J.T. WHITEHEAD**  
Deputy Attorney General  
Indianapolis, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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ISAAH WILLIAMS, )  
 )  
Appellant-Petitioner, )  
 )  
vs. )  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Respondent. )

No. 49A02-1010-PC-1235

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Steven R. Eichholtz, Judge  
Cause No. 49G20-0803-PC-59107

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**July 11, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

## **Case Summary**

On two separate occasions in October and November 2007, a police informant purchased cocaine from Isaiah Williams. In March 2008, police spotted Williams at a fast food restaurant and arrested him. At that time, he was in possession of marijuana and a large amount of cocaine. The State charged him with multiple counts of dealing and possession stemming from the three incidents. Williams worked with police as an informant, but in December 2008, police found him in possession of cocaine and arrested him in a separate cause. He eventually pled guilty to one count of class A felony cocaine dealing in the first cause in exchange for the dismissal of all remaining counts as well as the dismissal of charges in two other cases pending against him. The State also agreed not to file a habitual offender charge.

Williams later filed a petition for post-conviction relief, claiming that he was denied his constitutional right to effective assistance of counsel and that his guilty plea was not voluntarily made because counsel allegedly failed to advise him of a possible defense. The post-conviction court denied his petition, and he now appeals. Finding no error, we affirm.

## **Facts and Procedural History**

In October 2007, Indianapolis Metropolitan Police Detective Clifton Jones began working with a confidential informant (“the CI”) to conduct controlled cocaine buys from a man known as “Shorty.” The CI identified Williams as “Shorty” via photo array. On October 30 and November 8, 2007, Detective Clifton conducted surveillance outside Williams’s Jefferson Avenue residence while the CI purchased cocaine from Williams, who

delivered the cocaine to the CI's vehicle. Police did not arrest Williams at the time and did not issue an arrest warrant, due to the ongoing nature of their investigation and their goal of eventually using Williams as a confidential informant to find the source of greater quantities of cocaine.

Detective Jones could not locate Williams for a while after the fall 2007 incidents, but he waited for him to resurface. Meanwhile, police conducted a search of the Jefferson Avenue residence and found it vacant. Williams resurfaced at a local fast food restaurant on March 13, 2008, at which time police arrested him without a warrant and found 27.54 grams of cocaine on his person. A subsequent search of his vehicle produced 1.64 grams of marijuana and 1.2777 grams of cocaine. Detective Jones asked him to become a confidential informant, but he refused.

On March 18, 2008, in cause number 49G20-0803-FA-059107 ("cause 107"), the State charged Williams with seven drug-related offenses. The following counts were based on the March 13, 2008 incident at the restaurant: Count I, class A felony cocaine dealing; Count II, class C felony cocaine possession; and Count III, class A misdemeanor marijuana possession. In the same information, the State charged Williams with Count IV, class A felony cocaine dealing and Count V, class C felony cocaine possession, both based on the November 2007 incident, and with Count VI, class B felony cocaine dealing, and Count VII, class D felony cocaine possession, both based on the October 2007 incident.

While cause 107 was pending, Williams entered into a cooperation agreement with police and began working as a confidential informant. In November 2008, a change of

defense counsel occurred, and Brian Lamar was assigned to represent Williams.<sup>1</sup> At that point, Williams was still cooperating with police, and he had prospects for a favorable plea agreement. In December 2008, he was found with cocaine in his gas tank and arrested. At that point, the State terminated the cooperation agreement and charged him in cause number 49G20-0812-FA-294162 (“cause 162”) with one count of class A felony cocaine dealing, one count of class C felony cocaine possession, one count of class A misdemeanor possession marijuana, and one count of class A misdemeanor driving while suspended. Thereafter, defense counsel met with him and discussed possible defenses as well as the prospect of a habitual offender finding.

On March 2, 2009, Williams pled guilty via plea agreement to one count of class A felony cocaine dealing (Count I of cause 107) with a set twenty-five-year sentence. In exchange, the State dismissed the remaining six counts in cause 107 as well as all counts in cause 162 and the only count in cause number 49G20-0704-CM-058319 (“cause 319”) (class C misdemeanor driving while suspended). The State also agreed not to file a habitual offender count. The trial court accepted Williams’s guilty plea and sentenced him according to the plea agreement on March 16, 2009.

On June 26, 2009, Williams filed a pro se petition for post-conviction relief. He filed an amended petition by counsel on January 19, 2010, asserting that his defense counsel provided ineffective assistance in failing to advise him of a potential defense and in failing to

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<sup>1</sup> The record indicates that Williams was first represented by Todd Sallee. All references to defense counsel herein pertain to Lamar.

file a motion to suppress the cocaine found on his person at the time of his warrantless arrest at the fast food restaurant. He also asserts that due to the aforementioned alleged failures, his guilty plea was not voluntarily entered.

On April 16 and April 20, 2010, the post-conviction court held hearings on Williams's post-conviction petition. On September 27, 2010, the court issued extensive findings of fact and conclusions of law, denying his petition for post-conviction relief. This appeal ensued. Additional facts will be provided as necessary.

### **Discussion and Decision**

The petitioner in a post-conviction proceeding bears the burden of establishing grounds for relief by a preponderance of the evidence. *Henley v. State*, 881 N.E.2d 639, 643 (Ind. 2008). When appealing a denial of his petition for post-conviction relief, the petitioner stands in the position of one appealing a negative judgment. *Id.* When reviewing the judgment of a post-conviction court, we consider only the evidence and reasonable inferences supporting the judgment. *Hall v. State*, 849 N.E.2d 466, 468 (Ind. 2006). We neither reweigh evidence nor judge witness credibility. *Id.* To prevail on appeal from the denial of his post-conviction petition, the petitioner must demonstrate that the evidence as a whole leads unerringly and unmistakably to a conclusion opposite that reached by the post-conviction court. *Henley*, 881 N.E.2d at 643-44. Where, as here, the post-conviction court enters findings of fact and conclusions of law, we will reverse the findings and judgment “only upon a showing of clear error—that which leaves us with a definite and firm conviction that a mistake has been made.” *Id.* at 644 (citation omitted).

### *I. Ineffective Assistance of Counsel*

Williams first contends that he was denied his right to effective assistance of counsel as guaranteed by the United States and Indiana Constitutions. A defendant must satisfy two components to prevail on an ineffective assistance claim. *Smith v. State*, 822 N.E.2d 193, 202-03 (Ind. Ct. App. 2005), *trans. denied*. He must demonstrate both deficient performance and prejudice resulting from it. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Deficient performance is representation that fell below an objective standard of reasonableness, wherein counsel has “committ[ed] errors so serious that the defendant did not have the ‘counsel’ guaranteed by the Sixth Amendment.” *Brown v. State*, 880 N.E.2d 1226, 1230 (Ind. Ct. App. 2008), *trans. denied*. We assess counsel’s performance based on facts that are known at the time and not through hindsight. *Shanabarger v. State*, 846 N.E.2d 702, 709 (Ind. Ct. App. 2006), *trans. denied*. “[C]ounsel’s performance is presumed effective, and a defendant must offer strong and convincing evidence to overcome this presumption.” *Ritchie v. State*, 875 N.E.2d 706, 714 (Ind. 2007). “Counsel is afforded considerable discretion in choosing strategy and tactics, and these decisions are entitled to deferential review.” *Stevens v. State*, 770 N.E.2d 739, 746-47 (Ind. 2002). “Isolated mistakes, poor strategy, inexperience, and instances of bad judgment do not necessarily render representation ineffective.” *Id.* at 747. Prejudice occurs when a reasonable probability exists that “but for counsel’s errors the result of the proceeding would have been different.” *Brown*, 880 N.E.2d at 1230. We can dispose of claims upon failure of either component. *Id.*

Here, Williams pled guilty via plea agreement. To demonstrate prejudice in this context, he must show that but for counsel's alleged ineffectiveness, there is a reasonable probability that his defenses would have succeeded at trial. *Segura v. State*, 749 N.E.2d 496, 503 (Ind. 2001). He predicates his ineffective assistance claim on the following: (1) defense counsel's alleged failure to advise him regarding a possible defense to the search of his person during his warrantless arrest at the fast food restaurant; and (2) defense counsel's failure to file a motion to suppress the cocaine found on his person at that time.

First, Williams claims that defense counsel met with him only once and that he did not discuss his possible defense to the warrantless arrest and search. To give context to this claim, we note that when defense counsel entered his appearance, Williams had already entered into the cooperation agreement with police to act as an informant. Tr. at 30. At the guilty plea hearing, defense counsel indicated to the trial court that "he had met with [Williams] several times, reviewed the facts of both cases ... reviewed the good, the bad, options" before Williams made his final decision on whether to take the plea agreement. Pet. Ex. 5. He reiterated this point at the post-conviction hearing. He testified that he met with Williams once before Williams's December 2008 arrest and incarceration in cause 162 and multiple times during Williams's subsequent incarceration in that cause. He emphasized that he "reviewed the defenses and the options with Mr. Williams on each case." Tr. at 31. Williams merely asks us to reweigh evidence and judge witness credibility, which we may not do. Thus, the record supports a finding that defense counsel did not fail to advise Williams of an illegal search defense and therefore did not perform deficiently in this regard.

Next, in a closely related claim, Williams asserts that defense counsel was ineffective for failing to file a motion to suppress the cocaine seized from his person during his arrest at the restaurant. In general, searches that occur without prior judicial authorization via a warrant are constitutionally prohibited. *Black v. State*, 810 N.E.2d 713, 715 (Ind. 2004). One exception to the warrant requirement is a search incident to a lawful arrest. *Moffitt v. State*, 817 N.E.2d 239, 246 (Ind. Ct. App. 2004), *trans. denied*. Under this exception, a police officer may conduct a search of the arrestee's person and the area within his or her control. *Id.* In order for a search incident to arrest to be valid, the arrest itself must be lawful, which means that probable cause must be present to support the arrest. *Id.* "Probable cause adequate to support a warrantless arrest exists when, at the time of the arrest, the officer has knowledge of facts and circumstances that would warrant a person of reasonable caution to believe that the suspect committed a criminal act." *Id.*

Williams argues that the passage of four months between the controlled buys and his arrest negates any probable cause to arrest him at the restaurant, thus rendering the search of his person unlawful. We disagree. In *Andrews v. State*, 588 N.E.2d 1298, 1303 (Ind. Ct. App. 1992), we held that the passage of three months between the controlled buy and the warrantless arrest in a public place did not eliminate preexisting probable cause. There, we stated that "[w]hile the better practice would have been to obtain an arrest warrant, the officers nonetheless had probable cause to arrest [the defendant] in a public place on September 14 ... for the June 13 transaction." *Id.* As a result, we held that the arresting officer did not need to obtain a warrant to search the defendant because the search was

incident to a lawful arrest. *Id.*

Here, police had reason to believe that Williams had committed criminal acts based on his sale of cocaine to the CI at the Jefferson Avenue residence in October and November 2007. The CI identified Williams as the drug dealer known as “Shorty” who sold him cocaine in both instances. A woman residing at the Jefferson Avenue residence also told Detective Jones that Shorty’s real name was Williams. Tr. at 69. Moreover, Detective Jones provided surveillance during the controlled buys and observed a man who fit Williams’s description approaching the CI’s vehicle to complete each transaction. Finally, field and lab tests confirmed that the merchandise was cocaine. At the post-conviction hearing, Detective Jones testified that he had decided not to obtain a warrant for Williams’s arrest because he hoped to use Williams as an informant and therefore needed to preserve the confidentiality of Williams’s identity so that he could be effective at operating within the criminal community. *Id.* at 70-71. Another factor militating in favor of a probable cause finding was Williams’s disappearance in the intervening months between the controlled buys and his re-appearance on the day of his arrest, since police had to wait for him to resurface before an arrest could be made. Based on the foregoing, we conclude that probable cause to arrest Williams existed as of the dates of the controlled buys and that the passage of four months between the buys and Williams’s arrest did not eliminate the preexisting probable cause stemming from the original transactions. As such, defense counsel’s decision not to pursue a motion to suppress does not amount to deficient performance. Because no basis existed to suppress the evidence, Williams would not have been successful had he chosen to proceed to trial. *See Helton v.*

*State*, 907 N.E.2d 1020, 1023 (Ind. 2009) (holding that to establish prejudice stemming from counsel's failure to challenge search via motion to suppress, defendant must show a reasonable probability that, had counsel raised the defense, he would not have pled guilty and would have succeeded at trial). Consequently, Williams has failed to establish that he received ineffective assistance of counsel.

## ***II. Voluntariness of Guilty Plea***

In another closely related claim, Williams asserts that, because of defense counsel's alleged failure to adequately advise him of a defense surrounding the warrantless arrest and search of his person, his guilty plea was not knowingly, intelligently, or voluntarily entered. When reviewing a guilty plea, we look at all evidence which was before the post-conviction court. *Baker v. State*, 768 N.E.2d 477, 479 (Ind. Ct. App. 2002). We will not reverse if the evidence supports the post-conviction court's finding that the defendant entered his guilty plea knowingly, voluntarily, and intelligently. *Id.* Where a plea agreement calls for certain charges to be dismissed, the plea is voluntary if the defendant understands the sentencing range for the charge to which the defendant is pleading guilty. *Peace v. State*, 736 N.E.2d 1261, 1266 (Ind. Ct. App. 2000), trans. denied (2001). Absent coercion or deception regarding the charges to be dismissed, a reviewing court must consider all facts and circumstances, including incorrect advice, to determine whether the defendant voluntarily and intelligently pled guilty. *Id.*

First, to the extent that Williams bases his involuntariness argument on his counsel's alleged failures regarding the search warrant defense, we reiterate that the record indicates

that defense counsel *did* discuss that defense and other potential defenses with him. Next, we note that in its order denying his petition, the post-conviction court concluded that Williams had “not offered any evidence that his guilty plea was made under a misunderstanding of actual penal consequence, or that it was the result of an illusory bargain, coercion or deception.” Appellant’s App. at 96. Our review of the record supports the post-conviction court’s conclusion.

The record shows that Williams was aware of the number and seriousness of the charges pending against him and that he agreed to plead guilty to one count of class A felony dealing with a set twenty-five-year sentence. The agreement’s terms were extremely favorable when compared with the total number of counts dismissed (seven felonies and four misdemeanors), Williams’s sentencing exposure if he had chosen to proceed to trial, and the State’s agreement not to pursue a habitual offender charge. *See* Tr. at 36-37 (where defense counsel testified that Williams’s status as a habitual offender would have been easy to prove, that he and Williams discussed the prospect of such an enhancement, and that the State’s agreement not to file the habitual offender count was a “was a big part of his plea agreement.”). Moreover, even if the illegal search defense had been meritorious on Count I of cause 107, there were numerous other counts, including two class A felony counts, to which the State could have attached the plea agreement. In short, there was overwhelming evidence indicating that, on more than one occasion, Williams sold and/or was in possession of illegal drugs. As such, the probability of a more favorable outcome at trial was negligible, and we agree with the State’s assessment that the plea “agreement was so favorable that one

can only wonder what Williams is wishing for now.” Appellee’s Br. at 12. In sum, the evidence supports the post-conviction court’s determination that Williams knowingly, voluntarily, and intelligently entered his guilty plea. Accordingly, we affirm.

Affirmed.

ROBB, C.J., and NAJAM, J., concur.