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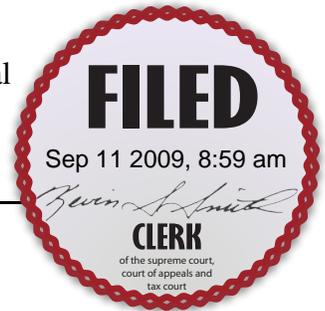
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**IN THE  
COURT OF APPEALS OF INDIANA**

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JASON A. PERRY, )

Appellant-Defendant, )

vs. )

No. 79A05-0904-PC-189 )

STATE OF INDIANA, )

Appellee-Plaintiff. )

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APPEAL FROM THE TIPPECANOE CIRCUIT COURT  
The Honorable Donald L. Daniel, Judge  
Cause No. 79C01-0903-PC-2

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**September 11, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**NAJAM, Judge**

## **STATEMENT OF THE CASE**

Jason A. Perry appeals from the post-conviction court's summary denial of his petition for post-conviction relief. Perry raises a single issue for our review, namely, whether the court erred in denying his petition without first forwarding it to the State Public Defender's Office.

We reverse and remand with instructions.

## **FACTS AND PROCEDURAL HISTORY**

Perry is serving a 223-year sentence for convictions of rape, attempted rape, criminal deviate conduct, sexual battery, criminal confinement, attempted robbery, burglary, and attempted burglary. On March 11, 2009, he filed a pro se petition for post-conviction relief. Perry also expressly requested representation by a public defender and attached an affidavit of indigency. On March 19, the State filed its response to Perry's petition. On March 23, the post-conviction court summarily denied Perry's petition without a hearing and without first forwarding the petition to the State Public Defender's office. This appeal ensued.

## **DISCUSSION AND DECISION**

On appeal, Perry contends, and the State agrees, that the post-conviction court erroneously denied his petition for relief without first ordering a copy of the petition be sent to the Public Defender's office. Indiana Post-Conviction Rule 1(2) states as follows:

If an affidavit of indigency is attached to the petition, the clerk shall call this to the attention of the court. If the court finds that the petitioner is indigent, it shall allow petitioner to proceed in forma pauperis. If the court finds the indigent petitioner is incarcerated in the Indiana Department of Correction, and has requested representation, it shall order a copy of the petition sent to the Public Defender's office.

Here, Perry specifically requested representation by the Public Defender and attached an affidavit of indigency to his post-conviction petition. He had previously been determined to be indigent when he was given court-appointed counsel during his trial and direct appeal. Pursuant to the above rule, if an indigent petitioner is incarcerated and has requested representation, then a copy of the petition is required to be sent to the Public Defender's office. See Ferrier v. State, 270 Ind. 279, 281, 385 N.E.2d 422, 423-24 (1979) ("It is undisputed that the petitioner expressly requested the aid of the Indiana State Public Defender; it is also undisputed that the petitioner properly supported his request with proof of indigency."). Thus, the post-conviction court erred when it did not send a copy of Perry's petition to that office. We reverse the summary denial of Perry's petition and remand with instructions that the court refer his petition to the State Public Defender's office. Nothing in this memorandum decision shall be construed as a comment on the merits of Perry's petition for post-conviction relief.

Reversed and remanded with instructions.

KIRSCH, J., and BARNES, J., concur.