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.

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IN THE
COURT OF APPEALS OF INDIANA

EUGENE BOWERS,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 49A04-1003-PC-274
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Kurt M. Eisgruber, Judge
Cause No. CR87-245A

May 16, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Eugene Bowers appeals the denial of his request for post-conviction relief, and raises three issues for our consideration:

1. Whether Bowers' trial counsel was ineffective for failing to advise him of an alleged deficiency in the probable cause affidavit;
2. Whether the post-conviction court erred when it denied Bowers' request to certify an issue for interlocutory appeal; and
3. Whether the post-conviction court abused its discretion when it denied Bowers' request to subpoena three witnesses.

We affirm.

FACTS AND PROCEDURAL HISTORY

Bowers was sentenced to six years imprisonment on May 5, 1988, for Class B felony burglary. In 2006, Bowers filed a petition for post-conviction relief. He amended his petition in 2009, and, after a hearing, the post-conviction court denied his petition in 2010.

DISCUSSION AND DECISION

Post-conviction proceedings afford petitioners a limited opportunity to raise issues that were unavailable or unknown at trial and on direct appeal. *Davidson v. State*, 763 N.E.2d 441, 443 (Ind. 2002). As post-conviction proceedings are civil in nature, the petitioner must prove his grounds for relief by a preponderance of the evidence. *Id*. A party appealing a negative post-conviction judgment must establish that the evidence is without conflict and, as a whole, unmistakenly and unerringly points to a conclusion contrary to that

reached by the post-conviction court. *Id*. Where, as here, the post-conviction court makes findings of fact and conclusions of law in accordance with Indiana Post-Conviction Rule 1(6), we do not defer to the court's legal conclusions, but "the 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." *Ben-Yisrayl v. State*, 729 N.E.2d 102, 106 (Ind. 2000) (citation omitted).

1. Ineffective Assistance of Trial Counsel

Generally, when claiming ineffective assistance of counsel, a petitioner must show that counsel's performance fell below an objective standard of reasonableness and there exists a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-688 (1984), *reh'g denied*. Because Bowers pled guilty to his crime, we review his claim of ineffective assistance of counsel under the analysis set forth in *Segura v. State*, 749 N.E.2d 496, 502-504 (Ind. 2001). Thus, Bowers must show he had a valid defense to his crime, the defense was overlooked or impaired by his counsel's ineffectiveness, and, by virtue of the defense, there was a reasonable probability of success at trial. *See id*. at 503.

Bowers claims the probable cause affidavit "was defective and unconstitutional because of the signature required by the Constitution that a detached judge/and or a neutral magistrate must agree that the information contained in the document is credible enough to deny a person liberty under the Fifth Amendment of the U. S. Constitution." (Br. of

Appellant at 15) (errors in original). He argues this deficiency, coupled with a handwritten addition to the probable cause affidavit, would have been a viable defense at trial and his trial counsel was ineffective for failing to move for dismissal of charges or "to have Bowers released on his own recognance[sic] pending resolution of whether probable cause existed." (*Id*.) We disagree.

The probable cause affidavit is used solely to obtain an arrest warrant, and not necessarily required when charging a defendant. *Rhoton v. State*, 575 N.E.2d 1006, 1008 (Ind. Ct. App. 1991), *trans. denied*. Deficiency in a probable cause affidavit is not a ground for the dismissal of a charging information. *Engram v. State*, 893 N.E.2d 744, 747 (Ind. Ct. App. 2004), *trans. denied*. Thus, had Bowers' trial counsel moved to dismiss the charging information based on the allegedly defective probable cause affidavit, he would have been unsuccessful. As counsel cannot be found ineffective for not raising meritless claims, *Gordon v. State*, 645 N.E.2d 25, 28 (Ind. Ct. App. 1995), *reh'g denied*, *trans. denied*, Bowers has not demonstrated the ineffectiveness of his trial counsel.

2. Denial of Petition to Certify Issue for Interlocutory Appeal

The entirety of Bowers' argument for his second issue consists of the following paragraph:

> Prior to the evidentiary hearing of November 17, 2009, Petitioner submitted a pleading that was two part[,] based upon newly-discovered evidence, and a continuance to properly present the evidence. This pleading incorporated an objection as well. The objection was overruled. Petitioner has no authority to cite regarding the erroneous conclusions of the court in overruling the

> objection filed October 29, 2009. Petitioner instructs the Court to scrutinize this denial under the abuse of discretion standard.

(Br. of Appellant at 18.)

Appellate Rule 46(A)(8)(a) requires each issue presented by the appellant be "supported by cogent reasoning . . .[and] supported by citations to authorities, statutes, and the Appendix or parts of the Record on Appeal relied on[.]" Failure to make a cogent argument supported by citation to authority results in waiver of issue on appeal. *Matheney v. State*, 688 N.E.2d 883, 907 (Ind. 1997). *Pro se* litigants are held to the same standard as licensed attorneys and are required to follow procedural rules. *Evans v. State*, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004), *trans. denied*. Bowers, by his own admission, has offered no citation to authority to support his argument. Neither has he provided cogent reasoning, as his paragraph does not include any legal assertion as to why the court abused its discretion by overruling his objection. Accordingly, his argument is waived.

3. <u>Denial of Request for Subpoenas</u>

When determining whether to issue subpoenas, the post-conviction court has broad discretion, and we will reverse its decision only for an abuse of that discretion. *Johnson v. State*, 832 N.E.2d 985, 994 (Ind. Ct. App 2005), *reh'g denied*, *trans. denied*. "An abuse of discretion has occurred if the court's decision is against the logic and effect of the facts and circumstances before the court." *Id*. at 994. "If the pro se petitioner requests issuance of subpoenas for witnesses at an evidentiary hearing, the petitioner shall specifically state by

affidavit the reason the witness' testimony is required and the substance of the witness' expected testimony." Ind. Post-Conviction Rule 1(9)(b).

In his brief, Bowers admitted he received the post-conviction court's instruction to provide information regarding his proposed witnesses pursuant to P-C.R. 1(9)(b). He claims he "partially addressed" the court's request, (Br. of Appellant at 19), but there is no evidence thereof in the Record on Appeal. Nor has he explained why the denial of his request to subpoena the three witnesses was an abuse of discretion. Thus, this issue is waived for failure to comply with Appellate Rule 46(A)(8)(a). *See Matheney*, 688 N.E.2d at 907 (failure to make a cogent argument supported by citation to authority results in waiver of issue on appeal).

CONCLUSION

Bowers' trial counsel was not ineffective for failing to move for dismissal of charges based on an allegedly defective probable cause affidavit, and Bowers failed to support his other two issues with cogent argument supported by authority. Thus, we affirm the denial of his petition for post-conviction relief.

Affirmed.

FRIEDLANDER, J., and MATHIAS, J., concur.