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IN THE
COURT OF APPEALS OF INDIANA

ROOSEVELT WILLIAMS,	)	
	)	
Appellant- Petitioner,	)	
	)	
vs.	)	No. 49A02-0911-PC-1124
	)	
STATE OF INDIANA,	)	
	)	
Appellee- Plaintiff,	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Mark D. Stoner, Judge
The Honorable Jeffrey L. Marchal, Master Commissioner
Cause No. 49G06-9607-PC-97107

August 10, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

Roosevelt Williams appeals the denial of his petition for post-conviction relief in 2009 following his 1997 conviction for murder. Williams raises two issues: 1) whether trial counsel was ineffective; and 2) whether appellate counsel was ineffective. Concluding neither trial nor appellate counsel was deficient and the post-conviction court did not err in denying Williams's petition, we affirm.

Facts and Procedural History

The Indiana Supreme Court summarized the facts as follows in Williams's direct appeal:

> Jerome Wade and his stepson Jerry Williams, Jr. ("Jerry," no relation to the defendant) were at their apartment on Staughton Drive in Indianapolis on June 25, 1995. At approximately 2:15 p.m., as Wade stood in the kitchen fixing dinner, Jerry ran to the back of the apartment. Wade turned around and saw two men standing in the doorway holding pistols. One was wearing all blue clothing and had pulled a blue mask over his face. The other was clad entirely in white. The man in blue ran after Jerry, while the man in white told Wade to sit on the couch and repeatedly ordered Wade not to look at him.
>
> Minutes later Wade heard the man in blue say "I know you got it, give it up," then heard several shots fired. When the man in white headed toward the back of the apartment, Wade tried to hide behind a recliner, and the man in white fired several shots at Wade, one of which struck him in the leg. The two intruders then left the apartment. Cynthia Tutt was sitting in her car in front of Wade's apartment building when she saw two men, one of whom had his hand wrapped in a towel, run out of the building, and drive off in a "big cream colored car."
>
> Jerry had been hit by six bullets and died from gunshot wounds to the chest and abdomen. Two 9 millimeter bullets were recovered during the autopsy. When police arrived they discovered a trail of blood leading from the apartment door to the sidewalk outside the building, and also found blood on a small rock across the street from the apartment. Police took several samples from this trail of blood and one sample from the rock.
>
> On the same afternoon at about 2:45 p.m., Williams appeared at Wishard Hospital with gunshot wounds to his arm and his leg. He told a Wishard special deputy that he had been carjacked. Detectives investigating

Jerry's murder heard a police radio transmission about a man who had arrived at Wishard Hospital claiming to have been shot in the course of a carjacking that occurred in the general vicinity of the murder. Two days later police obtained and executed a search warrant to draw blood from Williams, who was still at Wishard Hospital. After the blood was drawn, the detectives told Williams that they wanted to talk to him about Jerry's murder. Williams told the detectives that he would like to have some time to think about it, and the detectives told Williams that they would return in about an hour. When they returned, the detectives were unable to locate Williams. Hospital personnel told police that Williams "was not there," but had not been discharged.

DNA analysis of the blood found at the scene compared with samples from Williams, Wade, and Jerry excluded Wade and Jerry, but not Williams, as a source of the blood found at the scene. The DNA profile of Williams, which matched that of the blood found at the crime scene, occurs in one in 22,500 African-Americans.

Almost a year after Jerry's death, Ronald Rush was at his aunt's house when narcotics officers executed a search warrant. Rush was taken to the police station where he was asked if he knew anything about the murder of Jerry Williams. After being told that he was facing twenty to fifty years for a Class A felony drug charge, Rush agreed to talk to the police. According to Rush's statement, Williams and his cousin, Ian Gentry, arrived in Williams' cream-colored Buick to visit Rush. Rush reported that Williams was carrying a 9 millimeter handgun and said he and Gentry were going to rob Jerry. He also displayed a blue mask that he said he would wear to conceal his identity. Rush also told police that he went to Wishard Hospital the following day to speak to Williams, where Williams told him that, although he had planned only to rob Jerry, "it got deeper than just a robbery and he killed Jerry." Williams also told Rush that Jerry shot him in his arm and in his leg. Williams said that after Jerry shot him he "pulled the nine millimeter out and shot Jerry several times."

At trial, Rush changed his story. He testified that Williams never told him that he had killed Jerry and that his statement to police was based on details he heard from someone else. He also testified that a detective had told him "if I told him what I knew he'd let me go, and I just told him what I heard, you know, because I was scared." Later in the trial, defense counsel asked the detective who took Rush's statement whether Rush received any benefits for giving a statement, and the detective responded that drug charges were not filed. The detective also testified that he had informed a deputy prosecutor in the screening division about this "deal," but had not told the deputy in charge of trying Williams' case. Defense counsel moved for a mistrial based on the State's failure to disclose the arrangement with Rush. In the alternative, Williams asked that the detective's testimony and Rush's testimony be stricken from the record. The trial court denied the

> motion for mistrial but granted the request to strike the testimony of Rush and admonished the jury that "the testimony and prior statement of Ronald Rush, as well as any testimony concerning them from any other witness are no longer evidence in this case and are stricken from the record."

Williams v. State, 714 N.E.2d 644, 647-48 (Ind. 1999), cert. denied, 528 U.S. 1170 (2000).

The jury found Williams guilty of murder and the trial court sentenced him to sixty-five years. The Indiana Supreme Court affirmed Williams's conviction on direct appeal. See id. Williams filed a petition for post-conviction relief in 2003, and an amended petition in 2009. Following a hearing, the post-conviction court issued a twenty-seven-page order granting the amended petition as to a sentencing issue and denying it as to the ineffective assistance of counsel issues. Williams appeals the denial.

Discussion and Decision

I. Standard of Review

Defendants who have exhausted the direct appeal process may challenge the correctness of their convictions and sentences by filing a post-conviction petition. Stevens v. State, 770 N.E.2d 739, 746 (Ind. 2002), cert. denied, 540 U.S. 830 (2003). A petitioner who has been denied post-conviction relief faces a rigorous standard of review on appeal. Dewitt v. State, 755 N.E.2d 167, 170 (Ind. 2001). The post-conviction court's denial of relief will be affirmed unless the petitioner shows that the evidence leads unerringly and unmistakably to a decision opposite that reached by the post-conviction court. Id. We consider only the probative evidence and reasonable inferences therefrom that support the post-conviction court's determination and will not reweigh the evidence

or judge the credibility of witnesses. Bigler v. State, 732 N.E.2d 191, 194 (Ind. Ct. App. 2000), trans. denied.

Here, Williams argues that the trial court erred in denying his post-conviction petition because he received ineffective assistance of counsel both at trial and on appeal. The standard of review for a claim of ineffective assistance of trial counsel is the same as for appellate counsel. Reed v. State, 856 N.E.2d 1189, 1195 (Ind. 2006). To prevail on a claim of ineffective assistance of counsel, the petitioner must establish the two components first set out in Strickland v. Washington, 466 U.S. 668 (1984). Specifically, the petitioner must demonstrate that counsel's performance was deficient. Smith v. State, 765 N.E.2d 578, 585 (Ind. 2002). This part of the test requires the petitioner to demonstrate that counsel's representation fell below an objective standard of reasonableness and that counsel's errors were so serious that they resulted in a denial of the right to counsel guaranteed under the Sixth Amendment of the United States Constitution. McCorker v. State, 797 N.E.2d 257, 267 (Ind. 2003). There is a strong presumption that counsel's representation was adequate. Stevens, 770 N.E.2d at 746. This presumption can be rebutted only with strong and convincing evidence. Elisea v. State, 777 N.E.2d 46, 50 (Ind. Ct. App. 2002).

To establish the second part of the test, the petitioner must demonstrate that counsel's deficient performance resulted in prejudice to the defendant. Smith, 765 N.E.2d at 585. The petitioner must show that but for counsel's unprofessional errors, there is a reasonable probability that the result of the proceeding would have been different. McCorker, 797 N.E.2d at 267. A reasonable probability for the prejudice

requirement is a probability sufficient to undermine confidence in the outcome. Wesley v. State, 788 N.E.2d 1247, 1252 (Ind. 2003). We now turn to Williams's specific claims.

II. Ineffective Assistance of Trial Counsel

Williams argues trial counsel was ineffective for failing to 1) file a motion to suppress Williams's blood draw evidence; 2) remain steadfast in her request for a mistrial; and 3) object to jury instructions. We address each of his arguments in turn.

A. Motion to Suppress

Williams first argues trial counsel was ineffective for failing to file a motion to suppress Williams's blood draw evidence. The decision of whether to file a particular motion is a matter of trial strategy and absent an express showing to the contrary, the failure to file a motion does not indicate ineffective assistance of counsel. Moore v. State, 872 N.E.2d 617, 620-21 (Ind. Ct. App. 2007), trans. denied. To prevail on an ineffective assistance of counsel claim based upon counsel's failure to file a motion on a defendant's behalf, the defendant must demonstrate that such a motion would have been successful. Id. at 621.

We turn now to the substance of Williams's claims. In 1995, the State filed a "Request for an Arrest Warrant for the Limited Purpose of Obtaining Blood Evidence [from Williams]" in Marion County Municipal Courtroom 9. Petitioner's Exhibit 2. Attached to the request was an "Affidavit for Probable Cause, sworn to and submitted by Detective William D. Lorah of the Marion County Sheriff's Department, which set[] forth probable cause to believe that Roosevelt N. Williams committed the criminal act of Homicide." Id. In this affidavit, Detective Lorah affirmed in relevant part:

> Jerome Wade advised that two black males entered the apartment with guns. [O]ne of the suspects was described as a black male, 5'8" 160 lbs., wearing a ski mask. . . . There was also evidence that one of the suspects had been shot as [a] blood trail was found in the apartment and continuing from the scene east on the sidewalk and then south to a parking lot.
>
> On 6-25-95[,] Sgt. Humbles Unit 418 interviewed Cynthia Tutt. She advised as she was sitting in front of 5920 Staughton Drive on 6-25-95 at approx. 2:00 p.m. she observed two black makes running east from 5920 and get into a white or light color[ed] vehicle south of 5930 Staughton Dr. She also said that one of the subjects that [was] running was holding [his] arm which was wrapped in [a] towel. Shortly after arriving at the scene[,] I received police radio traffic of a carjacking in the area of 46th and Arlington. The vehicle matched the description of the vehicle described by Cynthia Tutt. Approximately 30 minutes later[,] a black male subject arrived at Wishard Hospital in a t-shirt and underwear advising he was shot during a carjacking. The subject identified himself as Roosevelt Williams[,] black male[,] DOB, 07-17-76. He advised that the vehicle he was driving during the carjacking was a light blue or green Buick with a tan top. The subject had a gunshot to his left arm and his leg.
>
> The vehicle involved in the carjacking and the physical description of Roosevelt N. Williams are very similar to the vehicle and the subject descriptions provided by two different witnesses at the scene of the incident on Staughton Drive.

Petitioner's Exhibit 4.

Based upon the affidavit, Judge Wiles, the trial court judge in Municipal Courtroom 9, found probable cause to collect Williams's blood for testing, and issued a warrant on June 26, 1995. Williams was charged with Jerry's murder in July 1996. The first entry on the Chronological Case Summary ("CCS") of Williams's murder trial is Williams's arrest for Jerry's murder in July 1996. The CCS does not contain an entry for the request of the 1995 warrant. However, a 1997 State's Notice of Discovery Compliance states that copies of a "Request for Arrest Warrant and Order, 4 pages" were

forwarded to defense counsel.[1] In 2007, Roosevelt obtained a copy of Detective Lorah's affidavit pursuant to a public records request to the Marion County Sheriff's Department. In 2008, Roosevelt requested a copy of the warrant, the warrant return, and the probable cause affidavit from the Marion County Clerk's Office. The Clerk's Office located the case file, but none of the requested documents were found in the file. At the post-conviction hearing, Detective Lorah identified the request for the arrest warrant, the probable cause affidavit he prepared, and the warrant. He testified the probable cause affidavit he prepared would have been presented to Judge Wiles. He also testified he would have received the warrant "after probable cause was filed and signed by the Judge." Post-Conviction Transcript at 97.

Williams first contends trial counsel was ineffective for failing to file a motion to suppress Williams's blood draw evidence because the 1995 probable cause affidavit was not properly filed pursuant to Indiana Code section 35-33-5-2. In 1995, that statute provided if an arrest or search warrant was sought on the basis of an affidavit, the warrant could not issue until the affidavit was "filed with the judge." Ind. Code § 35-33-5-2(A) (West PREMISE 1995). The Indiana Supreme Court has explained that for the purposes of Indiana Code section 35-33-5-2, "[f]iling consists of the delivery of the paper to the proper officer for the purpose of being kept on file by him in the proper place." Wilson v. State, 263 Ind. 469, 480, 333 N.E.2d 755, 761 (1975). The statute does not require the filing of documents with the clerk. See Moseby v. State, 872 N.E.2d 189, 191 (Ind. Ct.

[1] The "Request for an Arrest Warrant for the Limited Purpose of Obtaining Blood Evidence" was two pages as was the trial court's "Order and Warrant."

App. 2007) (pointing out no decisions have held improper the filing of the affidavit with the judge, rather than the clerk), trans. denied.

The post-conviction court concluded as follows on this issue:

> 70. Despite the conflicting evidence, the Court has found that the affidavit was properly "filed with the judge' as required under I.C. 35-33-5-2(a). The warrant, signed by Judge Wiles, clearly states that the State of Indiana has "file[d] its request for an Arrest Warrant for the limited purpose of obtaining a human blood sample for evidence" and the warrant, in turn, incorporated both the warrant request and the accompanying affidavit for probable cause. The warrant evidences that the Court "carefully read and considered the same."
>
> 71. The testimony of Detective Lorah confirms that the probable cause affidavit was filed with Judge Wiles and reviewed by him prior to the issuance of the warrant.
>
> 72. The fact that a copy of the affidavit and warrant are not shown to be with the Clerk or in the Order book does not persuade this Court that the requirements of I.C. 35-33-5-2(a) were not satisfied. . . . Petitioner is not entitled to relief.

Post-Conviction Court's Order at 16-17 (citations omitted).

Here, the State filed a request for the warrant in Judge Wiles's court. The request references an attached affidavit for probable cause. The trial court's order/warrant on the State's request states the court "carefully read and considered" the request. Petitioner's Ex. 3. Detective Lorah testified his probable cause affidavit would have been presented to Judge Wiles, and he would have received the warrant after the probable cause was filed and signed by the Judge. This evidence supports the post-conviction court's conclusion that the affidavit was delivered to Judge Wiles. Because Williams has failed to show the affidavit was not properly filed pursuant to Indiana Code section 35-33-5-2,

trial counsel was not ineffective for failing to file a motion to suppress the blood draw evidence.[2]

Williams also contends trial counsel was ineffective for failing to file a motion to suppress Williams's blood draw evidence because Detective Lorah intentionally made false statements in the probable cause affidavit. In support of his contention, he directs us to Franks v. Delaware, 438 U.S. 154 (1978). There, the United States Supreme Court held the defendant is entitled to a hearing where he makes a substantial preliminary showing that an affiant in a warrant affidavit made either a knowing and intentional false statement or a statement with reckless disregard for the truth, and the allegedly false statement is necessary to the finding of probable cause. Id. at 155-56. However, mistakes and inaccuracies in a search warrant affidavit will not defeat the reliability of the affidavit so long as such mistakes were innocently made. Lundquist v. State, 834 N.E.2d 1061, 1072 (Ind. Ct. App. 2005).

Williams claims Detective Lorah obtained a warrant from Judge Wiles based upon the following intentionally false statements: 1) the vehicle in the carjacking and the physical description of Williams were similar to the vehicle and subject description

[2] In a somewhat related argument Williams claims that because he did not receive a copy of the affidavit until ten years after his trial pursuant to his public record request to the Marion County Sheriff's Department, the affidavit constitutes newly discovered evidence that entitles him to a new trial. The Indiana Supreme Court has held new evidence will mandate a new trial only when the evidence demonstrates: 1) the evidence has been discovered since the trial; 2) it is material and relevant; 3) it is not cumulative; 4) it is not merely impeaching; 5) it is not privileged or incompetent; 6) due diligence was used to discover it in time for trial; 7) the evidence is worthy of credit; 8) it can be produced upon a retrial of the case; and 9) it will probably produce a different result at trial. Taylor v. State, 840 N.E.2d 324, 329-30 (Ind. 2006). The burden of showing that all nine requirements are met rests with the petitioner for post-conviction relief. Id. at 330.
Here, we agree with the State that Williams has not shown due diligence was used to discover the affidavit in time for trial. In 1997, a State's Notice of Discovery Compliance states that copies of a "Request for Arrest Warrant and Order, 4 pages" were forwarded to defense counsel. Counsel would have seen in the request that an affidavit for probable cause should have been attached to it and could have requested it. In addition, Williams has failed to show that the affidavit would have produced a different result at trial. The post-conviction court did not err in concluding the affidavit was not newly discovered evidence.

provided by two different witnesses at the scene of the incident on Staughton Drive, and 2) the carjacking occurred in the area of 46th and Arlington.

However, as the State points out, the physical description of Williams was very similar to descriptions provided by two witnesses at the scene of the crime. Wade described the man who killed his stepson as an African-American male, 5'8" tall and weighing approximately 160 pounds. Williams's pre-sentence investigation report reveals he is a 5'8" African-American male who weighs 140 pounds. Tutt described the men she saw running out of the victim's apartment building as between sixteen and twenty years old. Williams was eighteen at the time he murdered Jerry. Nothing in the description of Williams supports Williams's allegation Detective Lorah made intentionally false statements in the probable cause affidavit.

As to the description of the car and the location of the alleged carjacking, witness Tutt stated she saw two men get into a "big cream colored car" in front of the victims' apartment building. Detective Lorah stated in the probable cause affidavit that he "received police radio traffic of a carjacking in the area of 46th and Arlington [which was three blocks from the murder]. The vehicle matched the description of the vehicle described by Cynthia Tutt." Petitioner's Ex. 4. Although Williams alleges now the carjacking was reported at a different address substantially further from the crime scene, Detective Lorah's affidavit stated what was reported over the police radio. Williams has not alleged Detective Lorah did not in fact receive such police radio traffic. In addition, Detective Lorah's affidavit states Williams "advised that the vehicle he was driving during the carjacking was a light blue or green Buick with a tan top." Id. The

discrepancy between Williams's description of the car he was driving during the alleged carjacking and Tutt's description and the description on the radio traffic does not support Williams's allegation that Detective Lorah made intentionally false statements in the probable cause affidavit.

The post-conviction court concluded Williams failed to make a substantial showing that Detective Lorah's statements in the probable cause affidavit were made with a reckless disregard for the truth. Williams has not shown that the evidence leads unerringly and unmistakably to an opposite decision. See Dewitt, 755 N.E.2d at 170. Trial counsel was therefore not ineffective for failing to make a Franks challenge to the probable cause affidavit.

Lastly, Williams argues trial counsel was ineffective for failing to file a motion to suppress Williams's blood draw evidence because Williams's blood was not properly drawn pursuant to the protocol set forth in Indiana Code section 9-30-6-6. The statute provides that blood samples collected at the request of a law enforcement officer as part of a criminal investigation must be obtained by a "physician or a person trained in obtaining bodily substance samples and acting under the direction of or under a protocol prepared by a physician." Ind. Code § 9-30-6-6(a). Williams contends trial counsel should have filed a motion to suppress his blood draw evidence because the State did not present evidence the nurse who drew his blood was acting under a protocol prepared by a physician.

However, Indiana Code section 9-30-6-6(e) further provides the "test results and samples obtained by a law enforcement officer under subsection (a) may be disclosed

only to a prosecuting attorney or a deputy prosecuting attorney for use as evidence in a criminal proceeding under this chapter, IC 9-30-5, or IC 9-30-9." All of these provisions concern operating a vehicle while intoxicated. The blood evidence in this case was not used in a criminal proceeding under these statutory provisions. Rather, it was used in a prosecution for murder under Indiana Code section 35-42-1-1. The protocols set out above are not required as foundational evidence for the collection and admission of blood evidence in a murder prosecution. Cf. Abney v. State, 811 N.E.2d 415, 422 (Ind. Ct. App. 2004) ("[T]he requirements of Indiana Code section 9-30-6-6(g) were a tool to acquire evidence of blood alcohol content . . . .").

The post-conviction court concluded Indiana Code section 9-30-6-6 was not applicable in this case. Williams has not shown the evidence leads unerringly and unmistakably to an opposite decision. See Dewitt, 755 N.E.2d at 170.

B. Mistrial

Williams also argues trial counsel was ineffective for agreeing to withdraw her motion for a mistrial and failing to remain steadfast in her request. At trial, defense counsel moved for a mistrial after learning the State failed to disclose that drug charges had not been filed against witness Rush because he gave a statement about Williams's involvement in Jerry's murder. The trial court told defense counsel it would grant the motion for mistrial, but there would be a retrial. The court further explained DNA evidence excluded from the current trial would be admissible at the retrial. In the alternative, the court suggested if defense counsel withdrew her mistrial motion, the court would strike from the record Rush's statements and testimony and admonish the jury to

disregard both. Defense counsel chose to withdraw the mistrial motion and proceed with the trial court striking the testimony and admonishing the jury. Williams argues defense counsel should have remained steadfast in her request for a mistrial and was ineffective for withdrawing the motion.[3]

At the post-conviction hearing, trial counsel testified she agreed to withdraw the motion for a mistrial and proceed with the trial court striking the testimony and admonishing the jury for strategic reasons. Counsel was concerned if the mistrial motion was granted and Williams was retried, "more implicative or inculpatory [DNA] evidence would be admissible at the retrial." PCR Tr. at 63. Defense counsel believed the defense team had exposed the detective who failed to disclose the deal with Rush as a "liar" and "still had something to argue to the jury with some watered down DNA." Id. at 64.

Counsel is afforded considerable discretion in choosing strategy and tactics, and we will accord those decisions deference. Curtis v. State, 905 N.E.2d 410, 414 (Ind. Ct. App. 2009), trans. denied. A strong presumption arises that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. Strategies are assessed based on facts known at the time and will not be second-guessed even if the strategy in hindsight did not serve the post-conviction petitioner's best interests. Id. at 414-15. In this case, defense counsel chose a strategy

[3] On direct appeal, the Indiana Supreme Court held the trial court did not err in denying Williams's motion for a mistrial. The State claims Williams's post-conviction issue regarding the mistrial is res judicata because it has already been decided adversely to Williams. See Timberlake v. State, 753 N.E.2d 591, 597 (Ind. 2001), cert. denied, 537 U.S. 839 (2002) (stating if an issue was presented on direct appeal and decided adversely to the defendant the doctrine of res judicata prohibits revisiting the issue in post-conviction proceedings). Here, however, Williams does not argue the trial court erred in denying the motion. Rather, Williams contends trial counsel was ineffective for withdrawing her motion for a mistrial. This is a separate issue, which we therefore address.

based on facts known to her at the time. She was not ineffective for withdrawing her motion for a mistrial.

C. Jury Instructions

Lastly, Williams argues trial counsel was ineffective for failing to object to the following jury instructions that provide in relevant part:

Instruction Number 17(a)

> You are instructed that the Court has ruled that the testimony and prior statements of Ronald Rush, as well as any testimony concerning them from any other witness, are no longer evidence in this case and are stricken from the record.
>
> This means you are not to think about, comment upon, or refer to any matter related to Ronald Rush, any statements or testimony given by him, or any inferences therefrom at any time during your deliberations. In short, you are to deliberate as though you never heard anything about or from Ronald Rush.

Instruction Number 18

> You should not disregard the testimony of any witness without a reason and without careful consideration.

Clerk's Record at 114-15. Williams specifically complains that the two jury instructions "confused and misled the jury by providing conflicting charges." Appellant's Brief at 30.[4]

Instructing the jury lies within the sole discretion of the trial court. Carter v. State, 766 N.E.2d 377, 382 (Ind. 2002). Jury instructions must be considered as a whole and in reference to each other. Lewis v. State, 759 N.E.2d 1077, 1080-81 (Ind. Ct. App. 2001),

[4] In his direct appeal, Williams argued the trial court erred in giving the jury these instructions. The issue was waived because trial counsel did not object to the instructions or tender alternate instructions. Williams, 714 N.E.2d at 650. We now address the issue in the context of ineffective assistance of trial counsel for failing to object to the instructions.

trans. denied. Even an erroneous instruction will not be error if the instructions taken as a whole do not misstate the law or otherwise mislead the jury. Id. at 1081.

Here, Instruction Number 17(a) advised the jury to disregard the testimony of Ronald Rush. The following instruction, Instruction Number 18, told the jury not to disregard the testimony of any witness without a reason. Clearly, Instruction Number 17(a) provided the jury with a reason to disregard the testimony of one of the witnesses. When the instructions are considered as a whole and in reference to each other, these two instructions are neither confusing nor misleading. Trial counsel was not ineffective for failing to object to them.

III. Ineffective Assistance of Appellate Counsel

Lastly, Williams argues that appellate counsel was ineffective because he failed to argue Detective Lorah's probable cause affidavit was not properly filed and Williams's blood was not properly drawn pursuant to statutory protocol. We have already determined trial counsel was not ineffective for failing to raise these issues because there was no error with regard to these issues. Where we have determined a petitioner did not receive ineffective assistance of trial counsel, the petitioner can neither show deficient performance nor resulting prejudice as a result of his appellate counsel's failure to raise the same arguments on appeal. Davis v. State, 819 N.E.2d 863, 870 (Ind. Ct. App. 2004), trans. denied. Appellate counsel was not ineffective.

Conclusion

The post-conviction court did not err in denying Williams's petition as to the ineffective assistance of counsel issues.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.