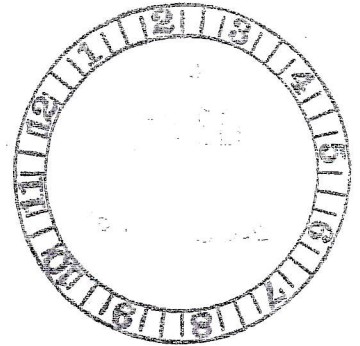


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IN THE
COURT OF APPEALS OF INDIANA

No. 49A05-0809-PC-531



VANESSA THOMPSON,)	Appeal from the Marion Superior
)	Court, Criminal Division Four
Appellant (Petitioner Below),)	Cause No. 49G04-9903-PC-035469
)	Formerly: 49G04-9903-CF-035469
)	
v.)	The Honorable
)	Steven J. Rubick, Magistrate
STATE OF INDIANA,)	The Honorable
)	Patricia J. Gifford,
Appellee (Respondent Below).)	Judge.

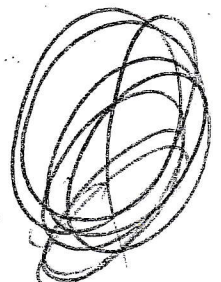
BRIEF OF PETITIONER-APPELLANT

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No. 49A05-0809-PC-531

Appellee (Respondent Below).)

**The Honorable
Steven J. Rubick, Magistrate
The Honorable
Patricia J. Gifford,
Judge.**

BRIEF OF PETITIONER-APPELLANT

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STATE OF INDIANA,)	The Honorable
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Appellee (Respondent Below).)	Judge.

BRIEF OF PETITIONER-APPELLANT

STATEMENT OF ISSUES

- I. Whether the post-conviction court's ruling that Thompson failed to prove the State withheld material exculpatory evidence from the defense in violation of *Brady v. Maryland* is clearly erroneous.
- II. Whether Thompson is entitled to relief on a claim not addressed by the post-conviction court: that the State elicited and failed to correct materially false and misleading trial testimony.
- III. Whether the post-conviction court's ruling that trial counsel rendered effective assistance is clearly erroneous.

STATEMENT OF THE CASE

This is an appeal from the denial of post-conviction relief. The direct appeal record, admitted at the post-conviction hearing as Petitioner's Exhibit A, is designated "TR" in this appeal. The post-conviction relief transcripts are designated "PCR Part 1" and "PCR Part 2" here.¹ The Appendix is referred to as "APP."

Prior proceedings: On March 2, 1999, Vanessa Thompson was charged with murder [TR 45-46].² On September 20, 2000, she was convicted as charged at trial by jury [TR 34]. On October 12, 2000, she was sentenced to fifty-five (55) years [TR 39]. On April 16, 2002, the Indiana Supreme Court affirmed the conviction on direct appeal in *Thompson v. State*, 765 N.E.2d 1273 (Ind. 2002).

Post-conviction proceedings: On April 16, 2001, Thompson filed a *pro se* Petition for Post-Conviction Relief, which the trial court held in abeyance until after the direct appeal [APP 54-61]. On August 22, 2002, the State Public Defender entered an Appearance in the PCR case [APP 65-66]. On September 10, 2002, the State filed an Answer [APP 67-68]. On June 29, 2006, the PCR petition was amended [APP 108-111]. On November 21, 2006, a Second Amendment was filed [APP 122-124]. On December 6, 2006, the State filed a second Answer [APP 129-130]. Hearings were held on January 24, 2007 [PCR Part 1, pp. 1-84] and September 19, 2007 [PCR Part 2,

¹Two post-conviction hearings were held, and the court reporter numbered and bound those hearings separately in **Part 1** and **Part 2**.

²Thompson was originally charged with murder in the same information as Alexa Whedon and Malcolm Wilson [TR 45]. On or about November 22, 1999, Whedon was convicted at a bench trial in Marion Superior Court Cause No. 49G04-9903-CF-035467 [PCR Part 1, p. 23]. On or about March 20, 2000, Wilson was convicted at a jury trial in Marion Superior Court Cause No. 49G04-9903-CF-035473 [PCR Part 1, p. 23].

pp. 1-42]. On January 22, 2008, a Motion to Amend Petition for Post-Conviction Relief was filed and additional evidence was tendered and reviewed by the PCR judge [APP 181-183; 184-186]. On July 21, 2008, the petition was denied by written findings of fact and conclusions of law [APP 187-205 (FFCL)].³

Appellate proceedings: On August 18, 2008, Thompson filed her Notice of Appeal [APP 206-207]. On September 18, 2008, the Notice of Completion of Clerk's Record was filed [APP 208]. On November 18, 2008, the Notice of Completion of Transcript was filed [APP 210]. This Court has granted Thompson an extension of time for filing the Brief of Appellant until January 12, 2009.

STATEMENT OF FACTS

This post-conviction relief case is being appealed after two post-conviction hearings were held. The direct appeal record, admitted at the first hearing, shows that on October 19, 1998, the body of Shanna Sheese, age 16, was found in a vacant lot near downtown Indianapolis [TR 234-236; 340]. According to the pathologist, Shanna had died from blunt force injury of the head [TR 344]. She was struck with a heavy object that was "relatively flat" or "slightly curved" [TR 341]. She could have been struck by a heavy tree limb, a two-by-four, an axe handle, or "possibly" a brick, and perhaps by more than one such object [TR 349-350]. She had been dead at least two days and possibly three or four [TR 343].

³A copy of the PCR court's findings of fact and conclusions of law ("FFCL") appears at the end of this brief as required by Ind. Appellate Rule 46(A)(10).

Shanna's sister, Summer, had last seen her on October 12, 1999, the day that their father died [TR 247-249]. Shanna was using crack cocaine and involved in prostitution [TR 254, 257, 263]. Summer had met Vanessa Thompson at "Ray's" house on Tacoma Avenue where people used crack cocaine, and Summer also frequented a crack house at 25 North Tacoma [TR 255-256]. She had never seen her sister Shanna with Thompson [TR 267].

Susan Miller was smoking crack cocaine and involved in prostitution and knew Shanna from the crack houses [TR 272-273]. She also knew Thompson and her boyfriend, Malcolm Wilson [TR 273-274]. Miller claimed that after Shanna's murder, Alexa Whedon was talking about the site where her body was found and that Thompson told Whedon not to discuss such things [TR 275-277]. According to Miller, Thompson also said that she was glad the girl was dead and that she "shouldn't have fucked with Malcolm" [TR 276-277].

— Where is recorded phone conversation I had with Malcolm at lock-up?

Davida Altmeyer had lived at 40 North Tacoma with her mother Rayetta Thomas [TR 288-289]. She got kicked out of her mother's house, and Thompson moved in [TR 290, 327-328, 368]. Davida was seriously addicted to crack cocaine and was diagnosed with bipolar disorder [TR 290-293]. She claimed to have seen Shanna with Thompson twice [TR 293-294]. She also claimed that she went one night to 25 North Tacoma to buy cocaine, that she saw tennis shoes attached to a body in Malcolm's white pick-up truck, and that Thompson was standing by the truck and said: "She saw, she saw" [TR 296-298; 327-330]. But Davida had to admit that she never said that in her first statement and that in a later statement, she lied about being taken in a van at gunpoint [TR 299-300, 306-310, 318-319; 326, 436-439]. She now claimed that her

said white girl, tennis, her sister summer said Shanna had on red high tops, halter top, strappy blouse, & was

mother, Rayetta, had said that *she* was taken at gunpoint in the van because of this case [TR 299-300, 307-312; 326]. However, when Rayetta testified, she denied ever telling Davida she was taken at gunpoint in a van [TR 361].

Pamela Nave testified Thompson had said at the Marion County Jail that she hurt someone for Malcolm and "would kill for him" [TR 392-396]. Nave claimed that she contacted the detective and gave a statement not because she was looking for help on her pending case, but only because she felt sorry for Shanna's family [TR 397-398].

Detective Roy West testified that his investigation developed no leads at first and that he ruled out several suspects in the first few months [TR 420-421]. He discovered Shanna's connection to the house at 25 North Tacoma and developed leads from that [TR 421-427]. He spoke with Davida early in the investigation and later at the jail [TR 424, 435-439]. He eventually took three statements from Thompson in which she denied knowing Shanna [TR 428-429]. Before Thompson's arrest, he took a statement from Gail Davis after Davis contacted him from the jail [TR 432-433]. There was no physical evidence linking Thompson to the murder [TR 432].

Gail Davis was in the Marion County Jail due to a probation violation on her robbery conviction and had since been transferred to the Indiana Department of Correction at Rockville [TR 454-457]. She had bipolar disorder and was taking Lithium, Cogentin, Thorazine, and Elavil to keep her "stable" or "level" at the time she was at the jail [TR 460-462]. She claimed that when Thompson was bunking in her area, she admitted crushing a young girl's head in with a brick and said she would never forget how warm the blood was on her hands [TR 463-468]. Davis testified that she made

Thompson move from her bunk area, thought about it for days, prayed on it, made a decision "to do the right thing," and contacted Detective West [TR 468-469].

On cross-examination, Davis denied attempting to get her story together with anyone else and insisted she did not "have a clue" why anyone would claim that she had said she was not going to testify before Marion County Prosecutor "Scott Newman" traveled to Rockville to talk to her [TR 476-481, 490-491]. She also admitted that she had sold her medications at the jail and had never before said Thompson had talked about feeling warm blood [TR 481-483, 487-490]. On redirect examination, Davis declared she was seeing her trial testimony through "[because] it's the right thing to do" and she was "getting nothing but a headache" from her testimony [TR 491-493]. In the end, she emphatically claimed that she had never asked the trial prosecutor (Stanley Kroh) "for anything" because she did not want anything from him [TR 493].

Attorney Kimberly Devane represented Thompson at the trial [TR 217]. Devane first called Donna Magnus to testify that Davida Altmeyer told her at the jail that her mother (Rayetta) said Thompson did not kill Shanna and Rayetta knew who did, and Magnus also confirmed that in their conversations at the jail, Davida never said anything about seeing Thompson by a truck with tennis shoes on a body [TR 499-506]. Devane then called Laura Dowell to testify that she overheard Gail Davis telling another inmate they needed to get their stories together, and that she later heard Davis say she had "Scott Newman" in the bag because he came to see her at Rockville [TR 513-518]. Devane later called Leann Kavanaugh to testify that when Thompson left Davis's bunk area at the jail, Davis had acted like "an upset, jealous boyfriend" [TR 637-638].

Devane also called Dr. Donald Olive to testify about bipolar disorder [TR 540-548]. During the manic phase of the disorder, the person is euphoric, grandiose, with tangential thought processes ("meaning they're sort of all over the place in their thinking process") and delusional thinking ("a false belief usually a really outlandish belief") [TR 549-550]. Thorazine is prescribed in the manic phase of the disorder (in conjunction with Lithium, Cogentin, and Elavil) to help reduce symptoms of hearing voices, hallucinations, or delusions [TR 550-551]. Patients who stop taking their medications can have their symptoms worsen, resulting in even more disorganized and delusional thinking [TR 551-552]. That in turn could make the patients prone to exaggerate or fabricate information [TR 553]. A bipolar person who was using crack cocaine could be affected in the same way and could be prone to giving conflicting versions of a story [TR 554-558]. Prolonged use of crack cocaine, on its own, could result in the person hearing voices and becoming delusional [TR 558-561]. On cross-examination, Dr. Olive had to admit that his opinions were just general and that he had never examined Davida Altmeyer or Gail Davis [TR 565-566].

Finally, Devane called Vanessa Thompson to testify [TR 574-634]. Thompson, 27, had used crack cocaine since she was 20 [TR 578-582]. In 1998 she was working as a prostitute and sometimes crashing at 25 North Tacoma [TR 585-586]. There she met Malcolm, who began taking care of her [TR 586-589]. She sold drugs for Malcolm [TR 594-597]. She had a fight with Davida around that time and moved into Rayetta's house with Malcolm's help [TR 589-592]. She had never met Shanna but knew her sister, Summer [TR 593, 595-596]. She was sometimes jealous that Malcolm slept with other women, but he slept with a lot of other women [TR 593-594]. After her arrest for

prostitution in early 1999, she cooperated with Detective West by giving him three statements [TR 597-598, 601-604, 610-613]. She suspected Malcolm might have had something to do with the crime and told West everything she knew about him [TR 615, 618]. She felt Gail Davis had a crush on her; she moved from her bunk because Davis had "this very obnoxious snore[;]" and Davis acted hurt when she moved [TR 605, 609]. She denied telling Davis that she had hit Shanna over the head with a brick [TR 605-606], denied telling Pamela Nave anything specific about this [TR 606-608], and denied killing Shanna [TR 617, 618]. On cross-examination, she again denied what Davis had said, denied saying she was glad Shanna was dead, and denied the claims made by Davida Altmeyer and Pamela Nave [TR 618-620, 624-626].

In his initial closing statements, Deputy Prosecutor Kroh told the jury without objection that he could not "think of any benefit" the young ladies who testified had got and that he knew there was "no evidence of any kind of benefit that any of them have received" [TR 660]. According to him, "[n]obody got out of jail earlier than they were supposed to" [TR 660]. He thanked God there were people like these women and "in the end the benefit that they get is they get to live with themselves [and] . . . get to sleep at night cause they know they came to court and told the truth . . ." [TR 661]. He said that Gail Davis was getting nothing "but the knowledge that she has come forward and told the truth . . ." [TR 663]. He concluded that part of his argument by telling the jury that all "these young ladies are speaking from their heart . . ." [TR 664].

For the defense, Devane maintained in her closing that Gail Davis was lying in the hopes of getting benefits, that Gail Davis and Davida Altmeyer were delusional due to their bipolar disorder and Davida's acute drug use, that the informants were

expecting favors for their testimony, and that Thompson was innocent [TR 664-675]. In his response, Deputy Prosecutor Kroh referred to Davida's courage and strength for coming forth and "speaking from the heart" [TR 677]. He characterized his witnesses as young ladies of conscience and courage and "[defied] anyone to say that any of these ladies had a motive for doing anything but coming in here and telling the truth . . ." [TR 677]. He reiterated that they were not getting any benefits except that they got to live with themselves and sleep at night and that Davis was getting nothing but a headache for this [TR 680]. In the end, he asked the jury to "honor the courage" of these witnesses [TR 682].

The jury convicted Thompson of murder [TR 684]. She was sentenced to the presumptive term of fifty-five (55) years [TR 39]. The conviction was affirmed on direct appeal on the grounds that the evidence was not incredibly dubious and the trial court had not erred by denying defense requests to examine mental health records. *Thompson v. State*, 765 N.E.2d 1273 (Ind. 2002).

On post-conviction, Thompson asserted a new trial must be held because the State suppressed material exculpatory evidence, the State failed to correct false and misleading testimony, and trial counsel was ineffective in several respects. At the first PCR hearing, Deseriee Vigil-Landers (A/K/A Deseriee Padilla and Rene Vigil) testified that she met Gail Davis in 1992 in Las Vegas and came to Indianapolis in 1996 to live with her [PCR Part 1, pp. 10-12]. She and Davis were "a couple" [PCR Part 1, p. 12]. They were incarcerated in the Marion County Jail at the same time and kept separated because it was known they were a couple [PCR Part 1, p. 13]. At some later point, they were allowed to be together again [PCR Part 1, p. 13]. She recognized Davis's

handwriting on three letters [PCR Part 1, pp. 14-15]. Those were admitted in evidence as one exhibit [PCR Part 1, p. 59 (Exhibit G, pp. 1-7); APP 211-217].

The first letter showed that Davis wrote to Prosecutor Kroh from the jail reminding him that when they recently met, she had asked him to contact jail records and have her name and the name of her "wife" Deseriee removed from their respective cards because Deseriee was leaving the jail in less than two weeks and Davis wanted to "spend at least a few days with her before she leaves" [PCR Part 1, p. 59 (Exhibit G, pp. 1-2; APP 211-212)].⁴ The second letter ("To Whom it May Concern") said that the jail conditions were horrific and that Davis had not received her medications for days [PCR Part 1, p. 59 (Exhibit G, p. 3); APP 213]. The third letter (also addressed to Kroh) said that she was withdrawing her testimony in the Thompson case because she had not received her medications for a week, that she was beginning to "manic out," and that she was "promised [she] would be taken back to Rockville after [Whedon's] trial" [PCR Part 1, p. 59 (Exhibit G, pp. 4-5); APP 214-215 (emphasis in original)].

Attorney Devane testified at post-conviction that these letters were not disclosed to the defense [PCR Part 1, p. 24]. When she finally viewed them on the day of the PCR hearing, she found them "graphic and interesting" because they would have bolstered their defense that Davis was a manic depressive, bipolar individual with grandiose, delusional thoughts, and because they showed that contrary to her adamant testimony about neither receiving nor seeking any benefits from the State, one letter showed on its face that Davis had even threatened to withdraw her testimony because

⁴We know the letter about Deseriee was the one post-marked April, 1999 [PCR Part 1, p. 59 (Exhibit G, p. 7)] because the content of the other letters shows they were sent after the Whedon trial (November, 1999) [PCR Part 1, p. 23].

the State had failed to meet her concerns and she was not getting her “perks” [PCR Part 1, pp. 24-27; 42-43]. Devane would “absolutely” have wanted to use the letters to thoroughly impeach her credibility because she was “undeniably the key witness” whose testimony “most persuasively swayed” the jury [PCR Part 1, pp. 27-28]. Devane would also have followed up on the letters with her expert and the jail staff and other witnesses if the letters had been disclosed [PCR Part 1, pp. 29-30].

Devane also testified that in essence, she did not know why she failed to impeach Gail Davis with a passage from her pretrial statement where Davis was asked about details Thompson supposedly had admitted about the crime and answered:

All I know, she, the closest that I got for a visual is a brick. Malcolm, Darrell and AJ were all there, and something about crushing this girl's head in, that's as far as I got as a visual, I don't know if it's true, I don't know.

[PCR Part 1, p. 31 (Exhibit F, p. 14)]. At first Devane speculated that she might have believed the negatives of using that passage outweighed the positives, but in the end she admitted that she might just have overlooked using the passage to impeach [PCR Part 1, pp. 32-34]. In any event, Devane believed that she would surely have used the passage about the “visual” to impeach Davis's credibility if her letters had been disclosed to the defense [PCR Part 1, p. 34]. Devane also testified that if she had known before the trial that the State had given Pamela Nave any sort of benefit, she would certainly have used that information to impeach Nave's credibility [PCR Part 1, p. 35].

Next, Stanley Kroh, the trial prosecutor, testified at post-conviction that he remembered receiving letters from Gail Davis and had no doubt the letters he was shown at the hearing came from the prosecution file, and he specifically recognized the

two letters that had been addressed to him [PCR Part 1, pp. 54-56]. One of the envelopes contained his personal notes reminding him that before the trial, a handful of jail inmates had approached the State in the belief that if they testified against Thompson, they could get their time cut [PCR Part 1, pp. 56-57]. The handwritten note read in pertinent part: "[F]lip on VT you can get your time cut" [PCR Part 1, p. 59 (Exhibit G, p. 6; APP 216)].

Kroh agreed that after receiving the letter from Davis about contacting jail records so that she could be together with Deseriee, he or West may have contacted the jail [PCR Part 1, p. 60 ("If she had asked us to do that, we would have looked into it if those people were still there.")] Kroh agreed that Davis had asked to be sent back to Rockville quickly after the Whedon trial and that he would have promised to try to do that for her [PCR Part 1, pp. 60-61]. Kroh also testified that as a result of receiving the letter from Davis where she threatened not to testify, he and West were concerned and traveled to Rockville to speak with her [PCR Part 1, p. 62]. When they arrived, Davis was still agitated, and he and West did their best to let her air her many frustrations [PCR Part 1, pp. 62-63]. Kroh agreed that he might have made inquiries at Rockville about whether Davis could keep her job if she testified back in Marion County [PCR Part 1, p. 63].

Kroh did not remember getting the call from West saying that Pamela Nave's attorney, Tom Leslie, had contacted West [PCR Part 1, p. 64]. Kroh knew at the time that Deputy Prosecutor Larry Sells was in charge of Nave's pending case, and he "very well may have" spoken to Sells about her cooperation in this case [PCR Part 1, pp. 65-66]. He did speak to Davida Altmeyer at some point, remembered speaking to her

attorney, Marty Hill, and would have told her that it was in her best interests to cooperate in this case [PCR Part 1, pp. 67-68]. He did not remember asking any prosecutor to provide Davida Altmeyer, Gail Davis, or Pamela Nave with favorable treatment "in a penal context" and did not believe that he had failed to turn over *Brady* material [PCR Part 1, pp. 77-83].

At Thompson's second PCR hearing, Detective West testified he had received messages from Gail Davis and her grandmother saying that she wanted to talk to him [PCR Part 2, pp. 15-16]. Davis later told West and Kroh at a jail interview that Deseriee was afraid of Thompson and wanted to be moved to another jail unit, and they then spoke to jail personnel [PCR Part 2, pp. 16-17]. Later he received a call from Davis wanting to know "why her wife was placed in lockdown" and saying that Deseriee needed to be put in another block, and he told Kroh about that call [PCR Part 2, p. 17]. He later received other voicemails saying Davis and Deseriee wanted to have contact at the jail [PCR Part 2, pp. 20-22].

West also testified at post-conviction that on July 21, 1999, he was approached by Pamela Nave's attorney, Tom Leslie, who told West that Leslie and Deputy Prosecutor Larry Sells were trying to work out a plea agreement for Nave and that Sells was unaware of the status of her cooperation in this case [PCR Part 2, p. 23]. As a result, West relayed this message to Prosecutor Kroh and asked Kroh to call Sells about Nave's status [PCR Part 2, pp. 23-24]. West recalled traveling to Rockville to visit Gail Davis in December of 1999, but he recalled nothing about her being angry or threatening not to testify [PCR Part 2, pp. 24-28, 32, 35]. West also received a call from Davida Altmeyer's attorney, Marty Hill [PCR Part 2, p. 18].

At the second hearing, the court also admitted exhibits pertaining to Pamela Nave's guilty plea held after she became a witness in this case. The exhibits revealed that Nave was represented by Tom Leslie and the State was represented by Larry Sells in a Class C felony burglary/Class D felony theft case for which a plea agreement was filed specifying Nave would plead guilty to burglary for an open sentence, with the executed part not to exceed one (1) year [PCR Part 2, p. 5 (Exhibits K-2, pp. 1-2, K-4, pp. 1-4)]. On June 22, 1999, a factual basis was laid for the guilty plea to the burglary, but on July 20, 1999, the case was put on hold due to a suspendibility question [PCR Part 2, p. 5 (Exhibit L (6/22/99 hearing, pp. 11-14; 7/20/99 hearing, pp. 12-14))]. On August 3, 1999, a new plea agreement was filed under which the State would let Nave plead guilty to theft for an open sentence, the executed part not to exceed one (1) year, and the burglary would be dismissed [PCR Part 2, p. 5 (Exhibit K-5, pp. 1-6; Exhibit K-6)]. That was around two weeks after Nave's attorney had approached West and said that Sells was unaware of her status as a witness in this case, and West had contacted Kroh to have him to call Sells [PCR Part 2, pp. 23-24]. At Nave's subsequent guilty plea and sentencing hearing, she was sentenced to time served after Deputy Prosecutor Sells took the needed steps to ensure that her presentence investigation report was corrected to show a suspended sentence was permitted [PCR Part 2, p. 5 (Exhibit L (8/3/99 hearing), pp. 8-12)].

Other evidence admitted at post-conviction revealed Davida Altmeyer received an illegal sentence and an early release from the Marion County Jail several months before this trial. In total, she was facing many charges during the time she was cooperating with the State: a felony cocaine possession charge in Cause 49F09-9811-

DF-174756 [PCR Part 2, p. 7 (Exhibits M-1 through M-5)], felony cocaine and marijuana possession charges in Cause 49G14-9903-DF-036481 [PCR Part 2, p. 8 (Exhibits O-1 through O-5)], a felony prostitution charge in Cause 49G14-9907-DF-128795 [PCR Part 2, p. 9 (Exhibits P-1 & P-2)], and drug related misdemeanor charges in other causes [PCR Part 2, p. 10 (Exhibits R-1 & R-2)].⁵

Davida had been arrested on the cocaine and marijuana charges in Cause 49G14-9903-DF-036481 on March 1, 1999 [PCR Part 2, pp. 8-9 (Exhibit O-2, p.1)] and then released. On July 23, 1999, she was arrested for the felony prostitution charge in Cause 49G14-9907-DF-128795 [PCR Part 2, p. 9 (Exhibits P-1, P-2 & Q, p. 10)]. On June 1, 2000, the State allowed her to plead guilty in those two causes and receive concurrent two year sentences [PCR Part 2, pp. 8-9 (Exhibits O-1, O-4, O-5, P-1, pp. 7-8, P-2, Q, pp. 3-9)]. At the guilty plea hearing, the parties openly discussed that Davida had only earned five days of jail time credit on the cocaine possession charge, but the State agreed that she should receive equal jail time credit on the possession charge and the prostitution charge so that she could be released early from the jail on all charges on July 20, 2000 [PCR Part 2, p. 9 (Exhibit Q, pp. 3-5)].

At the second PCR hearing, the parties informed the judge that the State was still trying to locate notes from its file showing Prosecutor Kroh had called Rockville about Davis's job, and the record was held open for submission of the notes (if found) and for Kroh's affidavit [PCR Part 2, pp. 2-3, 38]. Thompson later submitted the notes and

⁵On November 8, 1999, she entered a guilty plea to the Class D felony cocaine possession in Cause 49F09-9811-DF-174756 and was sentenced as a misdemeanor to 365 days in jail (with 305 days suspended) [PCR Part 2, p. 7 (Exhibit N, pp. 16-17)], leaving her fourteen more days to serve in jail on that charge, but she had to remain in jail due to her pending prostitution charge in Cause 49G14-9907-DF-128795.

affidavit, which the judge considered as part of the findings [APP 181-186].⁶ Kroh's affidavit shows that he had called Rockville to see if Davis could retain certain privileges if she came back to Marion County to testify [APP 218-221].⁷

After taking the evidence and proposed findings under advisement, the court entered findings denying post-conviction relief [APP 187-205 (FFCL)]. Other facts will appear as needed in the arguments that follow.

SUMMARY OF THE ARGUMENTS

I. The State withheld critical pieces of evidence about jailhouse informants who testified at this trial. The PCR evidence showed that the State's main witness, Gail Davis, repeatedly asked the State for help. The State failed to disclose that Davis had sent the prosecutor three letters from the Marion County Jail asking for special favors, threatening not to testify because he failed to keep a promise, and admitting that she was not receiving her bipolar disorder medications and was therefore starting "to manic out." Nor did the State disclose that the prosecutor was asked to contact Pamela Nave's prosecutor about her cooperation in this case, that he did call about her, and that shortly afterwards, she received a better plea bargain and was released. Finally, the State failed to disclose that shortly before this trial, another prosecutor agreed to an

⁶The court reporter omitted these documents from her exhibit binders. On January 9, 2009, Thompson filed a motion under Ind. Appellate Rule 32(A), asking the PCR court to correct the record by directing her to submit a supplemental record.

⁷As permitted by Ind. Appellate Rule 50(B)(1)(e), Thompson has preliminarily included copies of these exhibits in her Appendix pending the submission of the supplemental record.

illegal sentence and an early release for Davida Altmeyer. The State had a duty to disclose all material exculpatory evidence, including impeachment evidence. There was no physical evidence connecting Thompson to the crime, and there could not have been a conviction without the testimony of jailhouse informants. A new trial should have been ordered because the State withheld highly favorable evidence tending to show that crucial witnesses expected benefits from their cooperation in this case and sometimes got their benefits from the State.

II. The prosecutor failed to correct the false and misleading testimony of two State's witnesses, but the post-conviction court did not address this claim. Detective West testified that he was unaware of any promises they had made to their witnesses and unaware of any indications given that the witnesses could benefit from their assistance in this case. However, West knew the prosecutor had told Gail Davis that he would look into jail placement matters, and he passed on various messages asking the prosecutor to follow up on Davis's concerns and the concerns of the attorney representing Pamela Nave. The prosecutor knew about those inquiries and concerns and had made inquiries on behalf of Davis and other witnesses, so he had a clear duty to correct West's misleading testimony and Davis's totally false testimony that she had never asked him for "anything" because she wanted nothing from him. Finally, he compounded the violations in his closing arguments by declaring that every one of the jailhouse informants had the purist of motives for coming forth and by daring anyone to show otherwise. The gross misimpressions remaining therefrom had to have affected the jury's decision, so the post-conviction court should have ordered a new trial.

III. Trial counsel rendered an ineffective assistance. When Gail Davis testified that Thompson had said she had crushed the victim's head with a brick, trial counsel should have impeached Davis's credibility with her startling pretrial statement saying she was only getting a "visual" about a brick. In addition, trial counsel should have objected during the prosecutor's closing arguments when he repeatedly vouched for the credibility of Davis and his other crucial jailhouse witnesses. Because Thompson's conviction was based on the testimony of these jailhouse witnesses and the State's evidence of guilt was otherwise not strong, the trial result would likely have changed if counsel had taken those steps.

THE STANDARD OF REVIEW

An appeal from the denial of post-conviction relief is an appeal from a negative judgment, so "to the extent [the] appeal turns on factual issues [petitioner] must convince this Court that the evidence as a whole was such that it leads unerringly and unmistakably to a decision opposite that reached by the post-conviction court." **Harrison v. State**, 707 N.E.2d 767, 773-74 (Ind. 1999). The reviewing court accepts the lower court's findings of fact unless they are clearly erroneous, but the court reviews questions of law *de novo* and owes no deference to the lower court's conclusions of law. **Coleman v. State**, 741 N.E.2d 697, 700 (Ind. 2000), *reh. denied*.