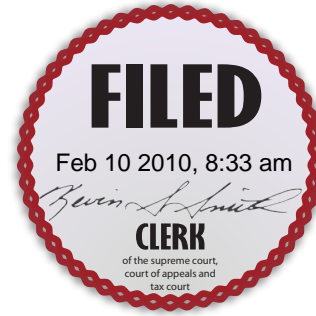


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JULIE SKINNER,)
)
Appellant-Petitioner,)
)
vs.) No. 89A01-0907-PC-366
)
STATE OF INDIANA,)
)
Appellee-Respondent.)

APPEAL FROM THE WAYNE SUPERIOR COURT II
The Honorable Gregory A. Horn, Judge
Cause No. 89D02-0410-PC-3

February 10, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Petitioner, Julie Skinner (Skinner), appeals the post-conviction court's denial of her petition for post-conviction relief.

We affirm.

ISSUE

Skinner raises one issue for our review, which we restate as: Whether her trial counsels provided effective assistance of counsel.

FACTS AND PROCEDURAL HISTORY

We previously detailed the facts in our memorandum decision considering Skinner's direct appeal as follows:

The facts reveal that on several occasions in February and March 1997 Skinner held her two-year old child in such a way as to stop his breathing. After two of these incidents, the child was admitted to Riley Hospital for Children. An investigation was initiated after medical staff began to suspect that Skinner was intentionally suffocating the child. On March 20, 1997, the child died while a patient at Riley Hospital. The cause of death was determined to be asphyxia of an undetermined cause.

Skinner was initially charged in Marion County with murder, attempted murder, and battery. A jury found her guilty only of the battery charge. Subsequently, a multi-count information was filed in Wayne County charging Skinner with several counts of attempted murder, aggravated battery, neglect of a dependent, and battery. Skinner filed a motion to dismiss the charges based upon double jeopardy. The trial court denied the motion. Skinner also filed a motion to suppress. However, prior to the trial court's ruling on this motion, Skinner pled guilty to three counts of aggravated battery. The trial court sentenced her to thirty-five years' imprisonment.

Skinner v. State, No. 89A01-0002-CR-68, slip op. at 2-3 (Sept. 13, 2000).¹ Skinner contended, on direct appeal, that the trial court had erred by denying her motion to dismiss based upon double jeopardy prohibitions and by failing to rule on her motion to suppress evidence of a confession that she had made. She also argued that an insufficient factual basis had been developed to support her guilty plea. We concluded that by pleading guilty, Skinner had waived each of those arguments. *Id.* at 4. Additionally, Skinner argued that her sentence was manifestly unreasonable, but we disagreed. *Id.* at 6.

On October 4, 2004, Skinner filed a petition for post-conviction relief, which she later amended on January 30, 2007. On March 7, and December 20, 2007, the post-conviction court conducted an evidentiary hearing on the petition. The post-conviction court entered into evidence the record of Skinner's prior proceedings from both Marion County and Wayne County. This record included three psychological evaluations that were performed in 1997 to determine whether Skinner was sane at the time of her offense in Marion County and competent to stand trial.

Dr. Hanus J. Grosz, M.D. (Dr. Grosz), a psychiatrist appointed by the Marion County trial court to evaluate Skinner, concluded as follows:

Soundness of mind at the time of the alleged offense

Though mentally disturbed and suffering from the diagnosable mental disorder of Munchausen Syndrome by proxy (factitious disorder by proxy), Ms. Skinner was medico-legally of sound mind. She knew what she was doing and that the alleged actions were against the law. The alleged offense was an

¹ Despite the fact that our memorandum decision makes reference to a jury verdict, all the witnesses at Skinner's post-conviction relief hearing that addressed the subject testified that Skinner had been tried to the bench in Marion County. (*See, e.g.*, PCR Transcript p. 119A).

attention seeking behavior. It was not meant to cause serious or permanent harm or death. It was the culmination of a series of similar actions that in the past have always resulted in only temporary impairment in the child's health and always in the immediate attention from her parents and her husband.

Competence to stand trial

Ms. Skinner understands the charges against her, and that she is to be tried in a court of law. She understands court proceedings and the functions of judge, jury, prosecutor and defense attorney. Her memory is intact and she is able to assist her attorney in her defense.

(PCR Exhibits, Volume 2, pp. 486-87). The other psychiatrist appointed by the trial court, Dr. William Schuster (Dr. Schuster), came to similar conclusions. He stated that Skinner "has been and is an emotionally unstable individual," and "presents as having a factitious (not genuine) illness by proxy or the so called Munchausen Syndrome by proxy," but concluded as follows:

As a result of my examination it is my opinion with reasonable medical certainty that Julie L. Skinner is competent to stand trial in that she understands she is charged with a crime, that she has sufficient [sic] understanding of the legal procedures and that she is able to assist her attorney in her own defense. I further believe that she was of sound mind, in the legal sense of that term, on or about March 9, 1997[,] in that she was not suffering from a mental disease or defect which impaired her ability to appreciate the wrongfulness of her conduct.

(PCR Exhibits, Vol. 2, p. 474).

Skinner's trial attorneys arranged for Dr. Loretta Kroin (Dr. Kroin) to evaluate Skinner as well. Dr. Kroin did not articulate a conclusion as to whether Skinner was legally competent to stand trial or sane at the time of her offense. The crux of her conclusions were as follows:

Though [Skinner] may overstate or exaggerate her psychological symptomatology [sic], there is no doubt that she suffers from a significant mental illness. I believe that this illness is debilitating and interferes with Ms. Skinner's thinking, planning, and problem-solving abilities as well as her relationships with others. Her inability to deal well with emotional distress is of great concern and exacerbates her distorted perception, cognitive disorganization, and poor problem-solving ability.

[] I believe there is sufficient evidence in her psychiatric history to suspect that [Skinner] may have suffered from Post-Traumatic Stress Disorder. [] There is also evidence that [Skinner] exhibits features of Borderline Personality Disorder. Furthermore, I believe that there is some evidence that, at times of distress, [Skinner] may dissociate or even experience brief psychotic episodes. This is consistent with both her history and with her psychological assessment results. These symptoms can certainly interfere with an individual's ability to accurately perceive reality and engage in rational, logical behavior.

(PCR Exhibits, Vol. 3, p. 505).

Based upon these evaluations and evidence regarding the events surrounding Skinner's waiver of her *Miranda*² rights and confession, she moved to suppress the evidence of her confession. However, she pled guilty prior to the trial court ruling on her motion to suppress. At the post-conviction hearing, the primary issue which Skinner advanced was her claim that her trial attorneys provided ineffective assistance of counsel by advising her to plead guilty prior to the trial court's ruling on the motion to suppress her confession.

At the post-conviction hearing, Skinner called Dr. Bruce Frumkin (Dr. Frumkin) who had performed psychological and comprehension evaluations on Skinner in 2006. Dr. Frumkin testified regarding Skinner's waiver of her *Miranda* rights and subsequent confession during custodial interrogation in 1997, that Skinner "had the capacity to make a

² *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 694 (1966).

knowing waiver of her rights . . . [b]ut she would not have been able to make an intelligent use of her right to silence.” (PCR Transcript p. 15).

Skinner testified at the post-conviction relief hearing that her trial attorneys had advised her to plead guilty because of her recorded confession and the result of her trial in Marion County. One of her trial attorneys, James Voyles (Voyles), testified that when he reviewed the State’s plea agreement with her, she did not indicate any confusion and asked appropriate questions regarding the agreement. Voyles testified that he went over the relative risks and benefits of pleading guilty pursuant to the plea offer and advised Skinner that it was in her “best interest to accept the offer that had been tendered by the State.” (PCR Tr. p. 136).

On June 22, 2009, the post-conviction court entered its order denying Skinner’s petition for post-conviction relief, making extensive findings of fact and conclusions of law, including the following:

18. In the videotape of [Skinner’s] interview and confession with police, [Skinner] conversed easily with law enforcement. Her body language was relaxed and she provided great detail regarding the medical instances of her son including locations, dates, times, and those people present. She further casually and appropriately used medical terminology and answered questions directly.

19. In a further videotape[d] interview of [Skinner], [she] advised officers that she did understand her [*Miranda*] rights and signed a Waiver of those rights. She continued to answer questions appropriately. Both officers called to testify advised that they did not notice anything inappropriate in [Skinner’s] demeanor nor did she appear to be at a loss for understanding. They further testified that she did not appear to be under the influence of any intoxicating substance nor did she claim that there was any impairment of her ability to comprehend what was occurring. []

* * *

27. The Court then made certain [Skinner] understood her constitutional rights and the possible consequences of her guilty plea. The Court further indicated the necessity of ensuring that the pleas were voluntarily and freely made with a factual basis to support them. []

28. The Court then advised [Skinner] that if she had any questions or did not understand something that was said, that she may ask the Court for clarification or consult with her counsel at anytime. [Skinner] advised the Court that she understood. []

29. [Skinner] advised the Court that she had consulted with her attorneys throughout the proceedings and had advised them of what had taken place to cause charges to be brought against her. [Skinner] further advised, after the charges were read, that she understood what she was accused of having done. She further indicated that she understood that by entering guilty pleas, she would not have a trial and would admit that the charges read were true. []

* * *

32. The Court further advised [Skinner] of her constitutional rights as required and outlined in Indiana Code section 35-35-1-2. After this particular advisement, [Skinner] took the opportunity to consult with her attorneys before advising the Court that she did, in fact, understand her rights.

* * *

41. [Skinner] was able to use appropriate language and provide most details when requested. []

42. [Skinner's] attorneys elicited further testimony from her in order to establish her comprehension of the proceedings and that she was in touch with reality and what was occurring around her. []

* * *

45. After a factual basis was established, the Court, again, took the effort to be certain [Skinner] understood everything that had transpired, if she had any questions, or if there was anything that she wanted the Court to cover again. [Skinner] advised [] the Court that she did understand, that she had no questions, and that she needed no further clarification. []

* * *

47. On October 12, 1999, Probation Officer Karen A. Maurer filed a Pre-Sentence Investigation Report and Addendum which were later made a part of the record. Attached to the Pre-Sentence Investigation Report were reports from Dr. Dwight Schuster and Dr. Hanus Grosz, who were appointed by the Marion County Courts, and a report from Dr. Loretta Kroin, who evaluated [Skinner] at the request of Attorneys Voyles and Zahn.

* * *

49. The Reports indicate that [Skinner] was not psychotic nor out of touch with reality. The Reports further revealed that [Skinner] was competent to stand trial and to assist her attorneys in her own defense. The Reports also indicate that [Skinner] did not suffer from any mental disease or defect that would have impaired her ability to appreciate the wrongfulness of her conduct at the times of the alleged offenses. The Reports did indicate that [Skinner] suffered from Munchausen Syndrome by Proxy.

* * *

71. Attorneys Voyles and Zahn never told [Skinner] to plead guilty. They did advise [Skinner] that their legal advice was to take the plea offer; that it was in her best interest to take the plea offer.

72. [Skinner] never gave her legal counsel any indication that she didn't understand the plea offer or what was to occur in the future.

73. While [Skinner] maintained to her attorneys that she didn't mean to hurt her child, when [Skinner's] parents were not present [Skinner] would always tell her legal counsel facts that were contrary to this assertion. These facts told to counsel in private were consistent with the charges to which [Skinner] was pleading guilty.

74. [Skinner] did suffer from Munchausen by Proxy.

75. Notwithstanding that [Skinner] suffered from Munchausen by Proxy, [Skinner] was in touch with reality, knew right from wrong, and was capable of making a knowing, intelligent, and voluntary waiver of her [Miranda] rights.

76. [Skinner] was, likewise, capable of making a knowing, intelligently, and voluntarily plea of guilty.

77. [Skinner] did make a knowing, intelligent, and voluntary waiver of her [Miranda] rights when she made her statements to police.

* * *

88. [] [T]he Court specifically finds that it was not ineffective assistance of counsel for [Skinner's] attorneys to not have [Skinner] evaluated regarding her capability to make a knowing and intelligent waiver of her [Miranda] rights and to subsequently present that testimony at the hearing on her Motion to Suppress, or to plead guilty as she ultimately did.

89. The experts appointed by the Court and retained by trial counsel evaluated [Skinner] at a time nearly ten (10) years prior to the hearing on [Skinner's] Amended Petition for Post-Conviction Relief and were in a much better position to assess [Skinner] and her ability to understand and to assist in her defense than was Dr. Bruce Frumkin, the expert witness for [Skinner] at such hearing.

90. Dr. Frumkin stated he was unable to give a true opinion as to whether [Skinner] could knowingly waive her rights or enter a plea, and was only able to list certain factors that he believed important in assessing her capabilities. Dr. Frumkin further admitted that [Skinner] was a different person in 2006 than in 1997, 1998, and 1999. []

* * *

117. At every phase, trial counsel took into consideration [Skinner's] mental status and low IQ in discussing the direction of her cases. Trial counsel[s'] actions fell well within an objective standard of reasonable representation and there has been no showing that if [Skinner] had not taken the proposed plea agreement, the result would have been different.

(Appellant's App. pp. 87-105).

Skinner now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Skinner contends on appeal that her trial counsels provided ineffective assistance of counsel by advising her to plead guilty. Specifically, Skinner argues that her trial counsels failed to develop evidence supporting a defense that her confession was involuntarily given and by not waiting for the trial court to rule upon her motion to suppress as filed.

The petitioner has the burden of establishing the grounds for post-conviction relief by a preponderance of the evidence. Ind. Post-Conviction Rule 1(5). Because Skinner is appealing from a negative judgment, to the extent her appeal turns on factual issues, she must provide evidence that as a whole unerringly and unmistakably leads us to believe there is no way within the law that a post-conviction court could have denied her post-conviction relief petition. *See Stevens v. State*, 770 N.E.2d 739, 745 (Ind. 2002), *reh'g denied, cert. denied*, 540 U.S. 830 (2003). It is only where the evidence is without conflict and leads to but one conclusion, and the post-conviction court has reached the opposite conclusion, that its decision will be disturbed as contrary to law. *Godby v. State*, 809 N.E.2d 480, 482 (Ind. Ct. App. 2004), *trans. denied*.

Post-conviction hearings do not afford defendants the opportunity for a “super appeal.” *Moffitt v. State*, 817 N.E.2d 239, 248 (Ind. Ct. App. 2004), *trans. denied*. Rather, post-conviction proceedings provide a narrow remedy for collateral challenges to convictions that must be based on grounds enumerated in the post-conviction rules. *Ross v. State*, 877 N.E.2d 829, 832 (Ind. Ct. App. 2007), *trans. denied*. This Skinner has done by alleging that her trial counsels provided ineffective performance in violation of Article 1, Section 13 of the

Indiana Constitution and the Sixth and Fourteenth Amendments to the United States Constitution. *See* Post-Conviction Rule 1 (1)(a).

In order to demonstrate ineffective assistance of counsel Skinner must establish both prongs of the test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), *reh'g denied*. *Lee v. State*, 880 N.E.2d 1278, 1280 (Ind. Ct. App. 2008). The defendant must prove (1) his or her counsel's performance fell below an objective standard of reasonableness based on prevailing professional norms, and (2) there is a reasonable probability that, but for counsel's failure to meet prevailing professional norms, the result of the proceeding would have been different. *Johnson v. State*, 832 N.E.2d 985, 996 (Ind. Ct. App. 2005), *reh'g denied, trans. denied* (citing *Strickland*, 466 U.S. at 690). Because all criminal defense attorneys will not agree on the most effective way to represent a client, "isolated mistakes, poor strategy, inexperience, and instances of bad judgment do not necessarily render representation ineffective." *Bieghler v. State*, 690 N.E.2d 188, 199 (Ind. 1997), *reh'g denied, cert. denied*, 525 U.S. 1021 (1998). Thus, there is a strong presumption that counsel rendered adequate assistance and used reasonable professional judgment. *Timberlake v. State*, 753 N.E.2d 591, 603 (Ind. 2001). If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.*

The first step which Skinner must take to demonstrate ineffective assistance of trial counsel is to prove that her confession would have been excluded had a motion to suppress or objection to the admission of the confession as evidence at trial was properly advanced by her trial counsels. *See Sauerheber v. State*, 698 N.E.2d 796, 807 (1998). The focus of

Skinner's argument is that none of the experts who evaluated her competency to stand trial and sanity at the time of her offense evaluated her ability to knowingly, intelligently, and voluntarily waive her *Miranda* rights.

Before we proceed further, we will address what *Miranda* rights are and how they apply. "The Fifth Amendment privilege against self-incrimination prohibits admitting statements given by a suspect during 'custodial interrogation' without a prior *Miranda* warning." *Gauvin v. State*, 878 N.E.2d 515, 520 (Ind. Ct. App. 2007), *trans. denied* (quoting *Ritchie v. State*, 875 N.E.2d 706, 716 (Ind. 2007)). A person who has been taken into custody or otherwise deprived of his freedom of action in any significant way must, before being subject to interrogation by law enforcement officers, be advised of her rights to remain silent and to the presence of an attorney and be warned that any statement she makes may be used as evidence against her. *Gauvin*, 878 N.E.2d at 520 (citing *Loving v. State*, 647 N.E.2d 1123, 1125 (Ind. 1995)). "Statements elicited in violation of *Miranda* are generally inadmissible in a criminal trial and subject to a motion to suppress." *Gauvin*, 878 N.E.2d at 520 (citing *Brabandt v. State*, 797 N.E.2d 855, 861 (Ind. Ct. App. 2003)).

We first note that the three experts who evaluated Skinner's competency to stand trial and sanity at the time of her offense are helpful in determining whether Skinner was competent to waive her *Miranda* rights and whether her resulting confession was voluntary. Although those experts evaluated Skinner for a slightly different determination, their reports provide a snapshot of Skinner's mental health and intellectual capacity near the time of her waiver and confession, which is something Dr. Frumkin admitted he could not provide based

on his evaluation nearly ten years later. The two court appointed experts concluded that Skinner was competent to stand trial after evaluating her I.Q. and mental health, which weighs in favor of the admissibility of her confession.

Moreover, Skinner relies upon the testimony of Dr. Frumkin to argue that she was not competent to waive her *Miranda* rights, and, thus her confession would not have been admissible against her at trial. However, Dr. Frumkin did not come to this conclusion. As we have stated above, Dr. Frumkin testified that Skinner “had the capacity to make a knowing waiver of her rights” although he did qualify this opinion by stating “she would not have been able to make an intelligent use of her right to silence.” (PCR Tr. p. 15). Further, Dr. Frumkin explained a test that he gave Skinner to ascertain her understanding of *Miranda* rights:

The first test is I give to the Defendant each of the four [*Miranda*] rights. I read the right to that person, one at a time, they're on a card that they look at, and that person has to tell me in his or her own words what each of the four [*Miranda*] rights mean. (Unintelligible) National Panel of Judges where some legal scholars had gotten together and decided what type of response would indicate a full understanding, which would be a two point response, a partial understanding which would be a one point response, and no understanding which would be a zero point response, and then you compare that person's scores with other people the same age and IQ level, et cetera. It's a standardized test. Ms. Skinner basically had, not basically, she obtained a perfect score on that test.

(PCR Tr. pp. 22-23). Thus, even Dr. Frumkin's testimony supported the conclusion that Skinner was able to know and understand her rights. Her rights included her right to counsel, which she chose not to exert, a choice which Dr. Frumkin demonstrated she understood

without qualification, and a right which may have prevented her confession had she chose to utilize it.

Skinner contends that her understanding of her *Miranda* rights was not enough, however, arguing that the “totality of the circumstances, including Ms. Skinner’s I.Q., psychological state and impairments, and maturity” demonstrate that her “statements were not voluntary.” (Appellant’s Br. p. 10).

It is well settled that the question of the admissibility of a statement or confession is controlled by determining from the totality of the circumstances whether or not the confession was given voluntarily and not through inducement, violence, threats or other improper influences so as to overcome the free will of the accused. The question of voluntariness is one for the trial court.

Massey v. State, 473 N.E.2d 146, 147 (Ind. 1985) (citations omitted). When the voluntariness of a defendant’s statement or confession is challenged the State bears the burden of proving by a preponderance of the evidence that the statement was voluntary. *Wells v. State*, 904 N.E.2d 265, 271 (Ind. Ct. App. 2009), *trans. denied*. In making the determination of voluntariness, the trial court may consider elements including police coercion, the length of the interrogation, its location, its continuity, the defendant’s maturity, education, physical condition and mental health. *Id.*

In addition to Skinner’s relatively low I.Q. and mental health issues, Skinner relies heavily on the fact that the police officer who took her confession first approached her at the hospital dressed as if he were a doctor, and that he falsely informed her that he had a videotape and other evidence which did not exist. However, “police deception does not

vitate a *Miranda* waiver and render a confession inadmissible, but is rather one consideration that must be viewed in determining the “totality of the circumstances.” *Pierce v. State*, 761 N.E.2d 821, 824 (Ind. 2002). Furthermore, the police officer, Detective Michael Duke (Detective Duke), immediately introduced himself to Skinner as a detective with the Indianapolis Police Department and displayed his badge upon approaching Skinner at the hospital. He explained that the doctor garb was to avoid making persons nervous at the hospital. Detective Duke asked Skinner to come with him to talk about what had been happening with her son, and she accompanied him to his car, where another officer joined them and they together drove to his office approximately two miles away. During the trip, Detective Duke informed Skinner that she did not have to speak with him. Upon arrival at his office, he informed Skinner that he would drive her back to the hospital when she was ready to leave. Skinner was never placed in handcuffs or other type of restraint. The trial court reviewed the tape of her interview, including footage before and after her advisement of her *Miranda* rights, and found that Skinner:

[C]onversed easily with law enforcement. Her body language was relaxed and she provided great detail regarding the medical instances of her son including locations, dates, times, and those people present. She further casually and appropriately used medical terminology and answered questions directly.

[S]he advised officers that she did understand her *Miranda* rights and signed a Waiver of those rights. She continued to answer questions appropriately. Both officers called to testify advised that they did not notice anything inappropriate in [Skinner’s] demeanor nor did she appear to be at a loss for understanding. They further testified that she did not appear to be under the influence of any intoxicating substance nor did she claim that there was any impairment of her ability to comprehend what was occurring. []

(Appellant's App. pp. 87-88). Based on this same evidence, the Marion County trial court rejected Skinner's motion to suppress her confession given after her waiver of rights. The post-conviction court concluded "there is evidence to suggest that the result would have been the same as the Motion to Suppress . . . in Marion County." (Appellant's App. p. 102). Based upon the evidence in the record and the discretion afforded trial courts in determining evidentiary matters, we conclude that Skinner has not demonstrated that her motion to suppress should have been granted.

Be that as it may, since Skinner has pled guilty, she must now establish not only that her motion to suppress would have been granted if properly pursued, but also that the suppression of her confession would have likely resulted in her acquittal at trial. "[I]n order to establish that the guilty plea would not have been entered if counsel had performed adequately, the petitioner must show that a defense was overlooked or impaired and that the defense would likely have changed the outcome of the proceeding." *Segura v. State*, 749 N.E.2d 496, 499 (Ind. 2001). "When a post-conviction allegation of ineffective assistance relates to trial counsel's failure to raise a defense . . . *Segura* requires that the prejudice from the omitted defense . . . be measured by . . . evaluating the probability of success of the omitted defense at trial." *Willoughby v. State*, 792 N.E.2d 560, 563 (Ind. Ct. App. 2003), *trans. denied*. However, Skinner has not presented or developed any claim that the State

lacked sufficient evidence to convict her absent her confession. Therefore, she has not adequately demonstrated prejudice.

CONCLUSION

Based on the foregoing, we conclude that the post-conviction court did not err when it determined that Skinner had failed to prove that her trial counsels performed ineffectively.

Affirmed.

VAIDIK, J., and CRONE, J., concur.