

**STATE OF LOUISIANA  
COURT OF APPEAL, SECOND CIRCUIT  
430 Fannin Street  
Shreveport, LA 71101  
(318) 227-3700**

No. 55,463-KW

STATE OF LOUISIANA

VERSUS

DVEIL DESHON FREEMAN

FILED: 07/27/23

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On application of State of Louisiana for SUPERVISORY WRIT in No. 10-F0808 on the docket of the Fourth Judicial District, Parish of OUACHITA, Judge Larry Donell Jefferson.

Robert Stephen Tew  
Holly A. Chambers-Jones

Counsel for:  
State of Louisiana

HOGAN ATTORNEYS  
Jane Hogan

Counsel for:  
Dveil Deshon Freeman

Before PITMAN, ROBINSON, and MARCOTTE, JJ.

**WRIT GRANTED AND MADE PEREMPTORY; REVERSED.**

Applicant, the State of Louisiana, is seeking review of the trial court's July 10, 2023, judgment which granted the application for post-conviction relief filed by Dveil Deshon Freeman. Freeman argued that he was entitled to post-conviction relief due to ineffective assistance of trial counsel Lance Unglesby. In reversing Freeman's second-degree murder conviction, along with seven drug convictions, the trial court determined that the "cumulative impact of counsel's failure to investigate and interview critical witnesses fell below an objective standard of reasonableness" and prejudiced Freeman, in violation of *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Relating to the murder conviction, the trial court specifically found that but for counsel's failure to call certain witnesses to testify, the outcome of the trial would have been different. The trial court determined that counsel's deficient performance for the murder charge also prejudiced Freeman's conviction for the drug offenses and that the only equitable remedy was to vacate all of Freeman's convictions and order a new trial.

The petitioner in an application for post-conviction relief shall have the burden of proving that relief should be granted. La. C. Cr. P. art. 930.2. The right of a defendant in a criminal proceeding to the effective assistance of counsel is mandated by the Sixth Amendment to the U.S. Constitution. *State v. Vallo*, 51,046 (La. App. 2 Cir. 1/11/17), 212 So. 3d 1198. Under the standard set out in *Strickland v. Washington*, *supra*, and adopted by the Louisiana Supreme Court in *State v. Washington*, 491 So. 2d 1337 (La. 1986), a conviction must be reversed if the petitioner proves (1) that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms, and (2) counsel's inadequate performance prejudiced defendant to the extent that the trial was rendered unfair and the verdict suspect. *State v. Legrand*, 02-1462 (La. 12/3/03), 864 So. 2d 89, *cert. denied*, 544 U.S. 947, 125 S. Ct. 1692, 161 L. Ed. 2d 523 (2005); *State v. Wilson*, 50,418 (La. App. 2 Cir. 4/6/16), 189 So. 3d 513, *writ denied*, 16-0793 (La. 4/13/17), 218 So. 3d 629. This requires a showing that counsel made errors so serious that he was not functioning as the counsel guaranteed to Freeman by the Sixth Amendment. *State v. Critton*, 52,058 (La. App. 2 Cir. 8/22/18), 251 So. 3d 1281, *writ denied*, 18-1515 (La. 2/25/19), 266 So. 3d 292.

After comprehensive review of the pleadings filed and evidence presented at the evidentiary hearings held on July 27, 2021, October 27, 2021, May 20, 2022, July 29, 2022, and August 18, 2022, as well as this Court's appellate opinion in this matter, *State v. Freeman*, 50282 (La. App. 2 Cir. 4/13/16), 194 So. 3d 1, *writ denied*, 16-0927 (La. 5/1/17), 220 So. 3d 743, this Court finds that Freeman did not meet his burden of proof, and that the trial court erred in granting post-conviction relief. The major reason cited by the trial court for finding that trial counsel was ineffective is that he failed to interview or call certain witnesses at trial, who Freeman alleged would have provided him an alibi at the time of the murder. Specifically, from the oral reasons and written judgment of the trial court, those witnesses included Thomas Blackburn, an expert in cell tower location, Jamerio Roberson, Shrona Burks, Eric Washington and Amy Freeman.

A reviewing court is required to give great deference to trial counsel's judgment, tactical decisions, and trial strategy, strongly presuming he has exercised reasonable professional judgment. *State v. Smith*, 49,356 (La. App. 2 Cir. 11/19/14), 152 So. 3d 218, *writ denied*, 14-2695 (La. 10/23/15), 179 So. 3d 597. Although counsel is ineffective when he fails to interview known witnesses, the decision to call or not to call a particular witness is a matter of trial strategy and is not, *per se*, evidence of ineffective assistance. *Critton*, *supra*, citing *State v. Butler*, 41,985 (La. App. 2 Cir. 6/20/07), 960 So. 2d 1208, *writ denied*, 07-1678 (La. 5/9/08), 980 So. 2d 685. The strategic decision to not present alibi witnesses, but rather rely on exploiting any weaknesses in the State's case, is not only a decision that any reasonable, competent attorney practicing criminal law could make, but also does not, in and of itself, prejudice the defendant. *State v. Woodard*, 08-0606 (La. 5/5/09), 9 So. 3d 112.

In this matter, trial counsel testified at length during the multiple evidentiary hearings, specifically noting that he investigated all possible alibi witnesses and made strategic decisions as to which witnesses to call at trial. This Court's review of the testimony shows that none of the witnesses named by Freeman were able to provide any definitive information as to where Freeman was located at the time of the murder. Otherwise, trial counsel provided well thought out reasons for choosing not to call each of those witnesses at trial. Those decisions are afforded great deference. Accordingly, despite the trial court's contrary conclusion, this Court finds that none of the witnesses presented in support of post-conviction relief actually, provided an alibi sufficient to change the outcome of Freeman's trial. Thus, Freeman has failed to show that counsel's strategic choices regarding those witnesses constituted ineffective representation.

The second reason cited by the trial court for finding that trial counsel was ineffective is that he did not personally interview Shronda Burks prior to trial. This Court finds that trial counsel reasonably relied upon the investigation, interviews, and work product of prior counsel in preparing his cross-examination of all of the State's witnesses. Counsel's confidence in the work of prior counsel does not fall below an objective standard of reasonableness if that work appears to be competent, thorough, and performed in an ethical manner. Moreover, trial counsel's strategic decision to not continuously contact Burks to avoid any detrimental attack on her via cross-examination because of her inconsistent statements constituted reasonable professional judgment.

This Court finds that the trial court erred in failing to give the appropriate deference to the trial counsel's tactical decisions and trial strategy, but rather substituted its own judgment as to what actions trial counsel should have taken. Moreover, considering the two independent eyewitness identifications of Freeman at or near the time of the murder, any actions of counsel which may have fallen below the standard of care would not have prejudiced Freeman or rendered the trial unfair and the verdict suspect. Accordingly, this application for supervisory review is granted, and the ruling of the trial court granting post-conviction relief and ordering a new trial is reversed. Freeman's convictions and sentences are reinstated.

Shreveport, Louisiana, this 26 day of September, 2023.

Com                      JGO                      JLR

FILED: September 26, 2023

Shandra Taylor

DEPUTY CLERK