

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

JUSTIN WILLIS,

Appellant,

v.

Case No. 5D18-3081

STATE OF FLORIDA,

Appellee.

_____ /

Decision filed January 31, 2020

3.850 Appeal from the Circuit
Court for Orange County,
John Marshall Kest, Judge.

William R. Ponall, of Ponall Law, Maitland,
for Appellant.

Ashley Moody, Attorney General,
Tallahassee, and Pamela J. Koller,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

AFFIRMED.

EVANDER, C.J., and GROSSHANS, J., concur.
COHEN, J., concurs specially, with opinion.

COHEN, J., concurring specially.

Justin Willis appeals the denial of his Florida Rule of Criminal Procedure 3.850 motion for postconviction relief following an evidentiary hearing. Willis was convicted of first-degree murder and sentenced to life in prison. This Court affirmed his conviction on direct appeal. Willis v. State, No. 5D12-4495, 2014 WL 12889589 (Fla. 5th DCA Feb. 18, 2014).

In his motion for postconviction relief, Willis alleged eight grounds of ineffective assistance of counsel. Although I concur in the affirmance of the denial of Willis's motion, I do so only on the basis that Willis failed to establish prejudice under Strickland v. Washington, 466 U.S. 668 (1984). In my view, Willis established that his trial counsel, Leslie Sweet, rendered deficient performance.¹

Willis claims that Sweet was ineffective during voir dire. The record reflects that Sweet failed to object when the trial court inadvertently did not seat jurors 5 and 36, who had not been challenged. Resultingly, jurors 41 and 42 were empaneled in the eleventh and twelfth seats. When Sweet had attempted to exercise her final peremptory challenge on juror 41, the trial court incorrectly informed her that she had exhausted all of her peremptory challenges. Sweet, too, had apparently lost track of the number of peremptory challenges she exercised. She failed to correct the trial court's mistake and instead, requested an additional peremptory challenge. The trial court denied Sweet's request, and juror 41 was seated. Had Sweet been attentive and notified the trial court of either

¹ This is not the first time that this Court has criticized Sweet for her performance. See Curry v. State, 169 So. 3d 1258 (Fla. 5th DCA 2015).

mistake, juror 41 would not have been empaneled. In my view, such careless mistakes, which were easily avoidable, amounted to deficient performance.

Willis also argues that Sweet “performed deficiently by acting in a grossly inappropriate and unprofessional manner throughout the trial, and by displaying a serious lack of knowledge regarding the law and the facts of [his] case.” He alleges that Sweet wore bedroom slippers during trial and ate cookies or crackers in the presence of the jury, picking up the crumbs from counsel table with her fingers.

The record supports many of Willis’s allegations. Sweet argued with the court; addressed the State directly during voir dire and throughout trial; interrupted the State, the court, and witnesses; made repeated speaking objections; told Willis not to “piss her off” before closing argument; described Willis as a “jerk” in her closing argument; and threatened to pack up and leave mid-trial. The trial judge, retired Circuit Judge Mark Lubet, testified at the evidentiary hearing, “I don’t think I’ve had a more unprofessional acting attorney in front of me in my eleven and a half years on the bench”

Sweet’s response was that violating the court’s orders of decorum can be a matter of sound trial strategy and that her statement during closing argument was intentional. Rude behavior and unprofessional conduct have no place in a court of law and contravene the precepts of professionalism expected of members of The Florida Bar. Indeed, the Oath of Admission to The Florida Bar requires an attorney to swear to maintain respect to courts of justice and judicial officers.

Despite Sweet’s inattention to detail during voir dire and less-than-professional conduct, Willis was unable to demonstrate prejudice as required by Strickland. In order to have established that he suffered prejudice based on Sweet’s failure to strike juror 41,

Willis was required to demonstrate that juror 41 was actually biased. See Mosley v. State, 209 So. 3d 1248, 1265 (Fla. 2016). Additionally, many of the instances of unprofessionalism described in Willis's motion occurred outside the presence of the jury, such that Sweet's conduct could not have impacted the verdict.² Thus, while Sweet's performance was, in my view, deficient and unprofessional, I do not believe Willis proved prejudice, and concur in the affirmance of the denial of Willis's motion for postconviction relief.

² Additionally, the evidence against Willis was overwhelming.