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IN THE
COURT OF APPEALS OF INDIANA

RONNIE DRANE,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 45A03-0912-PC-600
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Diane Ross Boswell, Judge
The Honorable Natalie Bokota, Magistrate
Cause No. 45G03-0805-PC-3

October 12, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Ronnie Drane appeals the post-conviction court's denial of his petition for post-conviction relief. We affirm.

Issue

Drane raises two issues, which we consolidate and restate as whether he was denied the effective assistance of trial and appellate counsel.

Facts

The relevant facts as set forth in our supreme court's opinion in Drane's direct appeal follow:

> Tomorra "Precious" Taylor and her cousin Adrian Ross spent the afternoon of May 27, 2002, together visiting friends and family in Gary, Indiana. They stopped at Steve Chatfield's home, and Taylor borrowed Chatfield's phone to call Ronnie Drane. Taylor later stopped at a gas station to make a telephone call, and shortly after she completed the call, a man driving a "silver van" with "nice rims" arrived. Taylor left Ross and climbed into the passenger seat of the van to talk to the male driver. Taylor shortly returned to her car, and she and Ross continued visiting friends and family.
>
> At about 8 p.m., Taylor and Ross went to the home of Taylor's foster mother, Chinese Lofton. Taylor placed several more telephone calls to Drane and made arrangements to meet him that night. Taylor's last conversation with Drane was at 9:47 p.m.; shortly thereafter, Taylor left Lofton's home alone.
>
> Between 11:00 and 11:30 p.m., off-duty Gary Police Corporal John Jones noticed a "gray or silver mini-van" parked in M.C. Bennett Park near the barbecue shelters. The van stood out because the park closed after sunset, and park police were supposed to make sure the park was empty. Corporal Jones testified that the van had "elongated taillights," or in other words, lights "[o]n the rear driver and

passenger side [that] start pretty much at the top and go down to almost the bumper." Two to three hours later, on his way home, Corporal Jones saw what appeared to be the same van parked in the same spot.

At about 9 a.m. the next morning, a man collecting cans in the park found Taylor's body in a shelter close to the location where Corporal Jones saw the van the previous night. Taylor's body was face down, and her legs were spread open. Her blue jean skirt was pulled up so that her genitalia were visible. Her shoes were strewn about a nearby picnic table. Taylor had several injuries, including a bruised and lacerated lower lip, abrasions on her ear, left jaw, and upper back, a fractured bone in her neck, and a large bruise on her upper right thigh. The coroner concluded strangulation was the cause of death.

Detectives found Drane after they traced phone calls Taylor made and received on the night she was killed. Those calls first led them to Tiffany Copeland's home. Detectives soon learned Drane lived with Copeland and used a cellular phone registered in Copeland's name. Copeland's home was about one mile from the park where Taylor's body was discovered. While detectives were speaking with Copeland, they noticed a silver van at the house next door, seemingly a match with the descriptions given by Corporal Jones and Ross. The van was registered in Copeland's name, but driven by Drane.

When Corporal Jones was shown pictures of Copeland's van at trial, he testified that the van in the pictures was likely the same van he saw in the park on the night of Taylor's murder. Similarly, when Ross viewed pictures of Copeland's van at trial, she testified that the van looked like the same van that she and Taylor encountered at the gas station on the afternoon preceding Taylor's murder.

Tests of DNA samples found on vaginal cervical swabs and external genital swabs obtained from Taylor's body revealed that Drane could not be excluded as a contributing source. In fact, Drane admitted during his case-in-chief that he had unprotected sexual intercourse with Taylor on the night of her murder. He claimed, however, that

> he and Taylor had consensual sex at his home, that she left shortly after midnight, and that he never saw her again.
>
> The State charged Drane with murder, murder in the perpetration of rape, and rape. The trial court found him guilty on all counts, merged the first two counts, and sentenced Drane to sixty-five years for murder and twenty years for rape, to be served consecutively. The Court of Appeals reversed, concluding the State did not present sufficient evidence to support the murder and rape convictions. Drane v. State, No. 45A04-0503-CR-164, slip op., 849 N.E.2d 1232 (Ind. Ct. App. Jun. 29, 2006).

Drane v. State, 867 N.E.2d 144, 145-46 (Ind. 2007) (footnotes and record citations omitted). Our supreme court granted transfer, found sufficient evidence to support Drane's convictions, and affirmed. Id. at 148.

In 2008, Drane filed a petition for post-conviction relief, and in 2009, he filed an amended petition for post-conviction relief. He raised claims of ineffective assistance of trial counsel for failing to investigate and present allegedly exculpatory fingerprint evidence and ineffective assistance of appellate counsel for failing to raise an ineffective assistance of trial counsel claim regarding the same fingerprint evidence. At the 2009 hearing on Drane's post-conviction relief claims, the trial court also allowed Drane to raise a claim of ineffective assistance of counsel for trial counsel's alleged failure to investigate and present evidence that the victim's vehicle was found at another person's residence. The post-conviction court then entered findings of fact and conclusions thereon denying Drane's petition for post-conviction relief.

Analysis

Drane argues that he received ineffective assistance of counsel from both his trial and appellate counsel. We begin by noting that, on appeal, Drane raises arguments that he did not raise in his petition for post-conviction relief or at the post-conviction hearing.[1] "Issues not raised in the petition for post-conviction relief may not be raised for the first time on post-conviction appeal." Allen v. State, 749 N.E.2d 1158, 1171 (Ind. 2001) (citing Ind. Post-Conviction Rule 1(8) ("All grounds for relief available to a petitioner under this rule must be raised in his original petition."), cert. denied. Because Drane did not present these claims to the post-conviction court, the claims are unavailable here. Consequently, the majority of Drane's claims are waived. We will address only Drane's claims that were presented in his petition for post-conviction relief and those allowed by the post-conviction court at the hearing.

Next, we note that, at the hearing, Drane said his intention was to enter his trial transcripts into evidence. The trial court replied that it had the record of the prior proceedings, would take judicial notice of the record, and would use the record in ruling on the petition for post-conviction relief. As a result, the transcript from the trial was not entered into evidence and is not part of the record on appeal. Both Drane and the State cite to evidence from the trial transcript but that transcript is not available to us.

[1] For example, Drane argues that his trial counsel was ineffective for failing to professionally investigate the crime scene, review discovery material, challenge an officer's alleged perjured testimony, interview persons at the crime scene after the victim's body was discovered, investigate potentially corroborating witnesses, request a continuance, timely file an alibi defense, interview the defendant prior to trial, discover and argue the defendant's alleged mixed genealogy in connection with the DNA results, interview Copeland's employer and co-workers, investigate Taylor's former boyfriend, investigate other silver vans in the area, argue that there was no evidence of rape, and argue there was no evidence that Drane killed Taylor.

As our supreme court has previously observed, "[i]t is practically impossible to gauge the performance of trial counsel without the trial record . . . ." Tapia v. State, 753 N.E.2d 581, 588 n. 10 (Ind. 2001). Further, the law is clear that, as a general rule, a post-conviction court may not take judicial notice of the trial transcript. Bonds v. State, 729 N.E.2d 1002, 1006 (Ind. 2000). Whether a defendant received ineffective assistance of counsel is a highly fact-sensitive determination, and it is imperative that we be provided with the trial record. Despite this error of omission, we will attempt to address Drane's claims of ineffective assistance of trial and appellate counsel.

A court that hears a post-conviction claim must make findings of fact and conclusions of law on all issues presented in the petition. Pruitt v. State, 903 N.E.2d 899, 905 (Ind. 2009) (citing Ind. Post-Conviction Rule 1(6)), reh'g denied, 907 N.E.2d 973 (Ind. 2009). "The findings must be supported by facts and the conclusions must be supported by the law." Id. Our review on appeal is limited to these findings and conclusions. Id. Because the petitioner bears the burden of proof in the post-conviction court, an unsuccessful petitioner appeals from a negative judgment. Id. (citing P-C.R. 1(5)). "A petitioner appealing from a negative judgment must show that the evidence as a whole 'leads unerringly and unmistakably to a conclusion opposite to that reached by the trial court.'" Id. (quoting Allen, 749 N.E.2d at 1164). Under this standard of review, "[we] will disturb a post-conviction court's decision as being contrary to law only where the evidence is without conflict and leads to but one conclusion, and the post-conviction court has reached the opposite conclusion." Id.

The issue is whether Drane was denied the effective assistance of trial and appellate counsel. To prevail on a claim of ineffective assistance of counsel, a petitioner must demonstrate both that his counsel's performance was deficient and that the petitioner was prejudiced by the deficient performance. Ben-Yisrayl v. State, 729 N.E.2d 102, 106 (Ind. 2000) (citing Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984)), cert. denied. A counsel's performance is deficient if it falls below an objective standard of reasonableness based on prevailing professional norms. French v. State, 778 N.E.2d 816, 824 (Ind. 2002). To meet the appropriate test for prejudice, the petitioner must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694, 104 S. Ct. at 2068. Failure to satisfy either prong will cause the claim to fail. Grinstead v. State, 845 N.E.2d 1027, 1031 (Ind. 2006). Most ineffective assistance of counsel claims can be resolved by a prejudice inquiry alone. Id.

Drane argues that his trial counsel was ineffective because: (1) he failed to investigate and present evidence regarding an unidentified fingerprint found on a wine bottle near the victim's body at the public park;[2] and (2) he failed to investigate and present evidence that the victim's vehicle was found at another person's residence. Regarding both claims, Drane was required to demonstrate that there is a reasonable probability that, but for his trial counsel's alleged errors, the result of the proceeding

[2] The post-conviction court concluded that the fingerprint was, in fact, entered into evidence by Drane's counsel; however, as noted above, we were not provided with the trial transcript.

would have been different. Drane failed to do so. Drane baldly asserts that the result of the proceeding would have been different. However, we cannot say that the result of Drane's trial would have been different as a result of the admission of unidentified fingerprints on the bottle found in a public park. Further, Drane did not provide any information at the post-conviction hearing regarding the location of the victim's vehicle. He has failed to establish that the result of his trial would have been different if his trial counsel had admitted evidence regarding the location of the victim's vehicle. The post-conviction court properly denied Drane's ineffective assistance of trial counsel claim.

Next, Drane argues that his appellate counsel was ineffective because he failed to present a claim of ineffective assistance of trial counsel regarding trial counsel's failure to present evidence of the fingerprint and regarding the victim's vehicle. We note that a post-conviction proceeding is the preferred forum for adjudicating ineffective assistance claims. Rogers v. State, 897 N.E.2d 955, 964 (Ind. Ct. App. 2008), trans. denied. When a claim of ineffective assistance is directed at appellate counsel for failing fully and properly to raise and support a claim of ineffective assistance of trial counsel, a defendant faces a compound burden on post-conviction. Ben-Yisrayl v. State, 738 N.E.2d 253, 261-62 (Ind. 2000), cert. denied. If the claim relates to issue selection, the defendant on post-conviction must demonstrate that appellate counsel's performance was deficient and that, but for the deficiency of appellate counsel, trial counsel's performance would have been found deficient and prejudicial. Id. at 262. Thus, the defendant's burden before the post-conviction court was to establish the two elements of ineffective assistance of counsel separately as to both trial and appellate counsel. Id.

Drane has failed to meet his burden of demonstrating that his trial counsel was ineffective and, therefore, has failed to meet his burden of demonstrating that his appellate counsel was ineffective for failing to raise an ineffective assistance of trial counsel claim regarding the same issues. The post-conviction court properly denied Drane's ineffective assistance of appellate counsel claim.

Conclusion

Drane failed to demonstrate that his trial counsel or appellate counsel were ineffective. The post-conviction court properly denied Drane's petition for post-conviction relief. We affirm.

Affirmed.

FRIEDLANDER, J., and CRONE, J., concur.