STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: January 22, 2018)

GERALD LYNCH	**:**	
	:	
v.	**:**	**C.A. No. PM-2015-4236**
	:	
A.T. WALL	**:**	

DECISION

CARNES, J. Before this Court is Gerald Lynch's (Lynch) application for postconviction relief (Application) challenging his jury conviction of four counts of first-degree sexual assault and a sentence of twenty years, with ten years to serve on each count, and ten years suspended with probation.[1] Lynch now requests this Court grant his Application and enter an order overturning his conviction. This matter is before this Court pursuant to G.L. 1956 § 10-9.1-1.

I

Facts and Travel

This Court gleans facts from the Rhode Island Supreme Court case *State v. Lynch*, 19 A.3d 51 (R.I. 2011), and the facts are further developed herein. The events that gave rise to Lynch's convictions transpired in the 1980s, over twenty years before the complainant, M.G.,[2] filed a report with the Pawtucket Police Department. In 2004, a grand jury returned an indictment charging Lynch with nine counts of first-degree sexual assault in violation of G.L. 1956 § 11-37-2. The case was tried before a jury in October 2006. Of the nine incidents giving

[1] Specifically, Lynch was sentenced to twenty years with ten years to serve and ten years suspended sentence with probation. Lynch was also ordered to have no contact with the victim, to enter a sex offender program (Count 4) and was given a twenty-year full sentence, ten years to serve and ten years suspended probation on Counts 7, 8, and 9, all to run concurrently.

[2] In order to protect the identity and privacy interests of the complaining witness, his name has been redacted from this Decision.

rise to the matter, eight consisted of Lynch performing oral sex on M.G., and the remaining count encompassed a single instance of Lynch forcing M.G. to perform oral sex on him. At trial, M.G. testified about the incidents. With respect to two of the incidents that occurred when M.G. was a high school freshman, M.G. could not recall if or how much force Lynch used. At the close of evidence, the state dismissed those two counts. Subsequently, a jury convicted Lynch on four counts and found Lynch not guilty of three other counts of first-degree sexual assault.[3] This Court denied Lynch's motion for judgment of acquittal and his motion for a new trial and sentenced Lynch to the Adult Correctional Institution (ACI). Thereafter, Lynch appealed his conviction to the Rhode Island Supreme Court, and the Supreme Court affirmed this Court's judgment.

In August 2015, Lynch filed an Application alleging fourteen different grounds and also filed for appointment of counsel.[4] This Court appointed counsel to represent Lynch. Thereafter, on June 10, 2016, Lynch, with the assistance of new counsel, filed a verified application for postconviction relief. In March 2017, counsel filed a motion to withdraw and a corresponding no-merit memorandum, also known as a "Shatney Memorandum."[5] In his Shatney Memoranda, counsel addressed each of the fourteen claims Lynch included in his verified application, as well as an additional five issues Lynch asked him to research. Lynch contended his attorneys were ineffective and that he was entitled to postconviction relief for the following reasons: (1)

[3] There was conflicting testimony regarding the three counts on which the jury found Mr. Lynch not guilty.

[4] This matter was originally heard before a now-retired Rhode Island Superior Court Judge prior to Lynch refiling his Application.

[5] In *Shatney v. State*, the Rhode Island Supreme Court set forth postconviction relief application procedures for the hearing justice to follow. 755 A.2d 130 (R.I. 2000) (explaining that if counsel believes a defendant's claim for postconviction relief is meritless, counsel must file a written memorandum with the Court detailing the research and reasoning behind the belief and serve a copy on the defendant. Counsel must also file a written motion to withdraw.).

ineffective assistance in making unreasonable strategic trial decisions which deprived Lynch of his right to a fair trial; (2) ineffective assistance in not properly objecting; (3) ineffective assistance in failing to adequately and sufficiently cross-examine witnesses; (4) ineffective assistance in failing to call character witnesses during the defense's case; (5) ineffective assistance in failing to call proper witnesses in support of defense; (6) ineffective assistance in not allowing Lynch to testify in his own defense; (7) ineffective assistance in failing to communicate and adequately discuss defense strategies with him; (8) ineffective assistance in failing to properly preserve trial errors so they could be raised at the appellate level and on his postconviction appeal; (9) failure of the authorities to take a statement from necessary witnesses; (10) ineffective assistance in not properly investigating Lynch's background to develop defense theory; (11) ineffective assistance in not cross-examining complaining witness about his discharge from the United States Coast Guard; (12) ineffective assistance in not calling witnesses that the private investigator spoke with; (13) ineffective assistance by misinformation from his attorneys that there was no way to verify that M.G. applied for, or had received, funds from the Victim's Crime Indemnity Fund; (14) Lynch was prejudiced by mention of "repressed memory" testimony even though no such testimony was elicited during trial; (15) prosecutorial misconduct by the State through withholding a statement; (16) ineffective assistance in failing to corroborate if witness Joseph Daurado was present on a boat; (17) ineffective assistance in failing to adequately investigate M.G.'s military discharge status in effort to undermine his credibility and financial motive; (18) ineffective assistance in failing to question a witness about police responding to his home after an arrest; and (19) the trial justice erred in commenting at sentencing on Lynch's involvement with the Boys and Girls Club after having ordered the evidence not be elicited during the course of trial.

Counsel, in the first Shatney Memorandum, concluded and thoroughly explained that each of Lynch's contentions lacked merit, and he asked this Court to conduct a hearing to determine whether it agreed. This Court conducted a hearing and granted counsel's motion to withdraw. Nevertheless, Lynch indicated he wished to continue his pursuit for postconviction relief. Counsel agreed to remain on standby to facilitate[6] witness examination at future evidentiary hearings. Moreover, at that time, Lynch raised additional issues upon which he alleged he was entitled to postconviction relief. Counsel submitted another Shatney Memorandum addressing Lynch's new arguments and ultimately concluded each contention meritless.

Attorneys Leonard O'Brien (O'Brien) and Lise Gescheidt (Gescheidt) represented Lynch throughout his jury trial. After Lynch submitted his Application alleging ineffective assistance of counsel, this Court held two separate evidentiary hearings where Lynch had the opportunity to represent himself and question his former attorneys regarding their performance throughout his trial. The relevant facts and exchanges from those hearings are further developed and applied herein.

II

Standard of Review

"[T]he remedy of postconviction relief is available to any person who has been convicted of a crime and who thereafter alleges either that the conviction violated the applicant's constitutional rights or that the existence of newly discovered material facts requires vacation of the conviction in the interest of justice." *DeCiantis v. State*, 24 A.3d 557, 569 (R.I. 2011) (citing

[6] At the time of the *pro se* evidentiary hearings, Attorney Leonard O'Brien was a resident of Florida. Among other logistics, appointed counsel arranged the logistics of O'Brien's visit to Rhode Island to testify.

Page v. State, 995 A.2d 934, 942 (R.I. 2010)) (further citation omitted); *see also* § 10-9.1-1. "An applicant for such relief bears '[t]he burden of proving, by a preponderance of the evidence, that such relief is warranted' in his or her case." *Brown v. State*, 32 A.3d 901, 907 (R.I. 2011) (quoting *State v. Laurence*, 18 A.3d 512, 521 (R.I. 2011)). Postconviction relief motions are civil in nature and thus governed by all the applicable rules and statutes governing civil cases. *Ferrell v. Wall*, 889 A.2d 177, 184 (R.I. 2005).

III

Analysis

As discussed above, Lynch filed an Application on several grounds and now asserts he was denied effective assistance of counsel guaranteed by the Sixth Amendment.[7] For the reasons stated herein, this Court rejects Lynch's Application and upholds his conviction.

A

Ineffective Assistance of Counsel

The United States Supreme Court case *Strickland v. Washington*, 466 U.S. 668 (1984), which our Supreme Court has adopted, is the benchmark decision when faced with a claim of ineffective assistance of counsel. *Brown v. Moran*, 534 A.2d 180, 182 (R.I. 1987); *LaChappelle v. State*, 686 A.2d 924, 926 (R.I. 1996). A petitioner claiming ineffective assistance of counsel must overcome a high burden in proving his claim. *See Rice v. State*, 38 A.3d 9, 17 (R.I. 2012); *Padilla v. Kentucky*, 559 U.S. 356, 371 (2010).

[7] *See supra* § I (listing all nineteen counts).

1

First Prong

A *Strickland* claim entails a two-part inquiry, and a petitioner must satisfy both requirements to prevail. First, a petitioner must prove that counsel's performance was deficient in such a way that counsel's errors were so serious that the attorney was "not functioning as the counsel guaranteed the defendant by the Sixth Amendment." *Strickland*, 466 U.S. at 687; *Neufville v. State*, 13 A.3d 607, 610 (R.I. 2011). Essentially, this prong of the *Strickland* analysis evaluates whether counsel's performance "fell below an objective standard of reasonableness." 466 U.S. at 688. However, the Sixth Amendment standard is "'very forgiving,"' *United States v. Theodore*, 468 F.3d 52, 57 (1st Cir. 2006) (quoting *Delgado v. Lewis*, 223 F.3d 976, 981 (9th Cir. 2000)), and there is a strong presumption that counsel performed competently. *Gonder v. State*, 935 A.2d 85, 86 (R.I. 2007). "As the *Strickland* Court cautioned, a reviewing court should strive 'to eliminate the distorting effects of hindsight.'" *Clark v. Ellerthorpe*, 552 A.2d 1186, 1189 (R.I. 1989) (quoting *Strickland*, 466 U.S. at 689). Accordingly, an attorney's choice in trial tactics that appear imprudent "only in hindsight, does not constitute constitutionally-deficient representation under the reasonably competent assistance standard." *United States v. Bosch*, 584 F.2d 1113, 1121 (1st Cir. 1978). "'[T]actical decisions by trial counsel, even if ill-advised, do not by themselves constitute ineffective assistance of counsel."' *Rivera v. State*, 58 A.3d 171, 180-81 (R.I. 2013) (quoting *Rice*, 38 A.3d at 18). This Court is not in the business of "'meticulously scrutiniz[ing] an attorney's reasoned judgment or strategic maneuver in the context of a claim of ineffective assistance of counsel."' *Id.* at 181 (quoting *Rice*, 38 A.3d at 17).

This Court is satisfied that Lynch's team of attorneys considered the possible defenses presentable to the jury, and the attorneys ultimately developed a strategy and expressed thoughts

about their technique to Lynch. A review of the transcripts[8] makes clear that Lynch's attorneys pursued various legal strategies in Lynch's defense. These defense strategies included showing that the sexual relationship between M.G. and Lynch was consensual and that there was no force, as well as establishing that M.G. was in his late teens, in order to strengthen the defense's position that the relationship was consensual. O'Brien Hr'g Tr. at 41:16-42:2. Importantly, while Lynch inquired about why his attorneys never delved into a line of questioning about M.G.'s age, counsel explained at a hearing on December 11, 2017 that M.G.'s age was of no moment. Hr'g Tr. 5:22-6:13, Dec. 11, 2017. Counsel clarified on the record and in his supplemental Shatney Memorandum that the charges were for sexual assault, rather than a crime with an age element. *Id.*

After Lynch filed his Application before this Court, Lynch had the opportunity to question both attorneys regarding their actions throughout his trial and in the preparation thereof. This Court finds the testimony of O'Brien and Gescheidt during their respective evidentiary hearings to be credible and gives weight to their testimony as such. The testimony makes apparent that each act or omission by the attorneys throughout Lynch's trial occurred for a specific and strategic purpose that at the time was both plausible and reasonable to this Court in furthering the defense's approach in an attempt to secure not-guilty verdicts for Lynch on the various counts of the indictment.

On July 26, 2017, O'Brien appeared to testify regarding Lynch's postconviction relief claim based on O'Brien's alleged ineffective assistance. Throughout the hearing, O'Brien provided detailed responses to each of Lynch's several questions regarding O'Brien's decisions and tactics throughout Lynch's jury trial. For instance, Lynch began by questioning O'Brien

[8] O'Brien testified on July 26, 2017 (O'Brien Hr'g Tr.). Gescheidt testified on October 2, 2017 (Gescheidt Hr'g Tr.).

regarding his failure to call the woman M.G. arrived at the Pawtucket Police Station with the day he filed a report. O'Brien explained that while he recalled Lynch bringing this to his attention several years prior, their trial strategy at the time was to challenge M.G.'s credibility and motive for suddenly reporting the alleged crime twenty years later. O'Brien elaborated, stating, "I did not regard it as a material difference if, in fact, there was a difference." O'Brien Hr'g Tr. 7:9-10.

After the *pro se* Shatney hearings, Lynch submitted a short memorandum[9] referencing certain pages of the trial transcript. In one instance, Lynch referred this Court to page eighty-five of the trial transcript with context to Lynch's argument on a motion to suppress Lynch's statement. This Court has reviewed the referenced page and context surrounding the same. Considering page eighty-five and its context does not change this Court's findings, *infra*, regarding the defense team, their strategies, and appropriate deference due.

Additionally, Lynch questioned O'Brien about why he never contacted or inquired about a witness who the Pawtucket Police Department apparently called in to answer questions. This witness worked at the florist shop where Lynch and M.G. were employed. Lynch contended that M.G. fabricated a story that he and this witness were on a boat, and that M.G. intended to kill himself that day on the boat and chose not to because of this witness's presence on the boat. In his post-hearing *pro se* memorandum, Lynch specifically argues:

> "Detective McGill never mentioned, on the stand, that he called Mr. Joseph Daurado to the Pawtucket PD, where he told him that [M.G.] said that he had invited him on a boat trip, which he and I had taken. [M.G.] claims that he was going to kill him and me by running the boat aground, and that the reason he did not was because Mr. Daurado was onboard. Daurado told Det. McGill that he had never been on a boat in his life; and that he could not swim and was afraid of the water. Det. McGill thanked Daurado for coming to the police department, and that he would be in touch. Daurado never heard from the detective again.

[9] After the hearings, Lynch filed a *pro se* memorandum with attached transcript pages on October 10, 2017.

> Therefore, obviously, there is a discrepancy here and as such, [M.G] arguably lied and the Prosecutor withheld this information during discovery."

See infra at n.9. O'Brien explained he did not further inquire about this witness or call him on the stand because it would have allowed M.G. to further explain the anguish he alleged Lynch caused. O'Brien Hr'g Tr. at 14:21-25. O'Brien further referenced R.I. R. Evid. 608 and explained to Lynch that he "didn't want to give [M.G.] an opportunity to clean some stuff up."[10] *Id.* at 15:24-25.

Furthermore, Lynch faulted his attorneys for failing to call him as a witness. In response to this contention, O'Brien testified that he informed Lynch that he had the right to testify; however, O'Brien further explained that Lynch "made it quite clear that he couldn't take the witness stand and testify consistently about what he[,] [Lynch,] had ultimately told [O'Brien] occurred." *Id.* at 40:9-12. O'Brien testified that he explained to Lynch that if Lynch intended to lie on the stand, he would be unable to represent him. *Id.* at 45:9-11. It is undeniable that suborning perjury is entirely unethical and in violation of an attorney's duty of candor, and therefore, Lynch's contention that his attorneys were ineffective on this point is meritless. Moreover, this case does not present a situation where Lynch appeared to be vehemently indicating he wished to testify and was nevertheless denied that right. In fact, Lynch failed to provide any evidence to this Court to indicate he was deprived of his right; rather, this Court finds that Lynch followed the recommendation of his attorneys and made the decision not to testify and therefore cannot establish O'Brien and Gescheidt were ineffective. *See also Washington v. State*, 989 A.2d 94, 105 (R.I. 2010) (holding that the applicant for postconviction relief did not establish the *Strickland* requirement of ineffectiveness where the attorney "did not

[10] O'Brien explained to Lynch that R.I. R. Evid. 608 prevents extrinsic evidence of a collateral matter to impeach a witness.

refuse to accept his client's desire to testify, nor did he fail to inform applicant of his right to testify").

With regard to several of Lynch's contentions in his Application, Lynch probed O'Brien regarding his decisions in failing to call certain witnesses or in failing to ask certain questions.[11] O'Brien explained, with detail, his approach and thought process at the time of trial. For example, O'Brien testified that many of his decisions in not addressing certain points that Lynch now believes are important were based on R.I. R. Evid. 404(b) considerations and the defense's attempt to avoid certain things from coming into evidence. O'Brien Hr'g Tr. at 16:7-24. When surveyed about his approach in cross-examining witnesses, O'Brien explained that he constructed questions to support the defense's strategy, but also to avoid pitfalls and any surprises. *Id.* at 43:12-14. O'Brien additionally testified that he did not probe M.G. about the status of his discharge because he had other questions that "were much more important in [his] trial strategy," and he "didn't think it would get [the defense] anywhere." *Id.* at 29:14-17. Moreover, O'Brien elaborated that asking M.G. certain questions when he was on the stand would have been "counterproductive" to their trial strategy. *Id.* at 31:20-21.

This Court finds O'Brien's explanations clearly go to the trial strategy he and his law firm developed, and these types of choices are '"tactical decisions by trial counsel [that] do not [ ] constitute ineffective assistance of counsel."' *Rivera*, 58 A.3d at 180-81 (quoting *Rice*, 38 A.3d at 18). The decision as to whether to pose certain questions or call certain witnesses is a tactical decision counsel has the power to make, and this Court finds O'Brien's conduct in these instances did not fall below the requisite level of reasonableness. *See Bustamante v. Wall*, 866 A.2d 516, 523 (R.I. 2005). Rather, our Supreme Court has noted that

[11] At trial, O'Brien and Gescheidt presented three witnesses on Lynch's behalf.

> "very often defense attorneys will avoid a lot of cross-examination on the details of . . . incidents because what they don't want to do . . . is give the witness the opportunity to tell the story again and again to the jury. . . . if you have a particularly sympathetic appearing witness . . . a lot of times attorneys don't want to cross-examine too heavily because they're afraid they're going to create a bias in the minds of the jury against the party that attorney is representing. These are very legitimate trial strategies." *Brown v. State*, 841 A.2d 1116, 1123 (R.I. 2004).

O'Brien was able to thoroughly articulate his tactics throughout the proceedings, and this Court is satisfied that those explanations and strategies were plausible and that of a reasonably competent attorney. Notably, O'Brien practiced law from 1977 until he retired in 2015. Roughly ninety to ninety-five percent of O'Brien's practice consisted of criminal law. Additionally, throughout his career, O'Brien handled hundreds of capital cases and dozens of sexual assault matters. After a review of O'Brien's credentials, this Court affords great weight and credibility to O'Brien's testimony.[12]

Thereafter, on October 2, 2017, Lynch questioned Gescheidt at an evidentiary hearing. Lynch submitted that Gescheidt's representation was ineffective because she never mentioned M.G.'s age in her closing arguments. However, Gescheidt explained that her approach in these arguments was to establish that the acts alleged against Lynch were between two consenting adults. Gescheidt Hr'g Tr. at 10:8-9. Therefore, bringing up M.G.'s age would have been completely contrary to this trial strategy. *See id.* Additionally, one of Lynch's many contentions was that the prosecutor's father, a magistrate at the time of Lynch's trial, improperly stood in the back of the courtroom during his daughter's closing arguments. This Court affords no weight to

[12] On cross-examination, the State's attorney asked O'Brien a number of questions regarding his credentials. *See* O'Brien Hr'g Tr. at 36:19-38:18.

this argument because, as Gescheidt testified at the evidentiary hearing, the public has a right to be present in the courtroom.[13]

Lynch also averred that O'Brien and Gescheidt were ineffective based on a lack of attorney-client communication. O'Brien Hr'g Tr. at 47:10-11. Gescheidt disagreed with this contention, and explained that she recalled meeting with Lynch in the office "quite regularly, especially when [the defense team was] preparing [Lynch's] case for trial. Gescheidt Hr'g Tr. at 5:25-6:2. O'Brien testified that Lynch visited his office more than once and that he gave Lynch "as much time as [he] thought was necessary." O'Brien Hr'g Tr. at 47:15-19; 48:3-4. O'Brien similarly described various meetings with Lynch at the office, explained his belief that "communication is very important," and described himself as "obsessed" with the case at the time. *Id.* at 47:18-19, 23-25; 50:24-25. In *Guerrero v. State*, the Rhode Island Supreme Court concluded that it was "satisfied that, by speaking with applicant only at the courthouse, applicant's trial counsel's performance did not fall outside the range of competence demanded of attorneys in criminal cases." 47 A.3d 289, 304 (R.I. 2012). This Court finds that O'Brien and Gescheidt's communications with Lynch undoubtedly exceeded that of the attorneys in *Guerrero* and, thus, rejects this allegation.

After the evidentiary hearings with O'Brien and Gescheidt, Lynch raised three additional issues concerning his Application. At a status hearing, counsel explained that after a discussion with Lynch, only one allegation remained. Specifically, Lynch maintained that M.G. testified that he was in the Coast Guard in 1987 through portions of 1988, and therefore, a jury could not have convicted Lynch of any crimes occurring during that time. As a part of his *pro se* post-

[13] There is absolutely no evidence that the prosecutor's father improperly influenced the trial judge.

hearing memorandum, *see infra* at n.9, Lynch specifically directed this Court's attention to page 544 of the trial transcript. Lynch has also attached pages 541 and 542 of said transcript.

These pages, along with a host of others, reflect cross-examination of M.G. which occurred on Monday, October 23, 2006.[14] Lynch argues that he was "convicted of 1 count (for 1988) [sic]." Lynch continues, "[M.G.] was not even in Rhode Island—he was in the Service, thus it is impossibility [sic]; nor could he have been working for me in 1988 . . ." Page 542 of the transcript contains M.G.'s testimony at trial. M.G. testified he was away from home October 1987 through March of 1988, perhaps a total of six months. Trial Hr'g Tr. at 542:10-25. Moreover, page 541 of said transcript reflects M.G. testifying about his birthday, *id.* at 541:3-4, and also the years he worked for Lynch in 1983, 1984, 1985, 1986, and 1987. *Id.* at 541:12-542:2. The jury had all of this information before them at trial and during deliberations.

After a review of the record, including Lynch's indictment and the trial testimony of M.G. that Lynch refers to, this contention is wholly without merit. The indictment did not include any allegations that a sexual assault occurred during that period of time.[15] As such, Lynch's contention is misplaced, and this Court need not consider it further.

In all, after evaluating the trial transcripts, evidentiary hearing transcripts, and corresponding papers, it is this Court's determination that O'Brien and Gescheidt's representation was clearly appropriate, reasonable, and reflected tactical judgment. Moreover, it is clear that Lynch's attorneys made a concerted effort in their representation of Lynch as

[14] M.G.'s direct examination occurred on the previous trial day. His testimony on direct begins at page 297 of the trial transcript. Cross-examination begins at page 535. Redirect examination begins at page 733 and recross-examination begins at page 776 and continues through page 784. This Court has reviewed M.G.'s testimony.

[15] As to the counts where the jury found Lynch guilty, Count Four alleged a First Degree Sexual Assault between the dates of May 11, 1983 and May 10, 1984 and Counts Seven, Eight, and Nine all alleged the same charge between the dates of May 11, 1984 and May 10, 1985.

evidenced by the fact that the jury found Lynch not guilty on three of the counts. Additionally, the Court dismissed two of the counts against Lynch. Notably, in denying an application for postconviction relief, our Supreme Court determined that

> "[a] defendant is not entitled to an attorney who agrees with the defendant's personal view of the prevailing law or the equities of the prosecutor's case. A defendant is entitled to an attorney who will consider the defendant's views and seek to accommodate all reasonable requests with respect to trial preparation and trial tactics. . . . Every defendant is entitled to the assistance of counsel dedicated to the proposition, and capable of assuring that, the prosecution's case shall be presented in conformity with the Constitution, rules of evidence and all other controlling rules and practices. No defendant has a right to more." *Bustamante*, 866 A.2d at 524.

Accordingly, the grounds upon which Lynch bases his claim of ineffective assistance are inadequate to rise to the level of representation that is so deficient as to deprive Lynch of his constitutional rights. As a result, Lynch cannot satisfy the first prong of the *Strickland* inquiry.

2

Second Prong

Nevertheless, even assuming *arguendo* that Lynch was successful on the first prong of the *Strickland* analysis, Lynch also had to demonstrate the second part of the inquiry, which requires a petitioner to show that even if counsel's performance was deficient, the attorney's shortcomings "prejudice[d]" petitioner's defense. *Strickland*, 466 U.S. at 687. Essentially, a petitioner is required to show that a reasonable probability exists that without counsel's unprofessional misgivings, the proceeding would have come out differently. Lynch failed to meet this burden.

The evidentiary hearing transcripts make clear that probing many of the issues or witnesses that Lynch contends his attorneys were ineffective in failing to do would have in fact made matters worse for Lynch. In his Application, Lynch detailed various avenues that O'Brien

and Gescheidt potentially could have pursued; however, this Court concludes that these avenues do not create a reasonable probability that Lynch's outcome at trial would have differed. This Court is satisfied that Lynch's attorneys had examined and explored various defenses prior to trial and acted reasonably in defending the case pursuant to those strategies. Lynch did not present evidence sufficient to show that if his attorneys explored the various avenues he suggested then his outcome would have been different. Rather, if O'Brien and Gescheidt explored every possible theme, Lynch could have risked confusing the jury and weakening the stronger arguments that his attorneys ultimately determined were best suited for his defense.

As discussed above, one of Lynch's contentions in his Application concerned the attorney's failure to call character witnesses on his behalf. In the evidentiary hearing, O'Brien testified that had he called certain character witnesses on Lynch's behalf during Lynch's jury trial, the prosecutor would have cross-examined those witnesses in such a way that would have actually resulted in ineffective assistance of counsel.[16] O'Brien Hr'g Tr. at 33:16-34:12. Furthermore, O'Brien explained that because Lynch was not going to take the stand, the defense could not "bring someone in to testify about [Lynch's] reputation for truthfulness if [the defense] hadn't put that in play." O'Brien Hr'g at Tr. 33:19-21. This Court finds that explanation to be reasonable and does not believe Lynch was prejudiced by this decision or that he would have received a better outcome had the defense called a character witness.

[16] O'Brien explained that if the defense called a character witness to testify as to Lynch's good character, the prosecutor would have inquired about topics that shed a negative light on Lynch in front of the jury. Specifically, O'Brien explained that the prosecutor would have questioned these character witnesses about Lynch's "reputation of not being forceful, not assaulting a person," and she could have asked if playing a tape recording of a conversation between Lynch and M.G., where Lynch admits to having sex with M.G. but denies force, would change their opinion. O'Brien Hr'g Tr. at 33:16-34:12.

It is clear to this Court that Lynch was not prejudiced by his attorneys' representation. Moreover, Lynch failed to provide evidence to this Court that a reasonable probability exists that the outcome would have differed had his attorneys pursued the many claims that he insists they should have. To reiterate, this Court will not "meticulously scrutinize an attorney's reasoned judgment or strategic maneuver in the context of a claim of ineffective assistance of counsel." *Rice*, 38 A.3d at 17. This Court is satisfied that based on O'Brien and Gescheidt's breadth of defense experience, and their detailed testimony regarding their determinations of the best theories to defend their client, the attorneys acted reasonably. This Court does not find Lynch's alternatives could plausibly have altered the jury's opinion in rendering its verdict.

Consequently, Lynch failed to provide evidence that the result of his trial would have differed and thus cannot satisfy the second prong of the *Strickland* analysis.

IV

Conclusion

For the reasons stated herein, Lynch failed to satisfy his burden in proving by a preponderance of the evidence that he is entitled to postconviction relief. Specifically, Lynch did not present evidence sufficient to overcome the heavy burden imposed via the two-prong analysis imposed through *Strickland*. Consequently, Lynch's Application is hereby denied.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

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CASE NO:	**PM-2015-4236**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**January 22, 2018**
JUSTICE/MAGISTRATE:	**Carnes, J.**

ATTORNEYS:

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For Defendant:	**Jeanine McConaghy, Esq.**