STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: August 30, 2021)

SYDNEY TAYLOR	:	
	:	
v.	:	**C.A. No. PM-2013-2206**
	:	
STATE OF RHODE ISLAND	:	

DECISION

McGUIRL, J. Before the Court is Petitioner Sydney Taylor's Application for postconviction relief (Application). Sydney Taylor (Petitioner) asserts that the Court denied his request for self-representation, in violation of the Sixth and Fourteenth Amendments of the United States Constitution, and that his appointed counsel at the trial, appellate, and postconviction relief stages all rendered ineffective assistance by failing to raise issues related to the trial court's denial of his request to proceed *pro se*. He further claims that his good-time credit while incarcerated has been inaccurately calculated. Jurisdiction is pursuant to G.L. 1956 § 10-9.1-1.

I

Facts and Travel

The pertinent facts herein are taken from the Supreme Court case *State v. Taylor*, 562 A.2d 445 (R.I. 1989). On July 19, 1985, Susan Traylor (Ms. Traylor) was asleep in her second-floor apartment at 70 Corinth Street in Providence, Rhode Island. She awoke to the sound of a dog barking and went to the window that overlooked her backyard. Ms. Traylor saw a shirtless man—later identified as the Petitioner—carrying a white bundle as he climbed over the fence enclosing her backyard. She went downstairs, where she met

her neighbor, Lydia Gray, who lived on the first floor with her boyfriend and six children. Ms. Gray told Ms. Traylor that she had been awoken by the sound of an intruder but had not found anything missing from her apartment. As Ms. Traylor was informing passing police about the possible intruder, Ms. Gray discovered that one of her children, seven-year-old Sally,[1] was missing. *Id.* at 447.

Sally awoke to find that she was being carried in a blanket with her head covered. As she was being thrown over a fence, the blanket dislodged, revealing a thin, shirtless man wearing jeans. The man picked up Sally, slapped her, and threatened to kill her if she screamed. The man then sexually assaulted Sally, after which he climbed a tree, and Sally ran home and told her mother what had happened. After a search of the surrounding area, police located Petitioner and detained him in the back of a police vehicle. Sally then identified Petitioner as her abductor, and Petitioner was taken to the central police station. *Id.* at 447-48.

A week before the trial commenced, trial counsel requested to withdraw, stating that Petitioner wished to represent himself. This request was denied. *Id.* at 454. At trial, Sally was permitted to testify on video, pursuant to G.L. 1956 § 11-37-13.2, because she had "froze[n] with fear" during her initial testimony at a hearing on a motion to suppress her prior identification of Petitioner. *Id.* at 450. The Petitioner was tried by a jury and found guilty on February 20, 1987 of one count each of burglary, kidnapping, first degree child molestation sexual assault, and obstructing a police officer. *Id.* at 446.

Petitioner appealed the decision to the Rhode Island Supreme Court, where he presented six issues: (1) whether § 11-37-13.2 violated the Confrontation Clause, as

[1] The Court has changed the victim's name to Sally, as other Courts have done during the history of this matter.

guaranteed by the Sixth and Fourteenth Amendments; (2) whether § 11-37-13.2 violated Petitioner's Sixth Amendment right to self-representation; (3) whether § 11-37-13.2 violated the Equal Protection Clause of the Fourteenth Amendment; (4) whether § 11-37-13.2 violated the Due Process Clause of the Fourteenth Amendment; (5) whether the admission into evidence of an out-of-court identification violated the Fourteenth Amendment; and (6) whether the trial justice erred by denying a motion for acquittal on the charge of kidnapping. *Id.* at 451.

The Supreme Court affirmed Petitioner's conviction. In its decision, the Supreme Court held that: (1) section 11-37-13.2 does not violate the Confrontation Clause. *Id.* at 453; (2) section 11-37-13.2 does not violate the Sixth Amendment right to self-representation. *Id.* at 454; (3) section 11-37-13.2 does not violate the Equal Protection Clause. *Id.* at 455; (4) section 11-37-13.2 does not violate the Due Process Clause. *Id.* at 456; (5) the victim's out of court identification of the Petitioner was properly admitted and was not constitutionally impermissible. *Id.* at 456; and (6) the confinement of Sally was more confinement than necessary to commit a sexual assault and so fell within the scope of G.L 1956 § 11-26-1, the kidnapping statute. *Id.* at 457.

In 1999, the Petitioner filed his first application for postconviction relief (1999 PCR Application), and counsel was appointed by the Court. After reviewing Petitioner's claims, court-appointed counsel indicated to the Court that Petitioner had no viable claims and, pursuant to *Shatney v. State*, 755 A.2d 130 (R.I. 2000), was permitted to withdraw from the case.

Undaunted, Petitioner pressed forward with his 1999 PCR Application. Petitioner argued (1) that the trial justice had made a prejudicial comment to the jury that had

"compromised his right of confrontation and presumption of innocence"; (2) that the trial court erroneously had allowed the victim to testify outside the presence of the jury; and (3) that the trial court had deprived him of his right to contemporaneously cross-examine the victim. *Taylor v. Wall*, 821 A.2d 685, 685 (R.I. 2003). On June 21, 2001, a PCR evidentiary hearing was conducted, and Petitioner's 1999 PCR Application was denied.

Petitioner appealed the denial to the Supreme Court, which affirmed the lower court's ruling. The Supreme Court held: (1) the claim of improper comment by the trial justice was barred by *res judicata*; (2) the trial court's findings satisfied the requirements for allowing the victim to testify outside of the Petitioner's presence; and (3) the delayed broadcast of the victim's videotaped testimony did not implicate Petitioner's constitutional right to contemporaneous cross-examination. *Id*. at 685.

Petitioner filed his current PCR Application on May 9, 2013. In the Application, Petitioner alleges that the trial court "denied him fundamentally fair procedures" by obstructing his right to choose to represent himself and present his own defense and by forcing him to proceed to trial with an ineffective attorney. (PCR Mem. at 5.) Next, the Petitioner alleges that his trial counsel rendered ineffective assistance by failing to preserve and correct the trial justice's conclusions regarding the denial of Petitioner's request to represent himself. *Id.* at 6. Petitioner also avers that his trial counsel had a conflict of interest that affected counsel's performance. *Id.* at 8. He further contends that his appellate attorney also rendered ineffective assistance of counsel by failing to effectively litigate the appeal and that his 1999 PCR attorney misinformed the court that Petitioner had no viable claims, thus withdrawing and effectively foreclosing Petitioner's right to have the assistance of counsel in pursuing his 1999 PCR Application. *Id.* at 4, 13.

Petitioner also argued in a letter to the Court that the Department of Corrections has abused its discretion in calculating his good-time/industrial time credit during his incarceration. (Pet'r's Letter, July 28, 2014, at 1.)

Petitioner was appointed counsel for his current PCR Application and filed a supplemental memorandum in January 2015, arguing that the Supreme Court had erred in upholding the denial of Petitioner's right to represent himself. (Pet'r's Suppl. Mem. at 1.) Petitioner avers that the Supreme Court conflated Petitioner's unequivocal request to represent himself with the issue of whether § 11-37-13.2 violates a defendant's right of self-representation. *Id.* Moreover, Petitioner argues that the Supreme Court's denial of his request to represent himself based on the timeliness of his request is "plainly wrong" in light of numerous cases allowing requests for self-representation, even at more advanced stages of trial. *Id.* at 2. A hearing on the Petitioner's current Application was heard before this Court on June 16, 2015, and a Decision is herein rendered.

II

Standard of Review

Section § 10-9.1-1 provides that "'the 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) (quoting *Page v. State*, 995 A.2d 934, 942 (R.I. 2010)). The action is civil in nature, with all rules and statutes applicable in civil proceedings governing. *See* § 10-9.1-7; *see also Ouimette v. Moran*, 541 A.2d 855, 856 (R.I. 1988). A petitioner for postconviction relief bears "'the burden of proving, by a

preponderance of the evidence, that such [postconviction] relief is warranted.'" *Motyka v. State*, 172 A.3d 1203, 1205 (R.I. 2017) (quoting *Anderson v. State*, 45 A.3d 594, 601 (R.I. 2012)). Should a petitioner challenge the constitutionality of his or her conviction, they have the heightened burden of demonstrating unconstitutionality beyond a reasonable doubt. *See State v. Beck*, 114 R.I. 74, 77, 329 A.2d 190, 193 (1974).

III

Analysis

A

Res Judicata

Petitioner raises three issues on appeal: (1) the Supreme Court denied him his constitutional right under the Sixth and Fourteenth Amendments to self-representation; (2) his trial counsel, appellate counsel, and 1999 PCR counsel were all constitutionally ineffective; and (3) the Department of Corrections miscalculated his good-time credit in determining his eligibility for parole. Before addressing Petitioner's first two arguments, this Court must address whether either of these two claims is barred by the doctrine of *res judicata*.

Section 10-9.1-8 codifies the doctrine of *res judicata* within a postconviction relief context. This section provides, in pertinent part:

> "All grounds for relief available to an applicant at the time he or she commences a proceeding under this chapter must be raised in his or her original, or a supplemental or amended, application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds that in the interest of

> justice the applicant should be permitted to assert such a ground for relief." Sec. 10-9.1-8.

Our Supreme Court has consistently held that "the doctrine of *res judicata* 'bars the relitigation of any issue that could have been litigated in a prior proceeding, including a direct appeal, that resulted in a final judgment between the same parties, or those in privity with them.'" *Ricci v. State*, 196 A.3d 292, 299 (R.I. 2018) (quoting *Hall v. State*, 60 A.3d 928, 932 (R.I. 2013)). Furthermore, "[a] judgment on the merits in the first case not only is conclusive with regard to the issues that were actually determined but also precludes reconsideration of all other issues that might have been raised in the prior proceeding." *Carillo v. Moran*, 463 A.2d 178, 182 (R.I. 1983). This principle has been extended to preclude the relitigation of substantially identical issues in a postconviction relief setting that have previously been ruled upon in an applicant's direct appeal. *Carillo*, 463 A.2d at 182 (citing *Thornley v. Mullen*, 115 R.I. 505, 507, 349 A.2d 158, 159 (1975)).

An exception to this otherwise absolute bar exists, which provides that issues that were "'finally adjudicated or not so raised' may nonetheless be the basis for a subsequent application for postconviction relief if the court finds it to be 'in the interest of justice.'" *Mattatall v. State*, 947 A.2d 896, 905 (R.I. 2008) (quoting *Ramirez v. State*, 933 A.2d 1110, 1112 (R.I. 2007)). However, this exception is narrow and limited and is reserved for those cases involving "actual innocence or newly discovered evidence." *Miguel v. State*, 924 A.2d 3, 5 (R.I. 2007) (mem.). *See also Ferrell v. A.T. Wall*, 971 A.2d 615, 621 (R.I. 2009) (stating that "the term 'interest of justice' [used in § 10–9.1–8] can be defined only upon a review of the facts in a particular case").

1

Denial of Petitioner's Request for Self-Representation

"The Sixth Amendment to the United States Constitution and article 1, section 10 of the Rhode Island Constitution afford an accused the right to the assistance of counsel in all criminal prosecutions." *State v. Cruz*, 109 A.3d 381, 390 (R.I. 2015). "A criminal defendant also has the right to proceed *pro se* at trial representing himself or herself, provided that his or her waiver of counsel is valid. . . . 'The Sixth Amendment does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his [or her] defense.'" *Id.* (quoting *Faretta v. California*, 422 U.S. 806, 819 (1975)). "However, in some circumstances a defendant may lose his constitutional right to conduct his own defense." *Taylor*, 562 A.2d at 454 (citing *Illinois v. Allen*, 397 U.S. 337, 343 (1970)). Moreover, the right of a criminal defendant to have counsel of his or her choice must be balanced against the public's right to "the efficient and effective administration of criminal justice." *State v. Dias*, 118 R.I. 499, 503, 374 A.2d 1028, 1030 (R.I. 1977) (internal quotation omitted).

The Petitioner asserts that his request to represent himself was unconstitutionally denied. However, the Petitioner clearly raised this allegation in his direct appeal to the Supreme Court in 1989: "The second [issue] is whether [§ 11-37-13.2] violates a defendant's Sixth Amendment right to self-representation." *Taylor*, 562 A.2d at 451. In addressing Petitioner's contention, our Supreme Court opined:

> "[W]e note that the denial of defendant's motion to represent himself was based upon the motion's being untimely. However, we see no conflict between the Sixth Amendment right to self-representation and § 11–37–13.2. In a case where a defendant states at an early date and in an unequivocal manner that he or she wishes to proceed pro

> se, standby counsel will be appointed to conduct the examination of the child victim. Through the use of headsets or other techniques affording two-way communication, the questions posed to examine the child victim may be authored by the defendant. Thus § 11–37–13.2 does not violate a defendant's right of self-representation, as he or she is able to undertake selfrepresentation [*sic*], albeit in a slightly modified form." *Id*. at 454.

Petitioner attempts to avoid the issue of *res judicata* by asserting in his supplemental memorandum that the Supreme Court decision "conflate[d] petitioner's unequivocal request to represent himself, with the issue of whether RIGL 11-37-13.2 . . . violates a Defendant's right of self-representation." (Pet'r's Suppl. Mem. at 1.) The Court is unpersuaded by this argument. Rather, although the Supreme Court examined Petitioner's right to self-representation in the context of a particularly technical procedural act, it determined that the motion to withdraw occurred "one-and-a-half years after [Petitioner's] arrest, and the case was scheduled to go to trial the following week," making it untimely given the complex nature of the trial. *Taylor*, 562 A.2d at 454.

This Court thus faces a demand by Petitioner to relitigate this issue absent any indication or competent evidence that his claim falls within the narrow exception to *res judicata*. Instead, Petitioner rehashes what he originally argued in his direct appeal, that his constitutional right to self-representation was denied. The Court is confident that granting such relief at this time would not be in the interest of justice. Rather, the Court is satisfied that Petitioner articulated and received the Supreme Court's judgment on the very issue he now attempts to relitigate. The Court denies this claim. *See Price v. Wall*, 31 A.3d 995, 999–1000 (R.I. 2011) (holding "[an applicant] for post-conviction relief

cannot escape the effect of claim preclusion merely by using different language to phrase an issue and define an alleged error").

2

Ineffective Assistance of Counsel

Claim Against Trial Counsel

Petitioner additionally asserts multiple claims against his prior counsel. He first asserts that his trial counsel rendered ineffective assistance of counsel by "not arguing, preserving, raising and/or by causing procedural default of these aforementioned constitutional violations." (PCR Mem. at 6.) Moreover, the Petitioner contends that a conflict of interest arose when the trial justice accused his counsel "of covertly conspiring with Petitioner to . . . create a frivolous issue for appeal," which stopped his counsel from objecting to the trial justice's interpretation of his motivation for bringing the motion to withdraw. *Id*. at 9.

The Court is satisfied that the Petitioner could have raised these issues in his previous litigation, either in his direct appeal or his 1999 PCR Application, and, therefore, this claim is barred by the doctrine of *res judicata.* It is well-settled law that '"a judgment on the merits in the first case not only is conclusive with regard to the issues that were actually determined but also precludes reconsideration of *all other issues that might have been raised in the prior proceeding*."' *Price*, 31 A.3d at 1000 (quoting *Carillo*, 463 A.2d at 182). Accordingly, Petitioner's claim that his trial counsel rendered ineffective assistance of counsel is denied.

The Court is also satisfied that the litigation of this issue would not serve the "interest of justice," the narrow exception to the doctrine of *res judicata*. An allegation

of ineffective assistance of counsel must pass the two-pronged *Strickland* test, articulated by the U.S. Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984). The *Strickland* test requires that an applicant first "establish that counsel's performance was constitutionally deficient; '[t]his requires [a] showing that counsel made errors so serious that counsel was not functioning as the counsel guaranteed . . . by the Sixth Amendment.'" *Reyes v. State*, 141 A.3d 644, 654 (R.I. 2016) (quoting *Bido v. State*, 56 A.3d 104, 110-11 (R.I. 2012)). The review of counsel's performance should be highly deferential, and '"every effort [must] be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time."' *Tassone v. State*, 42 A.3d 1277, 1285 (R.I. 2012) (quoting *Lynch v. State*, 13 A.3d 603, 606 (R.I. 2011)).

Only if counsel's performance is found to be deficient does the court move on to the second prong of a *Strickland* analysis, which requires that an applicant '"demonstrate prejudice emanating from the attorney's deficient performance such as to amount to a deprivation of the applicant's right to a fair trial."' *Chum v. State*, 160 A.3d 295, 299 (R.I. 2017) (quoting *Lipscomb v. State*, 144 A.3d 299, 308 (R.I. 2016)). The petitioner must establish "to a reasonable probability that 'but for counsel's unprofessional errors, the result of the proceeding would have been different."' *Barbosa v. State*, 44 A.3d 142, 146 (R.I. 2012) (quoting *Rodriguez v. State*, 941 A.2d 158, 162 (R.I. 2008)).

Here, the Court is satisfied that Petitioner's ineffective counsel claim does not pass the first prong of the *Strickland* test: that counsel's performance was constitutionally deficient. Petitioner's trial counsel filed and argued the motion to withdraw at Petitioner's request under Rule 50(b) of the Superior Court Rules of Criminal Procedure.

Rule 50(b) provides that "[a]n attorney who has appeared on behalf of any defendant in a criminal action may not withdraw unless the attorney first obtains the consent of the court." Super. R. Crim. P. 50(b). Trial counsel advised the Court during oral argument that Petitioner "has indicated to me that he feels that he is intelligent enough, capable enough of representing himself. . . ." (Pet'r's Suppl. Mem. Attach. at 34:24-35:1.) Further, trial counsel advised the Court on the record that "I would suggest to the Court that he has a constitutional right, based on the case of *Faretta v. The State of California*[,] to do so." *Id*. at 35:1-3.

Clearly, trial counsel understood the test for self-representation, the relevant law, and the constitutional issues involved. He also clearly represented the wishes of the Petitioner, while recognizing that his withdrawal required the consent of the Court. Moreover, trial counsel advised the Court of the ramifications of the proposed withdrawal and alerted the Court as to the possible constitutional consequences. Accordingly, this Court is not moved by Petitioner's contention that his counsel rendered ineffective assistance. Moreover, Petitioner's assertion that his trial counsel was ineffective by failing to preserve the potential constitutional violation within the Court's refusal carries no weight. '"It is well established that tactical decisions by trial counsel, even if ill-advised, do not by themselves constitute ineffective assistance of counsel."' *Rice v. State*, 38 A.3d 9, 18 (R.I. 2012) (quoting *Vorgvongsa v. State*, 785 A.2d 542, 549 (R.I. 2001)) (further citation omitted). Thus, trial counsel's representation, when viewed with appropriate deference, displays no indication of ineffective representation.

Turning to Petitioner's assertion that his trial counsel's performance was affected by a "conflict of interest," this Court is again satisfied that the interest of justice would

not be served by permitting this otherwise barred claim from moving forward. In order to prove a claim of conflict of interest in relation to a claimed *Strickland* violation, "a criminal defendant who had raised no objection at trial must demonstrate that his or her attorney 'actively represented conflicting interests' and that 'an actual conflict of interest adversely affected his lawyer's performance.'" *Simpson v. State*, 769 A.2d 1257, 1267 (R.I. 2001) (quoting *Strickland*, 466 U.S. at 692). "To establish an actual conflict of interest, the defendant must show (1) the lawyer could have pursued a plausible alternative defense strategy or tactic, and (2) the alternative strategy or tactic was inherently in conflict with, or not undertaken, due to the attorney's other interests or loyalties." *Carey v. U.S.*, 50 F.3d 1097, 1100 (1st Cir. 1995) (citing *United States v. Soldevila-Lopez*, 17 F.3d 480, 486 (1st Cir. 1994)).

This Court is unpersuaded by Petitioner's claim that a conflict of interest was created after the trial justice asserted that trial counsel was attempting to create an issue for appeal by bringing an untimely motion to withdraw. (Pet'r's Suppl. Mem. Attach. at 37:23-24.) Trial counsel capably argued the motion to withdraw, which was then denied. Although the trial judge intimated that there was an attempt to create an issue for appeal with her ruling, she did not indicate an intention to censure trial counsel nor did she create an oppressive atmosphere as a result of trial counsel's motion to withdraw. There is also no evidence on the record that trial counsel failed to represent Petitioner capably in the trial that followed. Accordingly, this Court finds that Petitioner's trial counsel's performance was not constitutionally deficient, and Petitioner's contention that the trial judge's comment created a conflict of interest does not fall within the "interest of justice" exception to the doctrine of *res judicata*. It is therefore denied.

3

Claims Against Appellate Counsel

Petitioner next argues that his appellate counsel rendered ineffective assistance of counsel by failing "to properly litigate the errors concerning trial counsel's failure to assert Petitioner's [constitutional] rights and to clarify the trial record, as well as trial counsel's operating under a [conflict] of interest." (PCR Mem. at 11.) The Petitioner asserts that this alleged failure prevented the Supreme Court from considering or addressing Petitioner's constitutional claims. Moreover, Petitioner asserts that appellate counsel's failure allowed the Supreme Court to "speculate" that Petitioner was not capable of conducting his own defense. *Id.* at 12.

Again, the Court is satisfied that Petitioner had the opportunity to raise these issues during his 1999 PCR Application and hearing but failed to do so. To reiterate, '"a judgment on the merits in the first case not only is conclusive with regard to the issues that were actually determined but also precludes reconsideration of *all other issues that might have been raised in the prior proceeding*."' *Price*, 31 A.3d at 1000 (quoting *Carillo*, 463 A.2d at 182).

This Court is again not persuaded that Petitioner's claims fall within the "interest of justice" exception to the doctrine of *res judicata*. Rather, the Court is satisfied that Petitioner's Sixth Amendment argument was sufficiently raised and argued by appellate counsel on his direct appeal. *See Taylor*, 562 A.2d at 454. Furthermore, the Court finds no merit in Petitioner's argument that appellate counsel's alleged deficient performance "foreclosed the Supreme Court from directly addressing Petitioner's otherwise viable and dispositive constitutional claims. . . ." (PCR Mem. at 12.) Petitioner's argument calls for

speculation as to the Supreme Court's motives, and this Court will not so engage in the distorting effect of hindsight. *See Tassone*, 42 A.3d at 1285. Accordingly, this Court finds Petitioner's claims against his appellate attorney do not fall within the "interest of justice" exception and are thus barred by the doctrine of *res judicata*.

4

Claims Against PCR Counsel

This Court now addresses Petitioner's claim that his attorney during his 1999 PCR Application was also ineffective. Specifically, Petitioner alleges that his attorney failed to effectively litigate his trial counsel's and appellate counsel's ineffectiveness when he informed the Court that Petitioner had no viable claims.

As stated above, this Court is satisfied that Petitioner had ample opportunity to raise this issue during his appeal to the Supreme Court of the denial of his 1999 PCR Application, but he failed to do so. Again, "'a judgment on the merits in the first case not only is conclusive with regard to the issues that were actually determined but also precludes reconsideration of *all other issues that might have been raised in the prior proceeding*.'" *Price*, 31 A.3d at 1000 (quoting *Carillo*, 463 A.2d at 182). Accordingly, Petitioner's claim against his 1999 PCR attorney is barred by the doctrine of *res judicata*.

Furthermore, the Court is satisfied that this claim also does not fall within the "interest of justice" exception to the doctrine of *res judicata*. It is well settled that "the right to counsel in a postconviction-relief proceeding is a matter of legislative grace, not constitutional right." *Campbell v. State*, 56 A.3d 448, 454 (R.I. 2012). Section 10-9.1-5 provides that, in cases where the Office of the Public Defender is unable to represent the applicant, "the court shall assign counsel to represent the applicant." Sec. 10-9.1-5.

However, a "judicially created escape hatch" allows for court-appointed attorneys to withdraw, pursuant to *Shatney*, 755 A.2d 130, "in those cases where the appointed attorney's obligations under Rule 11 require withdrawal because the only alternative, in counsel's professional opinion, is the impermissible pursuit of irremediably frivolous claims." *Reyes*, 141 A.3d at 661. As is true in other contexts, "'[t]he hallmarks of a meaningful attorney-client relationship . . . , including zealous advocacy and the protection of the [client's] confidences,' exist between the applicant and counsel appointed under § 10–9.1–5." *Id*. at 658 (quoting *Campbell*, 56 A.3d at 454-55).

Our Supreme Court had the opportunity to examine a similar claim in *Reyes*. In *Reyes*, the petitioner argued that his PCR counsel was ineffective because counsel "simply respond[ed] to Reyes's postconviction claims instead of mak[ing] an effort to narrow [the] issues, re[ ]frame[,] or supplement them. . . ." *Id.* at 658. The Supreme Court disagreed and responded that counsel was permitted to withdraw from representation, pursuant to *Shatney*, 755 A.2d 130, after "postconviction counsel's investigation of Reyes's claims led him to the conclusion that Reyes's postconviction claims lacked merit[.]" *Id.* at 649. The Supreme Court noted that postconviction counsel acted with appropriate zealousness, having "met with Reyes on four separate occasions and expended considerable effort to locate the alleged exculpatory bail-hearing testimony about which, according to Reyes, trial counsel knew or should have known." *Id.* at 659.

Here, the Court finds that Petitioner has failed to offer anything more than unfounded assertions that his 1999 PCR counsel "misinform[ed] the Superior Court that Petitioner [had] no viable claims." (PCR Mem. at 13.) However, the Court notes that Petitioner was permitted to pursue his 1999 PCR Application on his own and, therefore,

fails to see any prejudice in his 1999 PCR counsel's withdrawal. For his part, Petitioner fails to cite or argue any specific instances where his appointed counsel "misinform[ed] the Superior Court" and instead relies upon a broad assertion that the very act of withdrawal by counsel deprived Petitioner of his rights by depriving him of counsel for his 1999 PCR Application. *Id.* This Court will not entertain an argument where so little has been provided by Petitioner, particularly an argument that appears to be in direct conflict with his previous argument asserting his right to self-representation. *See Drew v. State*, 198 A.3d 528, 529 (R.I. 2019) (quoting *Terzian v. Lombardi*, 180 A.3d 555, 558 (R.I. 2018)) (holding that the Court "will not 'scour the record to identify facts in support of the plaintiff's broad claims, and we will not give life to arguments that the plaintiff has failed to develop on his own'"). This Court is therefore satisfied that Petitioner's 1999 PCR counsel performed within expected standards and that Petitioner was not prejudiced by counsel's recusal. Petitioner has also failed to persuade the Court that the narrow "interest of justice" exception is applicable here, and, thus, this claim is also barred by the doctrine of *res judicata*.

B

Good-Time Credit

Petitioner has additionally raised an argument that his good-time credit has been miscalculated by the Department of Corrections (DOC). Specifically, Petitioner contends that he had the right to rely on the original calculation of his good-time credit and that "the good-time/industrial time statute does not grant [the DOC] latitudinal discretion to indiscriminately pick and choose who and how [the DOC] grants - or deducts - the credits in question." (Pet'r's Letter, July 28, 2014, at 1.)

Our Supreme Court had the opportunity to examine a similar argument in *Spivey v. Wall*, 19 A.3d 1234 (R.I. 2011) (mem.). In *Spivey*, the applicant asserted that the DOC reduced his good-time credit based on a new method of calculating good time. *Id*. at 1235. Specifically, instead of granting "up front" good-time credit, as it formerly had, the DOC began awarding monthly good-time credit on an earned basis, a practice that, the applicant contended, illegally reduced his good-time credit in violation of the Due Process and Equal Protection Clauses of the United States and Rhode Island Constitutions as well as Article I, forbidding the passage of *ex post facto* laws. *Id*.

In denying Spivey's application, the Supreme Court held that since "there is no liberty interest created by our good time and industrial time credit statute since it is completely discretionary, the [DOC's] modification of its manner of calculating good time and industrial time credits does not implicate the due-process clause." *Id*. (internal quotation omitted). The Supreme Court affirmed its holdings in *Leach v. Vose*, 689 A.2d 393 (R.I. 1997), that "'the ex post facto clause is not implicated when the department changes its procedures to conform to the mandates of the statute' and that 'the ex post facto clause does not give a prisoner a vested right to a favorable, but erroneous, interpretation of the law.'" *Id*. (quoting *Leach* 689 A.2d at 397).

The Court is similarly not persuaded by Petitioner's contention here that the DOC exceeded their discretion in their method of granting and deducting good-time credits. Rather, the Court notes that, in G.L. 1956 § 42-56-24, the good-time/industrial time statute vests the DOC with "discretion in granting or refusing to grant good-behavior and institutional industries time credits, depending upon the inmate's monthly record of conduct. . . ." *Barber v. Vose*, 682 A.2d 908, 910 (R.I. 1996). Accordingly, the Court

places no weight in Petitioner's argument that the DOC exceeded its discretion and summarily denies Petitioner's claim.

IV

Conclusion

For all of the reasons stated herein, Petitioner has failed to satisfy his burden in proving by a preponderance of the evidence that he is entitled to postconviction relief. Accordingly, Petitioner's Application is hereby denied.

Counsel shall submit an appropriate judgment and order for entry.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Taylor v. State of Rhode Island**
CASE NO:	**PM-2013-2206**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**August 30, 2021**
JUSTICE/MAGISTRATE:	**McGuirl, J.**
ATTORNEYS:	
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For Defendant:	**Judy Davis, Esq.**