STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: January 31, 2023)

CHANTHA LEUTHAVONE	**:**	
	:	
VS.	**:**	**PM/07-2339**
	:	
A.T. WALL	**:**	

DECISION

KRAUSE, J. In this, his third postconviction relief (PCR) application, Chantha Leuthavone renews his previously unsuccessful complaint that his murder conviction was compromised because, as a Laotian native with cultural differences, he says that he could not appreciate his *Miranda* options.

His entreaty has failed at every turn: the denial of his pretrial suppression motion in 1992 by this Court; affirmance of that denial in his direct appeal, *State v. Leuthavone*, 640 A.2d 515 (R.I. 1994); two PCR petitions, PM/95-5386 and PM/99-0652, which, along with his claim of ineffective assistance of counsel, were rejected on April 4, 2001 by the late Justice William A. Dimitri, and by this Court, in the instant case, in its June 5, 2007 Order.[1]

Leuthavone now seeks to present psychological evidence and replay his assertion that because of cultural differences and his professed exposure to violence (which he omitted from his trial testimony), he did not appreciate his *Miranda* rights.

[1] Notices of appeal were filed on April 27, 2001 in both of the PCR petitions which Judge Dimitri denied, but no appellate review in either case was thereafter pursued. In April 2009, the Supreme Court returned the instant case to this Court to allow Leuthavone an opportunity to respond to its June 5, 2007 dismissal Order. Leuthavone is presently represented by his fourth court-appointed PCR lawyer.

This Court finds that Leuthavone's attempt to remodel a contention which has been explicitly rejected by the Supreme Court is foreclosed by the doctrine of *res judicata*.[2]

* * *

In his direct appeal, the Supreme Court specifically addressed Leuthavone's cultural assertions and other *Miranda* predications. In that appeal Leuthavone contended, as he again does in this petition, that "the trial justice failed to properly consider the impact of defendant's status as a foreigner who spoke little English and was unfamiliar with our legal system." *Leuthavone*, 640 A.2d. at 518. In affirming Leuthavone's conviction, the Court rejected that claim and said:

> "Our conclusion that defendant fully comprehended his Miranda rights is not altered by defendant's suggestion that the Providence police should have recognized defendant's unique cultural background and inexperience with our legal system, and should have disregarded defendant's affirmations of comprehension and offered explanations for such terms as 'court of law' and 'lawyer.'
>
> "Although the additional explanations may have affected defendant's decision to issue a statement, *see Moran [v. Burbine*, 475 U.S. 412, 422 (1986)], imposition of such an added burden on law-enforcement authorities 'is neither practicable nor constitutionally necessary,' *Oregon v. Elstad*, 470 U.S. 298, 316 . . . (1985). As written, *Miranda* does not require the police to provide suspects with a précis of criminal law prior to soliciting statements from them. The Supreme Court has declined to extend the requirements of *Miranda* because to do so could impair its clarity and ease of application, *Moran*, 475 U.S. at 425 . . . , as well as subvert its careful balance between the interests of society and those of the individual. The Supreme Court has warned that the practice of "'forever adding new stories to the temple'" of a well-settled rule can only hasten the collapse of the entire temple "'when one story too many is added.'" *McNeil v. Wisconsin*, 501 U.S. 171, 182 . . . (1991). We as well decline to augment the scope of *Miranda*, wary that our tampering may unsettle the delicately balanced principles that have evolved. Accordingly, we affirm the

[2] The parties agree that if the the *res judicata* issue is resolved adversely to Leuthavone, it is dispositive of this petition. Ample memoranda in support of their respective positions have been filed, and further evidence or oral argument would not aid the decisional process. Accordingly, the Court has made its ruling based upon those submissions and the record of the case.

> trial justice's denial of defendant's motion to suppress his confession." *Leuthavone*, 640 A.2d at 520-21.

His *Miranda* claim having already been expressly rejected by the Supreme Court, and his criticism of his trial counsel dismissed by Judge Dimitri, Leuthavone is now foreclosed by the doctrine of *res judicata* from renewing those implorations. *Barros v. State*, 180 A.3d 823, 831-32 (R.I. 2018) (*Barros II*) and *Hall v. State*, 60 A.3d 928, 931-32 (R.I. 2013) (noting that the PCR statute, G.L. 1956 § 10-9.1-8, applies the doctrine of *res judicata* to such petitions and bars the relitigation of any issue that has been or could have been litigated in a prior proceeding, including a direct appeal). "Our jurisprudence on this issue is quite firm." *Martinez v. State*, 128 A.3d 395, 396 (R.I. 2015). *Accord*, *Jaiman v. State*, 55 A.3d 224, 232 (R.I. 2012), *State v. DeCiantis*, 813 A.2d 986, 993 (R.I. 2003).

A PCR applicant is rarely permitted to assert an otherwise estopped ground for relief, and "only if it is in the 'interest of justice.'" *Hall*, 60 A.3d at 931-32 (quoting *Ferrell v. Wall*, 971 A.2d 615, 621 (R.I. 2009)). Nothing in Leuthavone's regenerated contentions surmounts that high bar.

Although the forgoing essentially ends the Court's consideration of Leuthavone's instant petition and perforce requires its denial, the Court offers some additional commentary.

Miranda

Other courts have rejected similar culture-based *Miranda* arguments, including *United States v. Yunis*, 859 F.2d 953, 964-65 (D.C. Cir. 1988), which is referenced in Leuthavone's direct appeal, *Leuthavone*, 640 A.2d at 520. The *Yunis* court observed, "The fact that a defendant's alien status may have prevented him from understanding the full, tactical significance of his decision to confess will not invalidate his waiver." *Yunis*, 859 F.2d at 965. Overtures similar to Leuthavone's were rejected in *State v. Amaya-Ruiz*, 800 P.2d 1260, 1273–74 (Ariz. 1990) (citing *State v. Rivera*, 733 P.2d 1090 (Ariz. 1987)).

Notably, in *State v. Griffith*, 612 A.2d 21, 26 n.2 (R.I. 1992), the Rhode Island Supreme Court acknowledged the tempered effect that *Colorado v. Connelly*, 479 U.S. 157 (1986) has had on the *Miranda* equation:

> "In light of the holding and rationale of the United States Supreme Court in *Colorado v. Connelly*, 479 U.S. 157 . . . (1986), wherein a mentally disturbed defendant was prompted by the 'voice of God' to confess and said confession was held to be admissible absent government coercion, *we must caution that the term 'intelligent' may not be as stringently applied as indicated in our earlier cases and those of the Supreme Court of the United States*." *Id.* (emphasis added).

Our state Supreme Court has also reminded us that the United States Supreme Court has held that a '"valid waiver does not require that an individual be informed of all information 'useful' in making his decision or all information that 'might * * * affec[t] his decision to confess.' * * * '[W]e have never read the Constitution to require that the police supply a suspect with a flow of information to help him calibrate his self-interest in deciding whether to speak or stand by his rights. *Colorado v. Spring*, 479 U.S. 564, 576–77 . . . (1987) (quoting *Moran v. Burbine*, 475 U.S. 412, 422 (1986))." *State v. Forbes*, 900 A.2d 1114, 1119 (R.I. 2006). *See State v. Hobson*, 648 A.2d 1369, 1373 (R.I. 1994) ('"The inquiry is simply whether the warnings reasonably 'convey to [a suspect] his rights as required by *Miranda*.'"). (Quoting *Duckworth v. Eagan*, 492 U.S. 195, 203 (1989).).

Leuthavone made his statement to the police in Laotian to Providence Police officer Bounhevang Khamsyvoravong, also a native Laotian, who recounted at the suppression hearing that Leuthavone "appeared to be normal, intelligent, and free of the influence of [any] drugs and alcohol." *Leuthavone*, 640 A.2d at 518. The Supreme Court found no overreaching by any law enforcement officer, and stated: "The trial justice believed Khamsyvoravong's testimony, and the substance of that testimony alone was more than sufficient to establish the voluntariness of

defendant's March 3 statement by the requisite clear and convincing evidence . . . Buttressing this conclusion is our determination that defendant's statement was made in full compliance with *Miranda.*" *Id*. at 519.

Leuthavone speculates that if his claim of prior exposure to violence had been explored, it may have increased the odds that a factfinder might have been inclined to accept his professed inability to appreciate *Miranda's* admonitions. As noted earlier, however, Officer Khamsyvoravong assured the Court at the suppression hearing that Leuthavone impressed him as normal and intelligent, and not under the influence of drugs or alcohol. Leuthavone did testify at trial and recounted his circumstances before arriving in the United States. He said that he had been in a refugee camp, but made no mention of personal exposure to violence. He denied soldiering and said he was not in a combat area, but merely shipped food to the soldiers. (Trial Tr. at 280, 310-11.)

Ineffective Assistance of Counsel

In his current submission Leuthavone continues to complain that his trial attorney, Chief Public Defender Richard Casparian, who passed away twenty-six years ago, provided deficient representation. That renewed claim, rejected in previous PCR rulings by Judge Dimitri, also runs aground on *res judicata* shoals.

Leuthavone has expanded his criticism and now faults Mr. Casparian for not engaging a psychologist to bolster his claim that his cultural background precluded his appreciation of the options offered in the *Miranda* warnings. It should be borne in mind that Mr. Casparian hardly ignored the cultural-difference claim at trial and pointedly argued it to the jury. (Trial Tr. at 398.)

Strickland v. Washington, 466 U.S. 668 (1984), which is the benchmark for a claim of ineffective assistance of counsel, is followed by our Supreme Court. *E.g.*, *Brown v. Moran*, 534

A.2d 180, 182 (R.I. 1987); *LaChappelle v. State*, 686 A.2d 924, 926 (R.I. 1996). A *Strickland* claim presents a two-part analysis. First, the petitioner must demonstrate that counsel's efforts were deficient. *Strickland*, 466 U.S. at 687; *Powers v. State*, 734 A.2d 508, 521 (R.I. 1999). A strong presumption exists that counsel fulfilled his responsibilities efficiently. *Gonder v. State*, 935 A.2d 82, 86 (R.I. 2007).

Secondly, even if counsel's performance was deficient, the petitioner must also establish that his attorney's shortcomings "prejudiced" his defense, such that a reasonable probability exists that but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland*, 466 U.S. at 687, 694; *Crombe v. State*, 607 A.2d 877, 878 (R.I. 1992). Both of *Strickland*'s requirements must be satisfied to mount a successful ineffectiveness claim. *Hazard v. State*, 968 A.2d 886, 892 (R.I. 2009).

The United States Supreme Court and our Supreme Court have warned that Monday-morning quarterbacking is an unsuitable method of gauging a lawyer's efficiency. "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); *see Knight v. Spencer*, 447 F.3d 6, 15 (1st Cir. 2006) ("[C]ourts should avoid second-guessing counsel's performance with the use of hindsight."); *United States v. Bosch*, 584 F.2d 1113, 1121 (1st Cir. 1978); *Linde v. State*, 78 A.3d 738, 747 (R.I. 2013).

This Court rejects Leuthavone's imprecation that counsel was derelict in not procuring a psychologist or other expert to evaluate his acuity and grasp of the *Miranda* rights. Not engaging an expert to promote or bolster a defendant's contention does not constitute deficient ministration. *See, e.g., Chapdelaine v. State*, 32 A.3d 937, 948 (R.I. 2011). In *Harrington v. Richter*, 562 U.S. 86, 105 (2011), the Supreme Court rejected a claim of ineffectiveness where Richter's attorney

had not consulted blood experts or introduced expert opinions. Emphasizing the danger of hindsight criticism, Justice Kennedy wrote:

> '"Surmounting *Strickland*'s high bar is never an easy task.' *Padilla v. Kentucky*, 559 U.S. 356, 371 (2010). An ineffective-assistance claim can function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial, and so the *Strickland* standard must be applied with scrupulous care, lest 'intrusive post-trial inquiry' threaten the integrity of the very adversary process the right to counsel is meant to serve. *Strickland*, 466 U.S. at 689–690. . . It is 'all too tempting' to 'second-guess counsel's assistance after conviction or adverse sentence.' *Id.* at 689; *see also Bell v. Cone*, 535 U.S. 685, 702 (2002); *Lockhart v. Fretwell*, 506 U.S. 364, 372 (1993). The question is whether an attorney's representation amounted to incompetence under 'prevailing professional norms,' not whether it deviated from best practices or most common custom. *Strickland*, 466 U.S. at 690." *Harrington*, 562 U.S. at 105.

This Court observed firsthand the efforts of a highly experienced trial attorney in this case and has also reviewed the record. There is no evidence nor the thinnest gloss of plausibility that Mr. Casparian rendered substandard assistance to Leuthavone. To the contrary, he exemplified the high standards which the Office of the Public Defender traditionally demonstrates, *State v. Sampson*, 884 A.2d 399, 404-05 (R.I. 2005), and he provided his client with as able a defense as possible in the face of compelling evidence of guilt.

A review of the record in this case leads this Court to the same conclusion which the Supreme Court reached in *Anderson v. State*, 878 A.2d 1049, 1050 (R.I. 2005): "The conviction in this case was not a result of petitioner's attorney but, rather, the weight of the credible evidence against [him]."

* * *

Withal, and wholly apart from the added commentary, the Court reiterates that the fate of Leuthavone's instant petition is foreordained and destined to fail principally because it cannot pass the *res judicata* sentry.

The application for postconviction relief is denied, and judgment shall enter in favor of the State of Rhode Island.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Leuthavone v. A.T.Wall**
CASE NO:	**PM/07-2339**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**January 31, 2023**
JUSTICE/MAGISTRATE:	**Krause, J.**
ATTORNEYS:	
For Plaintiff:	**George J. West, Esq.**
For Defendant:	**Judy Davis, Esq.**