STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

[FILED: August 15, 2023]

JAMES BROWN	**:**	
	:	
VS.	**:**	**PM-2008-1183**
	:	**(P1-1999-3862A)**
STATE OF RHODE ISLAND	**:**	

DECISION

F. DARIGAN, J. (Ret.) This matter came before the Court on a petition for postconviction relief in Kent County Superior Court, Associate Justice Francis J. Darigan, Jr. presiding, on May 1, 2023.

I

FACTS AND TRAVEL

The case arises from the murder of Pamela Plante on April 3, 1998 in the City of Woonsocket. Ms. Plante was found in her second-floor apartment by her mother who had not heard from Ms. Plante in several days. Ms. Plante was brutally murdered and found partially naked and bound hands and neck with several cords. She suffered stab wounds to her face and neck and petechia in her eyes indicated she was alive when the ligatures were applied. Cause of death was asphyxia due to ligature strangulation and stab wounds to the right side of her neck. Seminal fluid was found on a rug near the body and in the vaginal cavity, as well as on Ms. Plante's jeans.

There were no signs of forced entry into the apartment which required two keys to open the door.

Ms. Plante's mother told Peter Guerard she intended to go to Ms. Plante's apartment and Guerard gave the mother his keys to Ms. Plante's apartment. Mr. Guerard was the husband of Ms.

Plante. Ms. Plante and Guerard had a history of violence between them so the initial police investigation accused him as a possible suspect along with several others.

Mr. Guerard was cleared as a suspect when the DNA sample collected at the scene was determined to not be his.

Almost one year later, police received information that James Brown (petitioner) was seen with Ms. Plante the evening before she was killed. A DNA sample which Brown agreed to supply ultimately proved it was his semen found at the crime scene and in Ms. Plante's vaginal cavity.

Petitioner was indicted by a Providence County Grand Jury in November of 1999. The indictment charged Mr. Brown with one count of first-degree murder, one count of first-degree sexual assault, one count of larceny under $500, and one count of concealment of leased property.

The State filed notice seeking a sentence of life without parole.

The Petitioner was initially represented by John Hardiman, Assistant Public Defender. In 2000, Hardiman was appointed Public Defender and the case was assigned to Assistant Public Defender John MacDonald who entered the case in September of 2000. At that time, Mr. MacDonald had been a public defender for six years.

The trial was held before the Honorable John Sheehan. The jury returned a guilty verdict on all counts on March 28, 2001. On June 11, 2001, Petitioner was sentenced to life imprisonment without the possibility of parole on Count I, first-degree murder.

The Rhode Island Supreme Court affirmed the commutation on May 9, 2006, *see Brown v. State*, 898 A.2d 69 (R.I. 2006).

Petitioner's petition before this Court was filed on February 28, 2008. It is a *pro se* petition alleging ineffective assistance of counsel. Present counsel was appointed to represent Petitioner on October 4, 2021, succeeding previous counsel.

II

STANDARD OF REVIEW AND LAW

The postconviction relief statute is found at G.L. 1956 § 10-9.1-1 and provides that one who has been convicted of a crime may seek collateral review of that conviction based on alleged violations of his or her constitutional rights. The statute reads as follows:

> "(a) Any person who has been convicted of, or sentenced for, a crime, a violation of the law, or a violation of probationary or deferred sentence status and who claims:
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> "(1) That the conviction or the sentence was in violation of the constitution of the United States or the constitution or laws of this state:
>
> "(2) That the court was without jurisdiction to impose sentence;
>
> "(3) That the sentence exceeds the maximum authorized by law, or is otherwise not in accordance with the sentence authorized by law;
>
> "(4) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
>
> "(5) That his or her sentence has expired, his or her probation, parole, or conditional release unlawfully revoked, or he or she is otherwise unlawfully held in custody or other restraint; or
>
> "(6) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding, or remedy; may institute without paying a filing fee, a proceeding under this chapter to secure relief.
>
> "(b) This remedy is not a substitute for nor does it affect any remedy incident to the proceedings of the trial court, or of direct review of the sentence or conviction. Except as otherwise provided in this chapter, it comprehends and takes the place of all other common law, statutory, or other remedies heretofore available for challenging

> the validity of the conviction or sentence. It shall be used exclusively in place of them." Section 10-9.1-1.

Our Supreme Court has set forth that "an applicant who files an application for post-conviction relief bears the burden of proving, by a preponderance of the evidence, that such relief is warranted." *Mattatall v. State*, 947 A.2d 896, 898 n.3 (R.I. 2008); *Camacho v. State*, 58 A.3d 182, 185 (R.I. 2013).

In the instant case, the Petitioner enumerates fifteen (15) instances of alleged ineffective assistance of counsel as enumerated below.

Specifically, as enumerated in the petition filed by Mr. Brown,

(1) Trial counsel failed to adequately prepare for trial.

(2) Trial counsel failed to meet with their client.

a. Failure to secure client's authority to engage in the strategy of admitting to certain charged offenses.

b. Failure to explain the maximum penalties.

c. Failure to adequately explain the offer.

(3) Trial counsel failed to investigate.

(4) Trial counsel failed to research and interview potential witnesses.

(5) Trial counsel failed to locate and interview expert witnesses.

(6) Trial counsel failed to adequately investigate and confront the State's evidence.

(7) Trial counsel failed to properly challenge the police procedures for arrest, investigation of the crime scene, and the preservation of evidence.

(8) Trial counsel failed to make a proper motion to exclude evidence.

(9) Trial counsel failed to object to witness testimony.

(10) Trial counsel failed to properly impeach the witnesses.

(11) Trial counsel failed to maintain their client's innocence.

(12) Trial counsel failed to object to and request proper jury instructions.

(13) Trial counsel failed to properly argue for lesser included offenses.

(14) Trial counsel failed to present mitigating evidence during the sentencing phase of the trial; and

(15) The cumulative effect of trial counsel's failures caused an injurious effect at trial.

Pursuant to § 10-9.1-1, 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 interests of justice." *Lamoureux v. State*, 93 A.3d 958, 961 (R.I. 2014).

The burden of proving a claim of ineffective assistance of counsel lies with the petitioner. *State v. Cochrane*, 443 A.2d 1249, 1251 (R.I. 1982).

Strickland v. Washington, 466 U.S. 668, 687 (1984) provides a two-prong test which must be applied to claims of ineffective assistance of counsel.

A petitioner must establish that:

(1) His defense counsel's representation fell below an objective standard of reasonableness.

(2) That counsel's performance was so defective as to result in actual prejudice.

Regarding the performance prong, the standard is not what counsel may have done differently, but rather whether counsel's decisions were reasonable from counsel's perspective at the time. *Beardslee v. Woodford*, 327 F.3d 799, 807-09 (9th Cir. 2003).

With respect to the prejudice prong, the petitioner must show a reasonable probability that but for counsel's errors the result of the trial would have been different. *Strickland*, 466 U.S. at 694.

A reviewing court must take into effect the wide variety of circumstances and considerations and options available to defend a client in a criminal case. The *Strickland* case instructs a reviewing court to ensure that judicial scrutiny of the decisions made by trial counsel must be highly deferential and that there exists a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Strickland*, 466 U.S. at 689.

In *Rice v. State*, 38 A.3d 9, 18 (R.I. 2012), our Supreme Court instructs that an examination pursuant to the *Strickland* two-prong test must be one of reasonable competency by trial counsel. Thus, the Court opines, effective assistance of counsel is not the same as errorless representation. Therefore, a choice of trial tactics and strategy which may appear error in hindsight, does not constitute constitutionally deficient representation.

To prove ineffective assistance of counsel a petitioner must prove by a fair preponderance of the evidence that his counsel's errors "resulted from neglect or ignorance rather than from informed, professional deliberation." *State v. D'Alo*, 477 A.2d 89, 92 (R.I. 1984).

The Court has also stated that it will not "meticulously scrutinize an attorney's reasoned judgment or strategic maneuver in the context of a claim of ineffective assistance of counsel . . . when their choices are clearly reasonable and within the bounds of competent representation." *State v. Brennan*, 627 A.2d 842, 851 (R.I. 1993).

III

DISCUSSION

At the hearing, the Petitioner took the stand and was examined by his attorney. During his testimony, the Petitioner did not recall how many times Mr. MacDonald or Ms. Gundersen visited him at the ACI but he opined it was not very often. He testified that his counsel never advised him that he was facing a sentence of life without the possibility of parole if convicted of murder. Nor did his counsel ever inform him of an offer of straight life which would have allowed an application for parole after a period of years.

He was lead through many of the enumerated grounds for postconviction relief contained in his petition by his hearing counsel.

He recounted in answers to questions of his hearing counsel that Mr. MacDonald did not challenge Bernie Williams, his friend who informed the Woonsocket Police that the Petitioner was with Ms. Plante the night before her murder. The Petitioner believed Mr. Williams was a liar. He testified that his trial counsel did not adequately investigate the bloody footprint at the scene, failed to attempt to exclude evidence, never discussed the notion of a diminished capacity defense. In general, the Petitioner agreed with his hearing counsel as he was lead through the enumerated errors underlying his postconviction relief petition. He did acknowledge that he agreed to have trial counsel admit before the jury that he in fact did have the VCR which were lesser counts contained in his indictment because his trial attorney wanted him to agree to this admission.

On cross-examination, the State questioned the Petitioner on the same subjects and established that Petitioner had a good relationship with Mr. MacDonald and Ms. Gundersen, that Mr. MacDonald did discuss with the Petitioner the theory that Peter Guerard, the deceased's husband and father of two children, committed the crime of murder. He lived near the decedent

and had been to her apartment. He testified that he wanted Mr. MacDonald to exclude evidence that he was in Plante's vehicle even though his girlfriend said she had seen the Petitioner driving it. The Petitioner admitted that he gave three different statements to the police about his activities the night of the murder (only two were introduced at trial). Petitioner acknowledged that he gave access to his trial attorneys to all of his medical records and access to all of his relatives. He also acknowledged that he had a psychological examination prior to his sentencing. Petitioner denied his trial attorneys advised him of the meaning of a sentence of life without parole and denies that he was given an offer pre-trial of a sentence for life imprisonment which would be eligible for parole consideration after a period of years.

Mr. MacDonald took the stand and testified that he was an Assistant Public Defender for six years when he was assigned this case upon John Hardiman's appointment as Public Defender for Rhode Island.

He testified that at the time of this trial he had been assigned a dozen murder cases, four of which went to trial. He was assisted by Susan Gundersen, Esquire, an Assistant Public Defender, whose assignment was to develop the forensics of this case.

A strategy was developed by trial counsel to cast blame on Ms. Plante's husband Peter Guerard, which was fully explained and agreed to by the Petitioner. Mr. Guerard was a likely suspect because he was in a relationship with Ms. Plante and had the keys to her apartment. Mr. MacDonald testified that Mr. Brown, the Petitioner, agreed not to testify at trial due to his criminal history and the different statements he had made to the Woonsocket Police during their investigation.

The State's attorney then questioned Mr. MacDonald on each of the enumerated grounds for relief that Petitioner believed were cause for relief.

Mr. MacDonald's answers to all questions were straightforward, forthright and appropriate to the questions propounded by the State and in effect, answered the enumerated alleged errors. The State, during the course of this examination, introduced 23 exhibits, A to W, which categorized every step of Mr. MacDonald's and Ms. Gundersen's investigation, analysis and development of trial strategy. They contained, among many others, detailed notes on forensic evidence, trial preparation strategy notes, theories of defense, analysis of the State's evidence, jury profile check list, personal history of Mr. Brown, the Petitioner, comments by family members, sentencing memorandum, Petitioner's medical records, and psycho-social assessment and others.

This work represents hundreds of hours of trial preparation, trial strategy, and sentencing preparation which this Court found to be most comprehensive and significant trial preparation.

On cross-examination, Mr. MacDonald was questioned on the number of times he visited Petitioner at the ACI and his relationship with the Petitioner.

Like the Petitioner, Mr. MacDonald did not have a recollection of the number of times he went to the prison; however, like the Petitioner, Mr. MacDonald felt he had a good relationship with the Petitioner.

He related discussing trial strategy with the Petitioner and recalled no disagreement from Petitioner with targeting Peter Guerard as the likely perpetrator.

Mr. MacDonald testified that he discussed the possibility of a sentence of life without the possibility of parole with the Petitioner, prior to the assignment of a trial judge in his case. MacDonald testified that Mr. Brown had no confusion about the ramifications of that sentence and clearly did not wish to plead to any sentence.

When Judge Sheehan was assigned to the trial and offered straight life imprisonment, he met with the Petitioner with Ms. Gundersen at the ACI to discuss that sentence which the Petitioner

rejected. He adamantly said he was innocent. He did understand that a straight life sentence carried a possibility of parole.

For these reasons, no diminished capacity defense was contemplated because it required an admission that the act had been committed.

When questioned about Ms. Plante's automobile being started with a screwdriver, Mr. MacDonald brought in an expert witness to testify that this was not possible on the auto in question.

To every question on cross-examination, trial preparation, lesser included offenses, etc. Mr. MacDonald answered forthright and straightforward to Petitioner's hearing counsel.

Mr. MacDonald testified he argued to areas of what could be considered reasonable doubt to the jury. He did ask for a charge of lesser included offenses to Judge Sheehan, which was refused by him and upheld by the Rhode Island Supreme Court on appeal.

At the hearing and in a post-hearing brief, Petitioner's counsel averred that Mr. MacDonald failed to protect the innocence of the Petitioner when he admitted to the jury that the Petitioner did in fact conceal and sell a VCR belonging to Ms. Plante. While not having a specific recollection of why he might have done that at trial, Mr. MacDonald explained his general rationale in such instances was to "gain credibility in front of the jury as to other major issues that particular charge (VCR) was the least of our concerns at trial, and so if a concession was made it was made with that strategy in mind."

IV

DECISION

This Court, in reviewing the testimony of the participants, the numerous exhibits filed in this case and applying the decisions of the United States Supreme Court, Federal Courts and the Rhode Island Supreme Court, must come to the definite conclusion that the Petitioner James

Brown has not succeeded in his burden of proving by a fair preponderance of the evidence that his trial attorneys John MacDonald and Ms. Susan Gundersen engaged in ineffective assistance of counsel on behalf of the Petitioner Mr. Brown in his trial before the Honorable John F. Sheehan.

The Court has reached this decision based on its acceptance of the testimony of John MacDonald, Esquire as true, direct and appropriate in all matters concerning preparation for trial of this serious capital offense and his execution of the defense of the Petitioner and in his presentation and preparation for sentencing in this matter.

The Court finds the testimony of the Petitioner in this case to be vague, incomplete and in some cases contrary to the truth in what transpired between trial counsel and Petitioner, then Defendant, with regard to the explanations offered by Mr. MacDonald with regard to the meaning of a sentence of life without parole and the conveying an offer at trial of a disposition for the then Defendant of a straight life sentence with the possibility of parole.

As the State has averred, any defense counsel "worth his salt" would have been sure to clearly explain all aspects of such a serious sentence and any offers of a lesser sentence than life with the possibility of parole.

This case was an extremely difficult one to defend. The Petitioner had made conflicting statements, his DNA was present at the crime scene and in the body of Ms. Plante.

In this case, Mr. MacDonald was a six-year member of the Public Defender staff and was involved in the preparation of a dozen murder cases and four murder trials.

Applying the standards of the *Strickland* case, the defense of the Petitioner was certainly "objectively reasonable" by this Court's measure and experience and was "objectively superlative."

This Court, in reaching this decision on the first prong of the *Strickland* case, need not begin to explain the second regarding prejudice to the Petitioner.

The Petitioner's petition for relief on the grounds of ineffective assistance of counsel is respectfully denied.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**James Brown v. State of Rhode Island**
CASE NO:	**PM-2008-1183 (P1-1999-3862A)**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**August 15, 2023**
JUSTICE/MAGISTRATE:	**F. Darigan, J. (Ret.)**

ATTORNEYS:

For Plaintiff:	**Kara Hoopis Manosh, Esq.**
For Defendant:	**Judy Davis, Esq.**