IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
June 21, 2023 Session

JOSEPH MARQUIS JEFFRIES v. STATE OF TENNESSEE

Appeal from the Circuit Court for Williamson County
No. CR200421 James G. Martin, III, Judge

No. M2022-00865-CCA-R3-PC

The Petitioner, Joseph Marquis Jeffries, appeals the Williamson County Circuit Court's denial of his petition for post-conviction relief from his convictions for two counts each of aggravated assault and reckless endangerment, and one count each of domestic assault, interference with emergency communications, trafficking for a commercial sex act, promotion of prostitution, and evading arrest, for which he received an effective sentence of twenty-five years. On appeal, the Petitioner contends that the post-conviction court erred by denying relief on his claims alleging that he received the ineffective assistance of counsel. Specifically, the Petitioner argues that trial counsel was ineffective by: (1) failing to adequately explore racial bias during voir dire and (2) failing to seek additional time for the Petitioner to consider the State's plea agreement. After review, we affirm the judgment of the post-conviction court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

KYLE A. HIXSON, J., delivered the opinion of the court, in which CAMILLE R. MCMULLEN, P.J., and MATTHEW J. WILSON, J., joined.

Vakessha Hood-Schneider, Franklin, Tennessee, for the appellant, Joseph Marquis Jeffries.

Jonathan Skrmetti, Attorney General and Reporter; Benjamin A. Ball, Senior Assistant Attorney General; Kim R. Helper, District Attorney General; and Kelly Lawrence, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. FACTUAL AND PROCEDURAL HISTORY

A. Trial Proceedings

A Williamson County grand jury indicted the Petitioner for attempted second degree murder, aggravated assault by strangulation, aggravated assault by serious bodily injury, domestic assault, reckless endangerment of the victim's fetus, interference with emergency communications, promotion of prostitution, evading arrest, and four counts of trafficking for a commercial sex act. *State v. Jeffries*, No. M2018-00625-CCA-R3-CD, 2019 WL 5078723, at *1 (Tenn. Crim. App. Oct. 10, 2019), *no perm. app. filed*. Prior to trial, the State dismissed two counts of trafficking for a commercial sex act that involved the victim's friend. *Id.* at *3.

At trial, the proof showed that on February 14, 2017, the Petitioner assaulted and strangled the pregnant victim, who was working as a prostitute to support herself and the Petitioner. *Jeffries*, 2019 WL 5078723, at *1. During the assault, the Petitioner hit the victim multiple times, kicked her in the stomach while knowing she was pregnant, and twice strangled her to the point of unconsciousness. *Id*. at * 4. The victim suffered multiple fractures, excessive bleeding, swollen eyes, and a busted lip. *Id*. at *5. The Petitioner was apprehended by law enforcement later that day. *Id*. at *6.

The jury convicted the Petitioner of two counts each of aggravated assault and reckless endangerment, and one count each of domestic assault, interference with emergency communications, trafficking for a commercial sex act, promotion of prostitution, and evading arrest. *Jeffries*, 2019 WL 5078723, at *6. The trial court merged various offenses and imposed an effective sentence of twenty-five years as a Range II offender. *Id.* at *7. The Petitioner appealed, and this court affirmed the judgments of the trial court. *Id.* at *15.

B. Post-Conviction Proceedings

Following his direct appeal, the Petitioner filed a timely pro se petition for post-conviction relief alleging that he received the ineffective assistance of trial counsel. Post-conviction counsel was appointed and filed an amended petition alleging, *inter alia*, that trial counsel was ineffective by failing to examine racial bias during voir dire and failing to advocate for more time to allow the Petitioner to consider and be counseled on the State's plea offer. A hearing on the petition followed.

As pertinent to this appeal, the Petitioner testified at the post-conviction hearing that he and trial counsel did not have a good relationship. The Petitioner stated that their discussions about the case were often short because he would get angry with trial counsel and "storm out." The Petitioner stated that trial counsel waited until the Friday before trial began on Monday to inform him that the State had extended a plea offer for fifteen years

at thirty-five percent service. The Petitioner wanted to discuss the plea offer with his family and asked trial counsel to call the Petitioner's mother to hear her thoughts about accepting the State's deal. He stated that trial counsel refused to make the call.

The Petitioner testified that he felt rushed to decide and that from his perspective, trial was the only option. He stated that trial counsel did not explain the plea offer and that the entire conversation lasted only ten minutes. The Petitioner stated that he "might" have taken the plea deal if he had more time to discuss it with trial counsel and if it had been a "good deal."

Trial counsel testified that he was currently the District Public Defender for the Twenty-First Judicial District and that he was an Assistant Public Defender during his representation of the Petitioner. He stated that he had handled numerous criminal cases in his career and that the Petitioner's case was one of the first involving human trafficking in Williamson County. He stated that he had been lead counsel on a human trafficking case previously and, as a result, had researched the statute extensively. He stated that, at the time he represented the Petitioner, he would have been the "only experienced public defender" in Williamson County for a human trafficking case.

Trial counsel testified that his rapport with the Petitioner fluctuated. He stated that the Petitioner was involved with the defense strategy for the case and that arguments arose from that. Trial counsel stated that he would have filed the appropriate motions had the Petitioner requested another attorney and that he represented the Petitioner to the best of his ability.

Trial counsel stated that he did not directly ask the jurors if they were "racist" during voir dire. He stated that asking subtle questions during voir dire was a better approach to revealing racial animus. He agreed that direct questions about racial bias were important in certain cases but that asking pointed questions could run the risk of offending a potential juror to the detriment of the client.

Trial counsel agreed that racial bias has a negative effect in policing, sentencing, and trial results. He further agreed that, generally, people are not "purposefully racist" but sometimes have an implicit bias. He affirmed that criminal defense attorneys should be attuned to possible implicit biases, especially when their client is of a different race than the majority of the jury pool. He could not recall if he had prepared specific questions meant to elicit racial bias but testified that he had prepared a thorough voir dire. Trial counsel said that he would have further questioned any juror if the responses to his questions indicated potential racial bias.

Trial counsel stated that detecting racial bias during voir dire was a "case-by-case situation" and that he was unsure whether he could provide an example of a specific response that would elicit bias. He stated that in an effort to reveal a perspective juror's implicit bias, he would ask questions regarding the nature of the criminal justice system, the nature of potential trial defenses, and whether any jurors were related to law enforcement officers; he would then "listen to the answers that [were] given." He could not recall whether he had ever asked potential jurors during voir dire whether they had a "problem" with a client's race.

Regarding the plea offer issue, trial counsel stated that he wanted his clients to have as much time as possible to consider a plea offer. He stated that he was "very hesitant" to enter a guilty plea to serious felony charges involving lengthy prison sentences on the same day an offer was received. Trial counsel stated that he presented the plea offer to the Petitioner as soon as trial counsel received it from the State and told the Petitioner to "seriously" consider it. Trial counsel stated that he and the Petitioner had multiple "lengthy conversations" about the plea offer on that Friday afternoon between court hearings. Trial counsel stated that these conversations lasted more than ten minutes and included discussions about the Petitioner's prior criminal history, Range II offender status, and potential sentencing exposure, including the possibility of consecutive sentencing should the Petitioner reject the plea offer and proceed to trial.

Trial counsel testified that the Petitioner was "pretty adamant" about going to trial and did not express interest in accepting the State's plea offer. Trial counsel stated that he advised the Petitioner to request additional time to discuss the offer and that he would have "absolutely" brought it to the trial court's attention and asked for a continuance if the Petitioner had shown interest. Further, trial counsel stated that, because of the late hour of the plea offer, he would have had to inquire whether the trial court would accept a plea agreement on the morning of trial and explained that trial courts may refuse to accept agreements at a certain point before a trial.

Trial counsel did not recall the Petitioner's wanting to discuss the offer with his family. He stated that he had previously contacted the Petitioner's family and would have "been happy" to contact them again. He acknowledged how important a defendant's family could be in making these types of decisions and said he would have "done everything [he] could" if asked to contact the Petitioner's family.

After the conclusion of proof, the post-conviction court granted the parties permission to file supplemental memoranda. In his supplemental memorandum, the Petitioner argued that in *Peña-Rodriguez v. Colorado*, 580 U.S. 206 (2017), the United States Supreme Court acknowledged that implicit racial bias is antagonist to a fair and just

judicial system and that, accordingly, defense attorneys must engage in careful examination of the jury pool for implicit racial bias. The State responded in its memorandum that, absent cause to believe a juror cannot be fair and impartial, defense attorneys have no duty to explicitly question jurors about racial bias during voir dire.

On May 5, 2022, the post-conviction court filed a written order denying the Petitioner's post-conviction petition. The post-conviction court determined that the Petitioner generally failed to demonstrate either deficient performance or prejudice. Concerning trial counsel's failure to examine racial bias during voir dire, the post-conviction court found that the Petitioner failed to show by a reasonable probability that the trial results would have been more favorable if trial counsel had explored racial bias. The post-conviction court noted that in *Hughes v. State*, No. M2019-00248-CCA-R3-PC, 2019 WL 6133855 (Tenn. Crim. App. Nov. 19, 2019), this court concluded that *Peña-Rodriguez* did not mandate trial counsel to explicitly ask about racial bias during voir dire. Relying on *Hughes* and *Peña-Rodriguez*, it further found that the Petitioner failed to present proof that racial animus was a significant motivating factor in any of the jurors' findings of guilt. The post-conviction court noted trial counsel's testimony that trial counsel would have questioned any juror further had the juror's responses revealed a possible racial bias. The post-conviction court noted that the jury was presumed to have acted in accordance with the law.

Relative to the Petitioner's allegation that trial counsel was ineffective by failing to advocate for additional time for the Petitioner to consider the State's plea offer, the court found that the Petitioner failed to establish a factual basis showing that he expressed interest in accepting the plea deal at the time it was offered. The court further found that the Petitioner relied only upon hindsight to support his assertion that he would have accepted the plea deal if not for trial counsel's failure to contact the Petitioner's family or to ask for a continuance. Accordingly, the post-conviction court discredited the Petitioner's testimony in this regard.

This timely appeal followed.

II. ANALYSIS

On appeal, the Petitioner contends that the post-conviction court erred by denying his claims of ineffective assistance of counsel. Specifically, the Petitioner contends that

trial counsel was ineffective by: (1) failing to explore racial bias during voir dire and (2) failing to seek additional time to allow the Petitioner to consider the State's plea agreement. The State argues that the post-conviction court did not err by denying the Petitioner relief. We agree with the State.

Post-conviction relief is available when a "conviction or sentence is void or voidable because of the abridgment of any right guaranteed by the Constitution of Tennessee or the Constitution of the United States." Tenn. Code Ann. § 40-30-103. The burden in a post-conviction proceeding is on the petitioner to prove allegations of fact by clear and convincing evidence. *Id.* § 40-30-110(f); *see Dellinger v. State*, 279 S.W.3d 282, 293-94 (Tenn. 2009). "Questions concerning the credibility of witnesses, the weight and value to be given their testimony, and the factual issues raised by the evidence are to be resolved" by the post-conviction court. *Fields v. State*, 40 S.W.3d 450, 456 (Tenn. 2001). On appeal, we are bound by the post-conviction court's findings of fact unless we conclude that the evidence in the record preponderates against those findings. *Id.* Because they relate to mixed questions of law and fact, we review the post-conviction court's conclusions as to whether counsel's performance was deficient and whether that deficiency was prejudicial under a de novo standard with no presumption of correctness. *Id.* at 457.

Criminal defendants are constitutionally guaranteed the right to effective assistance of counsel. U.S. Const. amend. VI; Tenn. Const. art. I, § 9; *see Cuyler v. Sullivan*, 446 U.S. 335, 344 (1980); *Dellinger*, 279 S.W.3d at 293. When a claim of ineffective assistance of counsel is made under the Sixth Amendment to the United States Constitution, the burden is on the petitioner to show (1) that counsel's performance was deficient and (2) that the deficiency was prejudicial. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *see Lockhart v. Fretwell*, 506 U.S. 364, 368-72 (1993). "Because a petitioner must establish both prongs of the test, a failure to prove either deficiency or prejudice provides a sufficient basis to deny relief on the ineffective assistance claim." *Goad v. State*, 938 S.W.2d 363, 370 (Tenn. 1996). The *Strickland* standard has been applied to the right to counsel under article I, section 9 of the Tennessee Constitution. *State v. Melson*, 772 S.W.2d 417, 419 n.2 (Tenn. 1989).

Deficient performance requires a showing that "counsel's representation fell below an objective standard of reasonableness," and reviewing courts "must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Strickland*, 466 U.S. at 688-89. When a court reviews a lawyer's performance, it "must make every effort to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's conduct, and to evaluate the conduct from the perspective of counsel at that time." *Howell v. State*, 185 S.W.3d 319, 326 (Tenn. 2006) (citing *Strickland*, 466 U.S. at 689). We will not deem counsel to have been ineffective

merely because a different strategy or procedure might have produced a more favorable result. *Rhoden v. State*, 816 S.W.2d 56, 60 (Tenn. Crim. App. 1991). We recognize, however, that "deference to tactical choices only applies if the choices are informed ones based upon adequate preparation." *Cooper v. State*, 847 S.W.2d 521, 528 (Tenn. Crim. App. 1992) (citing *Hellard v. State*, 629 S.W.2d 4, 9 (Tenn. 1982)).

As to the prejudice prong, the petitioner must establish "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Vaughn v. State*, 202 S.W.3d 106, 116 (Tenn. 2006) (citing *Strickland*, 466 U.S. at 694). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. "That is, the petitioner must establish that his counsel's deficient performance was of such a degree that it deprived him of a fair trial and called into question the reliability of the outcome." *Pylant v. State*, 263 S.W.3d 854, 869 (Tenn. 2008) (citing *State v. Burns*, 6 S.W.3d 453, 463 (Tenn. 1999)).

A. Failure to Adequately Explore Racial Bias During Voir Dire

The Petitioner argues that he received ineffective assistance of counsel because trial counsel failed to adequately question the jury venire for implicit racial bias during voir dire. Specifically, the Petitioner argues that trial counsel's duty to ensure the Petitioner received a fair trial necessarily included a duty explore racial bias during voir dire because the venire was nearly all white and the Petitioner was African-American.[1] The Petitioner also argues that trial counsel's failure to question the venire about racial bias rendered the trial results unreliable. The State responds that the post-conviction court did not err by denying the Petitioner relief because the Petitioner failed to establish that trial counsel had a duty to question potential jurors about racial bias and failed to present evidence indicating that racial bias factored into the jury's verdict.

The Petitioner argues on appeal that the Supreme Court in *Peña-Rodriguez* "heavily insinuated" that defense attorneys have a duty to examine racial bias during voir dire, especially when an accused is of a different race than the majority of the jury pool. We respectfully disagree with this reading of *Peña-Rodriguez*. The Court in *Peña-Rodriguez* recognized that "the Constitution at times demands that defendants be permitted to ask questions about racial bias during *voir dire*" and later included voir dire on a list of "important mechanisms for discovering bias." 580 U.S. at 223-24 (citations omitted). The Court, however, noted that the operation of these mechanisms "may be compromised, or they may prove insufficient." *Id*. at 224. In making this observation, the Court noted "the dilemma faced by trial court judges and counsel in deciding whether to explore potential

[1] There was one African-American juror in the venire who was eventually struck by the State.

racial bias at *voir dire*." *Id*. (citations omitted). The Court described this "dilemma" as follows: "Generic questions about juror impartiality may not expose specific attitudes or biases that can poison jury deliberations. Yet more pointed questions 'could well exacerbate whatever prejudice might exist without substantially aiding in exposing it.'" *Id*. at 224-25 (quoting *Rosales-Lopez v. United States*, 451 U.S. 182, 195 (1981) (Rehnquist, J., concurring in result)). While *Peña-Rodriguez* lists voir dire as a potential tool for detecting juror bias, we agree with the *Hughes* panel of this court in concluding that *Peña-Rodriguez* does not mandate trial counsel to inquire about racial bias during voir dire. *See Hughes*, 2019 WL 6133855, at *7.

After applying *Hughes* and reaching the same conclusion, the post-conviction court noted that trial counsel testified that he prepared a thorough voir dire and would have further questioned any jurors whose responses suggested potential racial bias. The court reasoned that the jury was presumed to have acted in accordance with the law and found that the Petitioner offered no evidence that any juror's response indicated racial animus that required further examination by trial counsel or that racial animus was a significant motivating factor in any of the jurors' findings of guilt. *See Strickland*, 466 U.S. at 695 ("The assessment of prejudice should proceed on the assumption that the decisionmaker is reasonably, conscientiously, and impartially applying the standards that govern the decision."). The evidence does not preponderate against the post-conviction court's findings. *See Fields*, 40 S.W.3d at 456. The Petitioner has failed to establish that trial counsel acted deficiently by not exploring racial bias during voir dire or that any resulting prejudice occurred. He is, therefore, not entitled to relief on this issue.

B. Failure to Seek Additional Time to Allow Consideration of Plea Agreement

The Petitioner argues next that trial counsel was ineffective by failing to advocate for more time to allow the Petitioner to consider the State's plea offer. Specifically, the Petitioner contends that he likely would have taken the offer if he had more time to consider it. The State responds that the post-conviction court did not err by denying the Petitioner relief because the Petitioner failed to demonstrate that trial counsel's representation was deficient during plea negotiations or that, if given more time, the Petitioner would have accepted the offer.

Defense counsel has a duty to promptly inform and explain to a defendant all plea offers made by the prosecution. *See* Tenn. Sup. Ct. R. 8, RPC 1.4(a)(1) & cmt. [2]; *Nesbit v. State*, 452 S.W.3d 779, 800 (Tenn. 2014) (citing *Missouri v. Frye*, 566 U.S. 134, 145 (2012)). To succeed on a claim of ineffective assistance during plea negotiations, a defendant has the burden to show by a reasonable probability that, but for trial counsel's deficient representation: (1) the petitioner would have accepted the plea; (2) the

prosecution would not have withdrawn the offer; and (3) the trial court would have accepted the terms of the offer, such that the penalty under its terms would have been less severe than the penalty actually imposed. *Nesbit*, 452 S.W.3d at 800-01 (citing *Lafler v. Cooper*, 566 U.S. 156, 163 (2012)).

Here, trial counsel stated that he relayed the State's plea offer to the Petitioner upon receiving it. In contrast to the Petitioner's testimony, trial counsel stated that the two had multiple and lengthy discussions about the plea offer while in court on Friday afternoon. He stated that these conversations involved discussions about the Petitioner's sentencing exposure, his offender range, and his prior criminal history. Trial counsel stated that he advised the Petitioner to "seriously" consider the plea offer and to request additional time to consider and discuss the offer. He stated that the Petitioner was "adamant" about going to trial and showed no interest in accepting the offer. The post-conviction court did not credit the Petitioner's testimony and found that the Petitioner's testimony was based on hindsight with no supporting factual basis. We conclude that nothing in the record preponderates against the post-conviction court's findings. *Fields*, 40 S.W.3d at 456.

Furthermore, the Petitioner failed to present proof that, given more time, he would have accepted the State's plea agreement. He only testified that he "might" have accepted the offer if it was a "good deal." *Nesbit*, 452 S.W.3d at 801 (holding that the petitioner failed to establish prejudice because he presented no evidence showing a reasonable probability that he would have accepted the plea offer if properly conveyed) (citations omitted). Additionally, the Petitioner failed to show that the prosecution would not have withdrawn the offer or that the trial court would have accepted it. *Id.* at 800-01. As such, the Petitioner has failed to establish trial counsel's performance during plea negotiations was deficient or that any resulting prejudice occurred. Therefore, he is not entitled relief on this issue.

III. CONCLUSION

In consideration of the foregoing and the record as a whole, we affirm the judgment of the post-conviction court.

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KYLE A. HIXSON, JUDGE