IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs August 6, 2013

SAMUEL WINKFIELD v. STATE OF TENNESSEE

Appeal from the Circuit Court for Madison County
No. C-11-216 Donald H. Allen, Judge

No. W2012-02413-CCA-R3-PC - Filed November 8, 2013

The petitioner, Samuel Winkfield, was indicted for first degree (premeditated) murder, first degree (felony) murder, especially aggravated kidnapping, tampering with evidence, and conspiracy to tamper with evidence. During his July 2007 trial, the petitioner was acquitted of the felony murder and conspiracy to tamper with evidence charges. Because the jury was unable to reach a decision regarding the remaining charges, he was retried in January 2008 and convicted of second degree murder, a Class A felony, and tampering with evidence, a Class C felony. The jury was again unable to reach a decision on the kidnapping charge, and this charge was eventually dismissed. On the direct appeal of his convictions, the petitioner challenged the admission into evidence of his testimony from the first trial, the exclusion from evidence of the MySpace page of the State's chief witness, the sufficiency of the evidence, and his sentence. His convictions and sentences were affirmed. The petitioner then filed a timely post-conviction petition, asserting ineffective assistance of counsel. The petitioner asserted his trial counsel's performance was deficient in failing to investigate and produce witnesses; in failing to obtain expert testimony; in failing to adequately cross-examine witnesses; and in failing to explore alternative defense strategies. After a hearing, the post-conviction court denied the petition, and the petitioner appeals. Having reviewed the record, we discern no error and affirm the judgment of the post-conviction court.

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

JOHN EVERETT WILLIAMS, J., delivered the opinion of the Court, in which THOMAS T. WOODALL and CAMILLE R. MCMULLEN, JJ., joined.

Joseph T. Howell, Jackson, Tennessee, for the appellant, Samuel Winkfield.

Robert E. Cooper, Jr., Attorney General & Reporter; Jeffrey D. Zentner, Assistant Attorney General; Jerry Woodall, District Attorney General; and Shaun A. Brown, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTUAL AND PROCEDURAL HISTORY

The petitioner was convicted of the second-degree murder of his roommate, James Haney, who was shot and, shortly thereafter, discovered by a neighbor. On direct appeal, this Court summarized the facts as follows:

> Officers responded to the scene at around 10:18 a.m. Sergeant Buckley Sain of the Jackson Police Department entered the residence and found a "lifeless" Mr. Haney lying face-down on the floor with gunshot wounds to the right leg and chest. Mr. Haney was partially clothed at the time.
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> According to the medical examiner, the victim died of multiple gunshot wounds. There was no stippling around the wounds, which indicated that the shots were fired from more than three feet away. There was no alcohol or drugs in Mr. Haney's system at the time of his death.
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> As the investigation unfolded, officers learned that Mr. Haney lived at 324 Roland Avenue with Terrence McGee. [Petitioner] began living with them sometime in September of 2006. The three men were students at Lane College in Jackson. They rented the property from Mundt Rental Properties. At around 8:30 a.m. on the morning of October 19, 2006, Mundt Rental Properties received a telephone call from someone complaining about the trash in front of the house. An employee of Mundt Rental Properties, Teresa Trice, called Mr. McGee's cell phone number at around 10:00 a.m. that morning to tell them to move the trash around to the back of the residence. Ms. Trice did not recognize the voice that answered the phone to be that of Mr. Haney or Mr. McGee. She was assured by the person that answered the phone that the message would be relayed to Mr. McGee after he got out of class. Ms. Trice remembered that the person who answered the phone was breathing heavily.
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> According to college records, [petitioner] received a tuition refund check of more than $1,000 on October 17, 2006. Several weeks prior to the victim's death, [petitioner] told Mr. McGee

that someone was stealing his marijuana. [Petitioner] did not make any accusations at that time to indicate that he thought a specific person was responsible for the thefts.

On October 18, 2006, the night prior to Mr. Haney's death, several people were at the residence at 324 Roland Avenue, including Mr. McGee, [petitioner], and Mr. Haney. Mr. McGee and Mr. Haney got into a brief verbal argument because Mr. McGee had failed to pick up the laundry earlier that day. The next morning, October 19, 2006, Mr. McGee arose at around 8:30 a.m. and got ready for class. Several other students had stayed the night at the residence, and Mr. McGee dropped them off at school before going to class. When he left the residence, Mr. Haney and [petitioner] were the only people present.

Mr. McGee dropped some people off at class and then decided to make a quick trip to get the laundry prior to attending his own class. Mr. McGee got the laundry, then quickly drove home and dropped off the laundry. At that time, Mr. Haney was still asleep on the couch in the living room.

Mr. McGee ended up being about ten minutes late to class because he decided to take the laundry back to the house. Mr. McGee's class was over around 9:50 a.m. At the end of class, he realized that he left his cell phone at home. Mr. McGee borrowed the cell phone of a friend, Joe Elliot, to call his own cell phone. [Petitioner] answered the phone, informed Mr. McGee that something had happened to Mr. Haney, and instructed him to come home. Mr. McGee described [petitioner]'s voice as "scared."

Mr. McGee got into his car and drove quickly home. He pulled up in the alley behind the house, and [petitioner] ran out the back door carrying a black trash bag and a .380 pistol. It was the same .380 pistol that Mr. McGee had previously given to Mr. Haney. Mr. McGee tried to go inside the house, but [petitioner] "yanked" him back into the car and informed him "we've got to go." [Petitioner] even pointed the gun at Mr. McGee.

[Petitioner] instructed Mr. McGee to drive the car to his girlfriend's, Ciara Lasley's, apartment. On the way there, [petitioner] informed Mr. McGee that he was "sorry" but that "[Mr. Haney] kept playing with me, playing with me and testing me and playing with me." [Petitioner] took a stack of money out of his pocket. The money was neatly wrapped in the same manner that the victim kept his money. [Petitioner] denied that he had taken Mr. Haney's money.

[Petitioner] had exited the residence with Mr. McGee's cell phone. During the car trip to Ms. Lasley's apartment, [petitioner] used the cell phone several times. He called Ms. Lasley to get directions to her new apartment. [Petitioner] also called someone named "Booky" and told him to "go get [Mr. Haney] he's got two bullets in him."

When they arrived at Ms. Lasley's apartment, [petitioner] exited the vehicle with the trash bag and the gun. He left the cell phone and told Mr. McGee to keep quiet. Mr. McGee drove to the mall parking lot for about ten to fifteen minutes before returning to campus and attending his remaining classes. Mr. McGee received a call from a friend at around 1:00 p.m. that afternoon informing him that Mr. Haney was dead.

Ms. Lasley recalled receiving a telephone call from [petitioner] shortly before her 10:00 a.m. class. The call came from Mr. McGee's cell phone. [Petitioner] called her several more times from the phone. Ms. Lasley skipped her 10:00 a.m. class and returned to her apartment to find [petitioner] and Mr. McGee waiting on her in the parking lot. When she arrived, she did not go to the car but instead went directly into her apartment. Ms. Lasley did not recall if [petitioner] was carrying anything when he arrived.

[Petitioner] asked Ms. Lasley for a ride to Memphis. She agreed. Ms. Lasley drove [petitioner] to Memphis and dropped him off at a friend's house before driving back to Jackson.

Nicholas Parks, also known as Booky, was a mutual friend of [petitioner], the victim, and Mr. McGee. He received a call on

October 19 in the morning. He was asleep when the phone rang but noticed that the phone number was blocked by caller ID. When he answered the phone, a voice instructed him to "go get [Mr. Haney], he has two bullets in him." Mr. Parks ignored the call and went back to sleep.

Cell phone records indicated that Mr. McGee's cell phone received a call from Mundt Rentals at 9:37 a.m. on October 19, 2006. Additionally, Mr. McGee's cell phone made an outgoing call to Ms. Lasley's telephone at 9:42 a.m., received an incoming call from Joe Elliot's cell phone at 9:53 a.m., called Nicholas Park's phone at 10:04 a.m. with the phone number blocked, then made and received several more calls to and from Ms. Lasley's phone, beginning at 10:05 a.m. and concluding at 1:25 p.m.

After the victim's body was discovered and the investigation began, [petitioner] was located by authorities at his parents' home in Memphis. He was later arrested and indicted for his involvement in the death of the victim.

After he was arrested, [petitioner] was incarcerated for a time in the Shelby County Jail while he awaited trial. Larry Futtrell was an inmate in the Shelby County Jail along with [petitioner] in November of 2006. [Petitioner] told Mr. Futtrell about getting a tuition refund check from Lane College. According to Mr. Futtrell, [petitioner] used the money to buy some marijuana. [Petitioner] admitted to Mr. Futtrell that he got into a fight with another man for stealing drugs and shot him twice in the stomach with a .380 pistol. [Petitioner] even told Mr. Futtrell that he escaped by exiting through the rear of the residence and later had his girlfriend drive him to Memphis. Mr. Futtrell explained that [petitioner] had tried to call someone to go check on the victim after the shooting. [Petitioner] was worried about the phone calls that he had made on the morning of the shooting. When Mr. Futtrell came forward with information about the case, authorities had not released any information about the case to the public. In fact, investigators did not learn that [petitioner] had received a tuition refund check until after talking with Mr. Futtrell.

. . . .

> At the first trial, [petitioner] testified that he received a refund check from Lane College and used that money to buy some marijuana. On the day of the victim's death, [petitioner] woke up late after Mr. McGee had already left for school. At that time, the victim was asleep on the couch. [Petitioner] walked to a nearby convenience store to purchase some cigars and ran into Mr. McGee. [Petitioner] caught a ride to school with Mr. McGee, then rode back home. [Petitioner] rolled a cigar and went for a walk. When he returned to the residence, he saw the victim lying on the floor. [Petitioner] claimed that he was scared and went out the back door. [Petitioner] then ran into Mr. McGee, who told him to get into his car. When [petitioner] got in the car, he saw a .380 pistol on the seat. [Petitioner]'s testimony essentially pointed the finger of guilt to Mr. McGee.
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> At the second trial, [petitioner] called two witnesses in his behalf. Deidre Robinson and Arsenio Henderson testified that they spent the night at 324 Roland Avenue the night prior to the victim's death. They both recalled a short verbal altercation between [Mr. McGee][1] and the victim over the laundry. Neither Ms. Robinson nor Mr. Henderson felt that the argument was a big deal. Mr. Henderson even testified that "they are roommates and they do this all the time. I didn't think nothing of it."

State v. Winkfield, No. W2008-01347-CCA-R3-CD, 2010 WL 796917, at *1-4 (Tenn. Crim. App. Mar. 9, 2010). This Court concluded that the petitioner's testimony from the first trial was properly admitted; that the trial court did not abuse its discretion in excluding the MySpace page of Mr. McGee, showing him with a caption "armed and dangerous," offered as impeachment evidence; that the evidence was sufficient to support the verdicts; and that there was no error in his sentence. *Id.* at *1.

In his post-conviction petition, the petitioner asserts that his trial counsels' performance was deficient and prejudicial in that trial counsels failed to introduce the testimony of Joseph Elliott, Tracy Lovelace, Brandon Harlan, and the victim's girlfriend; in

[1]The appellate opinion states here that the argument was between the victim and "[petitioner]." However, the opinion contains a prior reference to the argument taking place between Mr. McGee and the victim, and testimony at the post-conviction hearing confirms that the victim was arguing with Mr. McGee.

that trial counsels failed to adequately cross-examine Mr. McGee and Mr. Futtrell; in that trial counsels failed to secure certain expert testimony and testing; in that trial counsels did not present a theory of self-defense or manslaughter; and in that trial counsels did not attempt to get a reduction in the petitioner's bond so that the petitioner could investigate the case.

The petitioner testified that he was represented by two attorneys, the District Public Defender and an Assistant District Public Defender. According to the petitioner, his trial counsels failed to call important witnesses during trial, including Joseph Elliott, who would have testified that Mr. McGee, and not the petitioner, had Mr. McGee's telephone and that Mr. McGee never used Mr. Elliott's phone. The petitioner also testified that Brandon Harlan, an acquaintance of the petitioner, victim, and Mr. McGee, emailed trial counsel that he knew the identity of the real killers but would only testify for money. However, the petitioner testified that the money would have been for travel expenses because Mr. Harlan was from Illinois. Trial counsels did not call Mr. Harlan. Trial counsels also did not call Tracy[2] Lovelace at the second trial. Ms. Lovelace had given a statement regarding a black Nissan Altima, not a Maxima, which was Mr. McGee's vehicle. The petitioner claimed she would have testified that the car was parked in front of the house at a time that Mr. McGee had stated he was gone and that she would have testified that she saw a man with a hairstyle different from the petitioner's approach the house. At the first trial, Ms. Lovelace had testified that she couldn't remember anything about the car, and the petitioner objects that trial counsels should have let her read her statement to refresh her memory. Trial counsels also did not call the victim's girlfriend, who had been the victim of an assault by the victim and had seen the victim shoot at some people in a motel. The petitioner acknowledged that post-conviction counsel had also been unable to locate these witnesses five years after the crime. The petitioner testified that his trial counsels did not ask for a reduction in his bond. Because he was incarcerated, he could not contact witnesses such as Mr. Harlan or Mr. Elliott.

At the hearing, the petitioner also challenged his trial counsels' alleged failure to develop defenses. He pointed to testimony by Mr. Futtrell that the petitioner's story was that the victim had pushed him prior to the shooting and to testimony from Mr. McGee that the petitioner was "foaming at the mouth" and "acting like a psychopath." He felt that these facts would have supported a theory of either self-defense or manslaughter. He also thought his own testimony supported a theory of negligent homicide, in that he had found the victim after the shooting but neglected to summon anyone other than Nicolas Parks to help. He testified he consulted with his trial counsels about both a manslaughter and a negligent homicide theory, but trial counsels dismissed them and directed the petitioner to try for a verdict of not guilty.

[2]In the transcript, Ms. Lovelace is also referred to as "Travis Lovelace."

The petitioner also faulted trial counsels for failing to cross examine witnesses about certain inconsistencies. The petitioner testified that Mr. McGee changed his testimony regarding the location of the laundromat between the first and second trials. He also changed his testimony regarding whether he drove to a motel or mall parking lot after dropping the petitioner off at his girlfriend's home. The petitioner also wanted to introduce evidence that the drive from the college to the house took over seven minutes, which he claimed was inconsistent with Mr. McGee's testimony. The petitioner testified that he was not permitted to impeach Mr. McGee with his prior statements. He also testified that his trial counsels were deficient in failing to obtain records from the jail showing that a conversation between the incarcerated petitioner and Mr. McGee, in which Mr. McGee claimed he urged the petitioner to confess, never took place. Likewise, the petitioner felt trial counsels should have located a recording of a phone conversation between the petitioner and Mr. Futtrell. He alleged that this conversation did occur, but not as Mr. Futtrell testified, and that trial counsels should have gotten the recording.

The petitioner also wanted his trial counsels to obtain DNA testing of Mr. McGee's clothing but testified trial counsels told him it was too expensive. He wanted DNA evidence and fingerprints from a knife found near the body.

The Assistant Public Defender testified that he was not able to locate Mr. Elliott. After the first trial, the Assistant Public Defender received an email from Mr. Harlan, whose name had been mentioned by the petitioner, offering to testify in return for money to pay off unrelated court fines. When the Assistant Public Defender told Mr. Harlan that it would be unethical and illegal to pay for testimony, he never heard from him again. He testified that trial counsel chose not to call Ms. Lovelace for the second trial because her testimony, while not damaging, was not helpful to the defense. He did not recall whether he presented Ms. Lovelace with a statement to refresh her memory. He testified that they did not file a motion to reduce the $250,000 bond because the petitioner's family did not think they could make even half of the bond, and no new circumstances had developed to justify a reduction.

The Assistant Public Defender also testified that the petitioner's attorneys were aware of the victim's charges for assault, but did not introduce the evidence because the defense's theory of the case was that the petitioner had not shot the victim. He testified that the defense brought out Mr. Futtrell's criminal record and cross-examined both him and Mr. McGee regarding the calls with the petitioner. The Assistant Public Defender testified that he cross-examined Mr. McGee, who had given numerous prior statements, regarding inconsistencies that mainly had to do with the kidnapping charge. He did not cross-examine him about whether he stayed in a mall or hotel parking lot. Although their investigator checked on the amount of time it would have taken to drive from the college to the house and found it to be somewhat more than the five minutes to which Mr. McGee testified, the

defense did not think it was significant enough to present to the jury. He also testified that both he and the District Public Defender strongly advised the petitioner not to testify in the initial trial, that he felt the testimony had ultimately been harmful, and that some of the jurors told him afterward that the petitioner had not seemed credible.

The District Public Defender testified that the petitioner had maintained his innocence throughout the proceedings and that he maintained that someone else was responsible for the shooting. Trial counsels had advised the petitioner against testifying. The District Public Defender did not recall discussions on introducing the victim's violent background because he did not feel it would be relevant under the theory that someone else committed the crime. He testified that Ms. Lovelace was confused and uncertain in the first trial, and he did not feel that her testimony would benefit the petitioner. The District Public Defender "seem[ed] to recall" showing Ms. Lovelace her statement and her finding that it did not help her remember.

Regarding the witnesses, the District Public Defender testified that they were not able to find Joseph Elliott or Brandon Harlan. He also testified that Mr. McGee was thoroughly cross-examined regarding numerous discrepancies in his prior statements. He testified that he had driven the route from the college to the home with the investigator and that the time was not significantly longer than in Mr. McGee's testimony, particularly considering that he kept to the posted speed limit. Mr. Futtrell was also cross-examined regarding his extensive criminal history.

He did not recall if Mr. McGee's clothing was confiscated and available for testing. In light of the petitioner's insistence on the fact that he was not involved in the crime, the District Public Defender did not think the knife was relevant to the defense, so he did not attempt to have it analyzed.

The post-conviction court denied the petition. The post-conviction court found generally that trial counsels had not performed deficiently, that the petitioner had not proven the allegations of fact by clear and convincing evidence, and that the petitioner had not shown prejudice. The post-conviction court went on to find that trial counsels were not deficient in failing to call witnesses; that trial counsels adequately investigated the case; and that trial counsels had advised the petitioner not to testify and that the admissibility of the testimony was addressed on appeal. At the hearing, the post-conviction court noted that it credited the testimony of trial counsels and found that they had advised the petitioner against testifying. The post-conviction court also found that Mr. Elliott could not be located and that Ms. Lovelace's testimony would not have been helpful to either party. The court further concluded that the petitioner had not shown how Mr. Harlan's testimony could have affected the outcome of the trial. The post-conviction court found that trial counsels' performance

was not deficient for failing to explore alternate defenses that were at odds with the petitioner's own assertions of innocence and with his own testimony and found that trial counsels had attempted to exclude the petitioner's prior testimony.

ANALYSIS

Tennessee Code Annotated section 40-30-103 allows for relief from a conviction when it is void or voidable due to the denial of a right under the Tennessee Constitution or the Constitution of the United States. T.C.A. § 40-30-103 (2010). The petitioner must prove the allegations in the petition by clear and convincing evidence. T.C.A. § 40-30-110(f). Both the Sixth Amendment to the United States Constitution and Article I, section 9 of the Tennessee Constitution guarantee the right to counsel. This right has been defined as the right to the "reasonably effective" assistance of counsel. *Vaughn v. State*, 202 S.W.3d 106, 116 (Tenn. 2006) (quoting *State v. Burns*, 6 S.W.3d 453, 461 (Tenn. 1999)). The standard is "whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Id.* (quoting *Strickland v. Washington*, 466 U.S. 668, 686 (1984)).

A claim of ineffective assistance of counsel has two components: 1) the petitioner must show that counsel's performance was deficient, and 2) the petitioner must show that the deficiency prejudiced the defense. *Pylant v. State*, 263 S.W.3d 854, 868 (Tenn. 2008). To establish deficiency, the petitioner must show that counsel's errors were "so serious as to fall below an objective standard of reasonableness under prevailing professional norms." *Goad v. State*, 938 S.W.2d 363, 369 (Tenn. 1996). In other words, the services of trial counsel must have fallen outside the range of competence demanded of attorneys in criminal cases. *Baxter v. Rose*, 523 S.W.2d 930, 936 (Tenn. 1975). The reviewing court must "indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Felts v. State*, 354 S.W.3d 266, 277 (Tenn. 2011) (quoting *Burns*, 6 S.W.3d at 462). There is a presumption that counsel's acts might be "sound trial strategy," and strategic decisions, when made after a thorough investigation, are "virtually unchallengeable." *Id.* (quoting *Strickland*, 466 U.S. at 689, 690). Furthermore, "[t]he reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." *Id.* (quoting *Strickland*, 466 U.S. at 691). "To succeed on a claim of ineffective assistance of counsel for failure to call a witness at trial, a post-conviction petitioner should present that witness at the post-conviction hearing." *Pylant*, 263 S.W.3d at 869. Presenting the testimony of the witness is the only way to show that the witness existed and could have been discovered with a reasonable investigation, that counsel failed to discover or interview the witness, and that, as a result, critical evidence was not introduced to the petitioner's prejudice. *Black v. State*, 794 S.W.2d 752, 757 (Tenn. Crim. App. 1990).

To show prejudice, the petitioner must demonstrate a reasonable probability that, but for counsel's deficiency, the results of the proceeding would have been different. *Pylant*, 263 S.W.3d at 868. The deficiency must be such that the reliability of the outcome is called into question. *Id.* at 869. Because both prongs must be established for relief, a court may deny relief based on a failure to show either prong, and need not address both components. *Goad*, 938 S.W.2d at 370.

In reviewing a post-conviction court's judgment, the post-conviction court's findings of fact are binding on the appellate court unless the evidence preponderates otherwise. *Finch v. State*, 226 S.W.3d 307, 315 (Tenn. 2007). Legal issues and mixed questions of fact and law – such as a claim of ineffective assistance of counsel – are reviewed de novo with no presumption of correctness. *Id.*

Here, the petitioner cannot show that his counsels were deficient in not securing the testimony of Mr. Elliott, Ms. Lovelace, Mr. Harlan, the victim's girlfriend, or any expert witnesses because he did not introduce the testimony of these witnesses at the post-conviction hearing; neither can he show that their testimony would have been helpful to his case or that its absence caused him prejudice. *See Pylant*, 263 S.W.3d at 869; *Brimmer v. State*, 29 S.W.3d 497, 512 (Tenn. Crim. App. 1998) ("Whenever the claim of ineffective assistance is based on the failure to submit proof, there must be a showing of what the evidence would have been."). We note that some of the expert testimony would also have been irrelevant under the petitioner's theory of the case. *See Beauregard v. State*, No. W2001-02546-CCA-R3-PC, 2002 WL 1284226, at *5 (Tenn. Crim. App. June 5, 2002) (concluding failure to obtain DNA expert was not deficient when the evidence would have contradicted the petitioner's theory of the case). The petitioner also has not introduced the jailhouse telephone records of the calls with Mr. Futtrell and Mr. McGee which he claims counsels were deficient in failing to obtain. The evidence does not preponderate against the post-conviction court's determination that trial counsels investigated the facts and witnesses relevant to the case.

We also note that the post-conviction court specifically credited the testimony of trial counsels, and both the petitioner's attorneys testified that the Assistant Public Defender cross-examined Mr. McGee and Mr. Futtrell thoroughly, including cross-examination regarding Mr. McGee's prior statements. Accordingly, the petitioner has not shown deficiency.

Neither was trial counsels' performance deficient when they decided not to pursue a theory that the victim was killed by the petitioner in self-defense or that the petitioner committed voluntary manslaughter. "The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." *Felts*,

354 S.W.3d at 277 (quoting *Strickland*, 466 U.S. at 691). The petitioner maintained and testified to his innocence; trial counsels' decision not to focus on evidence which would have been at odds with the petitioner's own testimony is presumed to be sound trial strategy. *Id.* at 277.

Insofar as the petitioner's claims relate to his sentencing or to the introduction of his testimony from his first trial at his second trial, these issues have been previously determined on direct review. The petitioner acknowledged that trial counsels objected to the introduction of the testimony and attempted to keep it out, and the post-conviction court found that trial counsels had tried to exclude the evidence and had advised the petitioner not to testify at the first trial. Accordingly, the petitioner has not shown any deficiency in this regard.

CONCLUSION

Because the petitioner has failed to demonstrate deficient performance by trial counsels and prejudice, we can see no error in the denial of the petition for post-conviction relief, and the judgment of the post-conviction court is affirmed.

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JOHN EVERETT WILLIAMS, JUDGE