

IN THE UTAH COURT OF APPEALS

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Nealy W. Adams,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner and Appellant,)	
)	Case No. 20070381-CA
v.)	
)	F I L E D
State of Utah,)	(October 30, 2008)
)	
Respondent and Appellee.)	2008 UT App 386

Second District, Ogden Department, 030903861
The Honorable W. Brent West

Attorneys: Grant W.P. Morrison and William P. Morrison, Salt
 Lake City, for Appellant
 Mark L. Shurtleff and Christopher D. Ballard, Salt
 Lake City, for Appellee

Before Judges Bench, Davis, and Orme.

ORME, Judge:

We have determined that "[t]he facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument." Utah R. App. P. 29(a)(3). Moreover, the issues presented are readily resolved under applicable law.

In order to demonstrate that he received ineffective assistance, Adams must show that "counsel's performance was deficient," Strickland v. Washington, 466 U.S. 668, 687 (1984), in that it "fell below an objective standard of reasonableness," id. at 688. "[A] court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance," id. at 689, and that it "might be considered sound trial strategy," id. (citation and internal quotation marks omitted). "[A]n ineffective assistance claim succeeds only when no conceivable legitimate tactic or strategy can be surmised from counsel's actions." State v. Tennyson, 850 P.2d 461, 468 (Utah Ct. App. 1993).

We are not persuaded that Adams received ineffective assistance from his trial counsel. Adams's trial counsel chose to pursue other viable defenses: that the victim was not credible; that the acts never occurred; that there was no credible evidence of the crimes charged; and that the victim was coached by her mother to accuse Adams, the mother being vindictive toward Adams after he jilted her. We conclude that counsel's strategic choice not to assert a voluntary intoxication defense, which might have tended to undercut some of the other defenses asserted, falls within the wide range of reasonable professional assistance and was therefore not ineffective.

Even assuming that counsel was obligated to explain the intoxication defense and to let Adams decide whether to pursue it, and further assuming that Adams would have wanted to pursue that defense, Adams has nonetheless failed to "show that counsel's . . . performance was prejudicial--i.e., that it affected the outcome of the case." State v. Litherland, 2000 UT 76, ¶ 19, 12 P.3d 92. "[D]efendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. at 694. Accord State v. Irvin, 2007 UT App 319, ¶ 23, 169 P.3d 798. We are not persuaded that there was a reasonable probability that Adams would have fared better if the voluntary intoxication defense had been pursued, especially given the facts that Adams consistently and adamantly asserted throughout the proceedings that he did not commit the crimes charged and that the jury, in weighing the evidence as it was presented, acquitted Adams of the more serious charge.

Adams also argues that the trial court abused its discretion by "overruling all of Adams'[s] objections, and by entering the State's proposed order without revision." Adams asserts that the State's order "did not accurately track the court's bench ruling." To determine "whether the trial court adequately participated in adopting findings prepared by counsel, Utah's appellate courts look to the record and will affirm the findings if there is no indication from the record . . . that the trial judge failed to adequately deliberate and consider the merits of the case." State v. James, 858 P.2d 1012, 1015 (Utah Ct. App. 1993) (alteration in original) (citation and internal quotation marks omitted). The trial court determined that the State's proposed order was "consistent with the Court's Ruling." And our review of the record and the trial court's bench ruling indicate that the order proposed by the State was in substantial accord with the trial court's ruling. Thus, we see "no indication from the record . . . that the trial judge failed to adequately deliberate and consider the merits of the case." Id. (alteration in original) (citation and internal quotation marks omitted). Moreover, it has been held that even when a subsequent order

differs from a bench ruling, the latter in time will control.
See Evans v. State, 963 P.2d 177, 180 (Utah 1998).

Affirmed.¹

Gregory K. Orme, Judge

WE CONCUR:

Russell W. Bench, Judge

James Z. Davis, Judge

¹Adams's complaints about the findings being contrary to the evidence adduced at the hearing and about certain legal conclusions being couched as facts are without merit, and we decline to address them further. See State v. Carter, 776 P.2d 886, 888 (Utah 1989) (stating that appellate courts "need not analyze and address in writing each and every argument, issue, or claim raised").