

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE  
30TH JUDICIAL DISTRICT AT MEMPHIS  
DIVISION VI

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ALVIN STEWART,	)	
Petitioner	)	
VS.	)	No. 13-01980
	)	
STATE OF TENNESSEE,	)	
Respondent.	)	

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ORDER DENYING  
PETITION FOR POST-CONVICTION RELIEF

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This cause came to be heard upon the Petition for Post-Conviction Relief filed in this cause; upon an evidentiary hearing that was conducted on November 22, 2021 and March 31, 2022; and upon the entire record of this cause. The petitioner alleges that his trial and appellate counsels were ineffective in a number of areas. For the reasons as set forth in this Order, the petition for post-conviction relief should be denied.

**HISTORY OF THE CASE**

The defendant was indicted by the Shelby County Grand Jury for the offenses of Aggravated Rape, Aggravated Assault, Domestic Assault and Cruelty to Animals. At arraignment the petitioner was appointed a public defender who represented him throughout the history of the case. On February 18, 2014 the petitioner went to trial before a jury and entered a not-guilty plea. On February 21, 2014 the jury found the petitioner guilty of aggravated rape as charged in count 1 and aggravated assault as charged in count 2 and domestic assault as charged in count 3. The jury acquitted the petitioner of cruelty to animals.

The Petitioner was ultimately sentenced to a total of 20-years in the Tennessee Department of Correction.

The petitioner appealed to the Tennessee Court of Criminal Appeal and his conviction was affirmed on February 25, 2015 under docket number No. W2014–01517–CCA–R3–CD, 2015 WL 5683095. Permission to Appeal was denied by the Tennessee Supreme Court on February 18, 2016.

### **FACTS ADDUCED AT TRIAL**

The facts of the case as set out by the Court of Criminal Appeals are as follows:

The victim testified that she first met the defendant in March 2010 when they both worked as truck drivers at the same company and started dating. She said that initially their relationship was “good” but subsequently became “chaotic,” with the couple often arguing “about the way [the defendant] wanted [the victim] to be quiet and let him finish what he had to say and then [the victim] was allowed to speak.” The defendant also argued with her when she received phone calls from her brother because he believed she was talking to a boyfriend. The victim said the defendant did not like her dog and was jealous of the dog, telling the victim that she loved her dog more than him. They broke off their relationship in April 2011 but got back together in February or March 2012 and became engaged.

The victim said that in February 2013 she and the defendant were living together but that she had started having doubts as to whether she wanted to marry him. They were both still employed as truck drivers but for different companies. They made plans for both of them to be home the weekend of February 9–10, 2013, so they could spend time together. The victim said she drove for eleven hours on February 9 and arrived home between 10:30 and 11:00 p.m. The defendant was still up when she got home, and she sat down on the couch and dozed off because she was exhausted. She later woke up, went upstairs to their bedroom, put on her nightgown, and lay across the bed. The defendant then came upstairs and wanted to be intimate, but she told him no because she was tired. The defendant, who was not

happy, went downstairs, came back upstairs, flipped the light on, went through the closet, and kept repeating this process as the victim was trying to sleep.

The victim said that she heard her car starting, ran downstairs, opened the door, and asked the defendant where he was going with her car. The defendant came back inside the residence, and they started arguing. The defendant's "whole expression in his face changed," causing the victim to back away from him. The defendant then grabbed the victim by her throat, hit her, and threw her into the wall, telling her to "shut the f\* \* \* up." The victim fell down, and the defendant got on top of her and started hitting her in the face, further loosening her already loose tooth. The defendant told her he would make her be quiet and then choked her until she lost consciousness, causing her to urinate on herself. When the victim regained consciousness, she crawled up the stairs to the bedroom to get her phone but could not get it to work. The defendant then came upstairs as her dog was barking, and she begged the defendant not to hurt her any more. The defendant told her to get her "mother\* \* \* \* \* ass over here," and when he touched her, she passed out again. When she awakened, she was on the bed and her dog was barking and "going after" the defendant. The defendant then slammed her dog into a wall, and the dog began yelping. The victim said she knew her dog was hurt, but she could not afford to take her to a veterinarian to be examined.

The defendant then told the victim he wanted to talk about what had happened, and they went downstairs to the living room. The defendant asked the victim if she wanted to go to the hospital, and she replied, "[W]ell, if I go to the hospital and they see me in my condition, do you think I'm going to lie to them?" The defendant then apologized for his actions and told the victim she "made him do it because all [she] had to learn was listen and this wouldn't have happened if [she] had listened to what he had to say and ... learned how to be quiet and shut [her] mouth." The victim said she and the defendant talked for hours, and she told the defendant she no longer wanted to marry him. The defendant then told the victim she was "[his] woman," stood up, and started removing his clothes. The victim ran to the kitchen trying to get away from the defendant because "he wanted to have sex." The victim told the defendant, "[N]o, I'm not doing this. I said no, you're not going to do this to me. No." The defendant kept coming after her, and they tussled back onto the couch. The

victim said as she was fighting with the defendant, he bit her arm and ripped off her underwear. The defendant tried to penetrate her vagina with his penis but could not. The victim said she repeatedly begged the defendant not to rape her. The defendant then forced her upstairs, pushed her down on the bed, and told her, “[Y]ou better not mother\* \* \* \* \* move like that.” After the defendant unsuccessfully tried to penetrate her vagina again, he lubricated himself, got on top of the victim, and held her by her throat. He then flipped her over and penetrated her vagina as she was lying on her stomach, ejaculating inside her.

The victim said she was “numb” after the assault, and the next thing she remembered was talking to the defendant downstairs on the couch. The victim told the defendant if he stayed at the residence, she was going to call the police. The defendant then gathered his belongings and left. The victim called a friend and told her what had happened. Her friend told her to call the police, but she was afraid to do so and “wasn’t thinking straight.” The victim called another friend and told him what had happened, and he called the police on her behalf.

The victim said that when the police arrived, she told them what had happened, and a female officer subsequently arrived to help “calm [her] down.” The victim then went to the police station, where she gave a statement, and to the rape crisis center, where she was examined. The victim acknowledged that initially she did not want to prosecute the defendant because she “didn’t want to ruin his career” and believed that the assault was her fault. However, after receiving counseling, the victim realized it was not her fault. The victim said that she was distraught, confused, and scared when she gave her statement to the police and that she “just signed the paper” without reading it. She acknowledged that she told the police she did not want the defendant to go to jail but receive counseling for his anger issues instead. The victim said she sustained bruising on her face, neck, shoulder, back, and buttocks and a bite mark on her arm and identified photographs depicting her injuries.

Officer Kcbena Cash of the Memphis Police Department testified that he responded to a disturbance call at 9:22 a.m. on February 10, 2013, at the defendant and victim’s residence. The victim, who was “obviously shaken up” and crying, allowed Officer Cash inside the residence where he noticed a wall by the staircase that was “kind of caved in and it was pretty fresh.” He

said that he knew the wall was freshly caved in because of the paint chippings at the bottom. As Officer Cash started up the stairs to check to see if anyone else was present, the victim told him to watch his step because she had urinated on the floor in that area. Upstairs, Officer Cash observed that the bedroom was in disarray as if a struggle had occurred. The victim told him she had been raped, and Officer Cash called for a female officer to come to the scene.

On cross-examination, Officer Cash said that the victim reported to him that she was awakened at 3:00 a.m. and that the defendant forced her arm behind her back, forced her to the couch in the downstairs living room, tore off her panties, punched her on the cheek until she cooperated with him, had sexual intercourse with her while holding her down on the couch, forced her off the couch and threw her into a wall by the stairs, choked her while she was lying on the floor, which caused her to urinate on herself, forced her up the stairs to the bedroom and threw her across the bed, choked her again as he had sexual intercourse with her a second time, threatened to kill her if she told anyone what had happened, removed her torn panties from the living room floor, and then left the residence.

Officer David Galloway of the Memphis Police Department testified that he responded to the scene of the crime at 10:45 a.m. on February 10, 2013. He took photographs of the scene and the victim's injuries and collected into evidence the victim's nightgown and bedding.

Memphis Police Officer Angela Collins testified that she was called to the crime scene to transport the female victim to the rape crisis center. En route to the rape crisis center, the "hysterical" victim told Officer Collins that the defendant had awakened her earlier that morning and wanted to have sex. When the victim told him "no," the defendant choked her, forced her against the couch, ripped off her underwear, and forced her to open her legs. The victim also said that the defendant had hit her more than once in the face, forced her upstairs, and threw her dog against a wall.

Tammy Keough, a nurse examiner at the Memphis Sexual Assault Resource Center, testified that she examined the victim on February 10, 2013. The victim was very upset, crying, and very tense and reported that her fiancé had beaten and sexually

assaulted her. A rape kit was collected and sent to the Tennessee Bureau of Investigation (“TBI”) for testing. Nurse Keough’s examination of the victim revealed contusions to her right and left jaw, abrasions on the back of her neck and shoulder, multiple abrasions and contusions on the front of her neck, a laceration to her left earlobe, bruising on her lips, bruising and abrasions on both arms, a round area consistent with a bite mark on her right forearm, purple bruising and a laceration on her left buttock, bruising on her right buttock and both legs, swelling and bruising on her left ankle, and a loose tooth. She said the victim’s injuries appeared to be “very new” and estimated they were inflicted within twenty-four hours of her examination. While the victim did not have any vaginal injuries, Nurse Keough noted that less than ten percent of the victims examined at the sexual assault center had such injuries.

Robert Durham, a criminal investigator with the Shelby County District Attorney General’s Office, testified that he collected a DNA sample from the defendant, which was sent to the TBI.

TBI Special Agent Donna Nelson testified that she was a crime laboratory regional supervisor and that the TBI received the victim’s sexual assault kit and the defendant’s DNA sample for testing. The vaginal swabs collected from the victim revealed the presence of sperm, and the DNA profile obtained after testing was consistent with the mixture of at least two individuals. The major contributor profile matched the defendant, and the minor contributor profile was consistent with the victim. Special Agent Nelson noted that the probability of the profile belonging to anyone other than the defendant “exceeded the world’s population.”

### **Defendant’s Proof**

The victim, recalled by the defense, testified that she gave a handwritten and a typed statement on February 11, 2013, which were admitted as exhibits.

The defendant testified that he did not rape or assault the victim and denied throwing her dog into a wall. He said that the victim called him on February 9, 2013, and told him she had fallen out of her truck. He arrived home from his truck driving job later that evening, and the victim subsequently arrived. The

victim showed him the injuries from her fall, including bruising on her buttock, hip, and arm and a scratch on her back. The defendant recalled another incident where the victim had called him, saying she had knocked out a tooth while operating her truck. Later that evening, around 7:30–8:00 p.m., he left to go pick up some food for their dinner and returned home about an hour later. After they ate dinner, they went upstairs to bed and had sex twice. The defendant said he then went to sleep and woke up between 1:00 and 2:00 a.m. He went downstairs to check on his clothes in the dryer and heard the victim’s phone receiving text messages in rapid succession. He began reading the text messages and discovered “a booty call” from a man named Summerall, as well as nude photographs of the victim. He said there were several text messages between the victim and Summerall, professing their love for each other. The defendant said he felt “[h]urt, dumbfounded, betrayed” by the text messages.

The defendant said he then went upstairs and woke up the victim to confront her about the text messages. The victim denied knowing Summerall, and when the defendant showed her the text messages, the victim “went ballistic,” hitting, punching, kicking, and chasing the defendant around the room trying to get her phone away from him. He denied seeing the victim’s dog or hearing the dog bark. He left the bedroom to go downstairs, with the victim “right on [his] heels.” He told the victim, “[F]\*\*\* your phone, b\*\*\*,” and the victim pushed him, causing his head, shoulder, and hand to hit the wall by the stairs. The defendant said the fall caused a lump on his head which turned into a mole. The defendant got up and told the victim if she put her hands on him again, he would “knock the sh\*\*” out of her. According to the defendant, the victim provoked him and told him to hit her, but he denied doing so. As he was walking toward the door to go outside to “cool off,” the victim spat on him twice. The defendant turned around and “flinched at” the victim. The victim ran to the side of the couch, and realizing he only had on his underwear, the defendant went upstairs and got dressed.

The defendant said he then went outside and sat in his truck to clear his head. He put some alcohol on the lump on his head. He decided that his relationship with the victim was over and went back inside the house to gather his belongings. The victim was sitting in the floor, crying, and started apologizing to him, but he told her she had cheated on him. The victim followed him through the house as he packed his clothing and told him he

was not going to leave her. He finished packing his belongings, gave the victim her key back, and asked for the engagement ring back. He said he had to “wrestle” the ring off the victim’s finger but denied hitting or choking her. The defendant admitted he had received training in fighting and had been an amateur boxer.

*Id.* at \*1-4.

After hearing the facts, the jury returned a verdict of guilty of Aggravated Rape and found the defendant not guilty of animal abuse.

### **ALLEGATIONS OF THE PETITIONER**

The petitioner alleges that his trial counsel was ineffective in that counsel did not fully explain the case to the petitioner and did not communicate with the petitioner in such a way as to keep him fully advised about the case, did not litigate his extradition and return to Tennessee and did not present witnesses during the trial that would have helped the petitioner’s case. The petitioner also alleges that trial counsel was not prepared for trial. The petitioner also alleges that trial counsel did not object to the chain of custody of the DNA evidence sent to the TBI for analysis and appellate counsel failed to raise this issue on appeal. For the reasons stated below, the Petition is denied.

### **FINDINGS OF FACT**

To support his petition, the petitioner was called as a witness and testified that he was represented by assistant public defender C. J. Barnes at the pre-trial and trial stage of his case. The petitioner testified that he had a bad relationship with his trial counsel. Petitioner complained that when he met with trial counsel she would not listen to what he wanted done or consider the legal issues he wanted raised. Petitioner testified that his



meetings with counsel were always confrontational and he blamed the cause on trial counsel's refusal to listen to his thoughts on the case. At one point, petitioner testified that trial counsel told him that "the train is leaving the station, with him or without him", which he interpreted as saying that trial counsel did not care what the petitioner said or thought about the case. The petitioner testified that he complained to trial counsel's supervisor and the Board of Professional Responsibility to no avail. Petitioner demanded that trial counsel mount an attack on his extradition to Tennessee and submit to the court that the affidavit of complaint that existed at the time was fraudulent. Petitioner testified that trial counsel refused to raise the issue and claimed that there was no legal basis to challenge the extradition.

At trial, the petitioner testified that trial counsel would not object to a chain of custody problem, he perceived, with a DNA sample introduced by the State. Petitioner stated that neither trial counsel or appellate counsel would raise the issue. The petitioner also testified that trial counsel would not call the neighbor, Mr. Sumerall, to testify about text messages between the neighbor and the victim. The petitioner stated that these text messages were what caused the fight to occur between the victim and himself.

The petitioner was given permission to call additional witnesses who could not appear on the date of the hearing. The State then put on its proof by calling trial counsel, C. J. Barnes to testify. Trial Counsel testified that she was appointed to represent the petitioner as an assistant public defender on his arraignment. Trial counsel testified that

she had been an assistant public defender for 25-years and had handled numerous sex crime trials. Trial counsel testified that she interviewed the petitioner on the day of the arraignment and took notes about what he told her. Trial Counsel testified that she got full discovery from the State and shared the information with the petitioner before trial including crime scene pictures. Trial Counsel testified that she met with the petitioner on several occasions face to face but also sent information to the petitioner through mail. Trial Counsel testified that she had ample time to discuss the case with petitioner and shared all the discovery with him before trial. Trial Counsel testified that she entered into plea negotiations with the State and got an offer which she communicated with the petitioner. Trial counsel testified that she explained to the petitioner his exposure at trial and what the plea entailed. The petitioner declined the offer and told trial counsel that he would not enter a guilty plea. Trial counsel testified that she had the petitioner appear in court on November 19, 2013 to testify that he was rejecting the plea offer and he was requesting his case be set for trial

At trial, Trial Counsel testified that she communicated with the petitioner throughout the proceeding. Trial Counsel testified that she bought clothes for the petitioner to wear with her own money and he complained and refuse to wear them. When asked about a chain of custody problem connected to the DNA testing, trial counsel testified that she was not aware of any problem and still does not know what the petitioner is talking about. Trial counsel testified that the DNA evidence was not critical in the prosecution since the petitioner admitted that he had sex with the victim several times on the day of the crime. A positive DNA match was not unexpected.

Trial counsel testified that the petitioner elected to take the stand in his own defense and she was prepared for direct examination with many pages of prepared questions. Trial counsel stated that the petitioner was able to testify about the text messages found on the victim's phone with the neighbor, Mr. Sumerall. Trial counsel testified that the petitioner did not perform well before the jury and showed the same attitude he had with her.

After the jury convicted the petitioner, petitioner hired a lawyer for appeal who handled all other matters. Trial counsel had no other contact with the case.

The petitioner finished his proof by calling appellate counsel, James Thomas, to testify. Appellate counsel testified that he was hired after the trial was completed but before the motion for new trial. Trial counsel testified that he met with the petitioner to discuss the appeal and discussed the issues that would be raised. Appellate counsel testified that working with the petitioner was difficult due to the fact that petitioner would demand certain issues be raised even though the issues could not be raised on appeal. Appellate counsel stated that the petitioner would not accept anything that disagreed with what he wanted done. Appellate counsel testified that he raised every issue that he felt he could legally and ethically pursue.

The petitioner ended his proof by calling Kion Sumerall to testify. Mr. Sumerall testified that he knew the victim of this case because she was a friend of his mother. Mr. Sumerall was questioned about making a 9-11 call the night of the crime and he responded that he had no recollection of making a 9-11 call. Mr. Sumerall also testified that he did not know the petitioner and never had a relationship with the victim. The petitioner then rested his case.

After hearing the witnesses testify and seeing the proof submitted the court finds that trial counsel was credible. Trial counsel answered questions freely and without hesitation. Trial counsel was able to corroborated her answers about her representation with documentation in her case file that she had with her at the hearing. The Court also finds appellate counsel credible. Appellate counsel also answered questions freely and without hesitation. Also, appellate counsel was not contradicted by any proof offered by the petitioner. The Court did not find the petitioner credible. His testimony was marked by fuzzy memory and opinion as a substitute for facts. Petitioner also made statements that were contradicted by the proof. For example, the petitioner testified that he was never told about his exposure when trial counsel was discussing a plea agreement. However, when petitioner was questioned about his plea offer on November 19, 2013 he specifically stated that he was aware of the range of punishment for each charge and wanted to go to trial.<sup>1</sup>

### **CONCLUSIONS OF LAW**

The Court begins its inquiry with the presumption that trial counsel was effective in her representation of the petitioner. *Strickland v. Washington*, 466 U.S. 668; 104 S. Ct. 2052; 80 L. Ed. 2d 674; 1984. In *Strickland*, the Supreme Court established a two-prong test placing the burden on a petitioner to prove that the performance of counsel fell below the range of competence expected of criminal defense attorneys and that this deficient performance resulted in prejudice. The petitioner must prove his case with clear and convincing evidence. Performance, as defined by the Tennessee Supreme Court in *Baxter*

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<sup>1</sup> See Exhibit 1, transcript of hearing November 19, 2013, pages 8-9.

v. *Rose*, 423 S.W.2d 930 (1975) is stated:

We believe a better standard, expressed in the generalities of *McMann, supra*, is simply whether the advice given, or the services rendered by the attorney, are within the range of competence demanded of attorneys in criminal cases. We would measure that range of competence by the duties and criteria as set forth in *DeCoster, supra*, and by our own Sixth Circuit case of *Beasley, supra*.<sup>2</sup>

Under *Strickland*, once a petitioner establishes that counsel fell below the standard of competence expected of a defense attorney, the second, performance, prong must be met showing that but for the failure of counsel to perform up to the standard of competence the outcome of the trial would have been different.

After considering the proof in this case the Court finds that the petitioner has not shown by clear and convincing evidence that counsel was ineffective in her representation of the petitioner. The proof shows that counsel was prepared for trial, had reviewed all the discovery, and crafted a reasonable trial strategy based on her investigation and the discovery received from the State. Trial counsel engaged an investigator who interviewed all identified witnesses. Counsel met with the petitioner and discussed the case and evidence on several occasions. Trial Counsel explained that she did not litigate the petitioner's claims against his extradition due to the fact that there was not a legal basis to do so. Trial counsel tried to explain to the petitioner that his claim of a false affidavit being used to get him extradited would not affect his indictment in any way. The petitioner would still be subject to prosecution for his indicted offenses. On this issue the petitioner has offered no proof to support his naked allegations that a viable legal issue had been forfeited

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<sup>2</sup> *Baxter v. Rose*, 423 S.W.2d at page 936, citing *McMann v. Richardson*, 397 U.S. 759, 90 S. Ct. 1441, 25 L. Ed. 2d 763 (1970), *United States v. DeCoster*, 159 U.S.App.D.C. 326, 487 F.2d 1197 (1973), *Beasley v. United States*, 491 F.2d 687 (6th Cir. 1974).

by his trial and appellate counsel. On this and other matters, trial counsel testified that the petitioner would insist that counsel do what he demanded and would not listen to any legal reason showing that he was incorrect about his understanding of the law or the facts. Trial counsel found that if she did not do what the petitioner demanded he would become very angry complain to her supervisor, the court, and the Board of Professional Responsibility.<sup>3</sup> The Court will not second-guess a trial tactic and strategy unless those choices were uninformed because of inadequate preparation.<sup>4</sup> As the Tennessee Supreme Court in *Hellard v. State*, 629 S.W.2d 4 (Tenn. 1982) stated:

Although in *Baxter* we adopted a higher standard of competence for the legal representation required in criminal cases, we did not require perfect representation. Moreover, the defense attorney's representation, when questioned, is not to be measured by "20-20 hindsight."

"Hindsight can always be utilized by those not in the fray so as to cast doubt on trial tactics a lawyer has used. Trial counsel's strategy will vary even among the most skilled lawyers. When that judgment exercised turns out to be wrong or even poorly advised, this fact alone cannot support a belated claim of ineffective counsel." *Robinson v. United States*, 448 F.2d 1255 at 1256 (8th Cir. 1971).

The court in *DeCoster*, *supra*, limited the new standard of competence there adopted by the following language:

"This court does not sit to second guess strategic and tactical choices made by trial counsel. However, when counsel's choices are uninformed because of inadequate preparation, a defendant is denied the effective assistance of counsel." *DeCoster*, 487 F.2d 1197 at 1201.

It cannot be said that incompetent representation has occurred merely because other lawyers, judging from hindsight, could have made a better choice of tactics. See: *United States ex rel. Burton v.*

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<sup>3</sup> The court notes that petitioner's uncooperative attitude was evident through the petitioner's interaction with the court as well as the attorneys who were representing the petitioner during the trial and post-conviction proceeding.

<sup>4</sup> *Goad v. State*, 938 S.W.2d 363 (Tenn. 1996); *Alley v. State*, 958 S.W.2d 138 (Tenn.Crim.App. 1997)

Cuyler, 439 F.Supp. 1173 at 1187 (E.D.Pa.1977). As former trial lawyers, we know that a criminal trial is a very dramatic, vibrant and tense contest involving many variables and that counsel must make quick and difficult decisions respecting strategy and tactics which appear proper at the time but which, later, may appear to others, or even to the trial lawyer himself, to have been ill considered.<sup>5</sup>

The petitioner also alleged that a certain witness, the neighbor Kion Summerall, was not called at trial and would have provided important testimony. Trial counsel testified that she did not call the neighbor, Mr. Summerall, to testify due to the fact that the statement the witness gave to her investigator was potentially damaging to the defense case. Trial counsel testified that her strategy was to use the petitioner to testify about any relationship between Mr. Sumerall and the victim and testify about text messages he saw between them. After hearing from Mr. Sumerall at the evidentiary hearing and his testimony that he did not make a 9-11 call and did not have sexual relations with the victim, trial counsel's decision to not call this witness and rely on the petitioner to present this evidence to the jury was proved to be correct. Petitioner argues that if trial counsel had called Mr. Sumerall at trial then maybe his testimony would have been more clear and helpful. However, that is not the proof before the Court. The Court will not speculate about potential trial testimony or take the word of the petitioner of what he believed the testimony would involve. The petitioner has the burden of proof and the Court will not assume what is not in evidence.<sup>6</sup>

The petitioner was most adamant that both his trial counsel and his appellate counsel were ineffective by not attacking his extradition to Tennessee and the chain of custody of

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<sup>5</sup> *Hellard v. State*, 629 S.W.2d at pages 9-10.

<sup>6</sup> *Grindstaff v. State*, 279 S.W.3d 208 (Tenn. 2009).

the DNA sample introduced in the trial. Both counsels testified that they could not find legal basis to mount a challenge and declined to raise the issues. Again, the petitioner has not met his burden of proof to establish that trial and appellate counsel were ineffective in any way for not raising these issues. No proof was submitted to show a legal basis for objection or any factual basis that would show success on the merits. Court can find no problem with trial and appellate counsel's performance in regards to these issues. The allegations are without merit and should be denied.

For the reasons stated above, the petitioner's Petition for Post-Conviction Relief should be DENIED.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the Petition for Post-Conviction Relief is hereby denied.

Entered this 5th day of April 2022.

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John W. Campbell, Judge  
Acting by Special Designation  
Criminal Court, Div. VI