

FILED

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Clerk of the
Appellate Courts

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs March 28, 2023, at Knoxville

JASELYN GRANT v. STATE OF TENNESSEE

Appeal from the Criminal Court for Shelby County
No. 16-05304 Chris Craft, Judge

No. W2022-01453-CCA-R3-PC

The petitioner, Jaselyn Grant, appeals the denial of her petition for post-conviction relief, which petition challenged her convictions of second degree murder, reckless endangerment, and aggravated assault, alleging that she was deprived of effective assistance of counsel at trial. Because the petitioner has failed to establish that she is entitled to post-conviction relief, we affirm the judgment of the post-conviction court.

Tenn. R. App. P. 3; Judgment of the Criminal Court Affirmed

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which JILL BARTEE AYERS and KYLE A. HIXSON, JJ., joined.

Sharon Morales, Memphis, Tennessee, for the appellant, Jaselyn Grant.

Jonathan Skrmetti, Attorney General and Reporter; Caroline Weldon, Assistant Attorney General; Steven J. Mulroy, District Attorney General; and Jamie Kidd, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

The petitioner was indicted on charges of first degree premeditated murder, attempted first degree murder, employing a firearm during the commission of a dangerous felony, and aggravated assault for fatally shooting Keara Crowder and pointing a gun at Ms. Crowder's 12-year-old son during the early hours of November 19, 2014. *State v. Jaselyn Grant*, No. W2017-00936-CCA-R3-CD, 2018 WL 1876339, at *1-2 (Tenn. Crim. App., Jackson, Apr. 18, 2018). According to the evidence presented at trial, the petitioner, who was a Memphis police officer, and Ms. Crowder recently ended their long-term relationship, and the petitioner shot Ms. Crowder four times during a domestic dispute at

the home that they shared. *Id.* at *1-3. Ms. Crowder's son fled the home during the shooting. *Id.* at *2. He ran across the street to hide behind a neighbor's truck as bullets flew past him, and he heard bullets ricocheting off the truck as the petitioner continued shooting. *Id.* at *2. The petitioner testified at trial, denied pointing a gun at Ms. Crowder's son prior to the shooting, and maintained that she shot Ms. Crowder in self-defense. *Id.* at *4.

The jury convicted the petitioner of second degree murder as a lesser included offense of first degree murder, reckless endangerment as a lesser included offense of attempted first degree murder, and aggravated assault as charged. *Id.* at *4. The jury acquitted the petitioner of the firearm charge. *Id.* The trial court imposed an effective 20-year sentence. *Id.* at *1. This court affirmed the petitioner's convictions on direct appeal. *Id.*

The petitioner filed a timely pro se petition for post-conviction relief, alleging numerous issues including ineffective assistance of counsel at trial. The post-conviction court appointed counsel to represent the petitioner. The petitioner, through counsel, filed an amended petition, asserting numerous instances of deficient performance by trial counsel. As relevant to the issues raised on appeal, she alleged that trial counsel was ineffective in failing to interview witnesses essential to the defense and in failing to retain an expert to analyze the crime scene. An evidentiary hearing was held on May 25, 2022, during which the petitioner and trial counsel testified.

The petitioner testified that she was released on bond pending trial and that trial counsel was retained to represent her. She stated that they met about once every two months and less than five times "right before the trial started." She said that trial counsel primarily discussed her fees during the meetings and that they did not discuss "the details of the trial" until three or four days prior to the trial. The petitioner denied that trial counsel discussed the defense theory with her and stated that she "figured" her defense was self-defense. She stated that although she was a police officer at the time of the shooting, she had not testified previously and was not familiar with court proceedings.

The petitioner testified that she wanted trial counsel to present witnesses at trial regarding Ms. Crowder's propensity for violence and prior acts of violence against the petitioner to support her claim of self-defense. She stated that she provided trial counsel with the names of witnesses she wanted trial counsel to interview and their contact information but that trial counsel said she was unable to contact the witnesses. The petitioner stated that the witnesses were Ms. Crowder's friends who lived in Memphis and could have been easily located. She said that trial counsel's failure to interview and present these witnesses at trial was detrimental to her claim of self-defense and that the evidence presented at trial instead showed that she "was a monster and angry and the violent one."

The petitioner testified that trial counsel never discussed hiring or consulting with an expert to analyze the crime scene. She stated that an expert would have established that based on “the trajectory of the actual bullets,” she was not standing over Ms. Crowder at the time of the shooting but was “shooting from a laying down position and actually running.”

During cross-examination, the petitioner acknowledged that prior to trial, trial counsel was successful in her efforts to exclude evidence of a prior police report by Ms. Crowder against the petitioner. She recalled that trial counsel informed her that if she presented evidence of Ms. Crowder’s prior violent acts, the State would be allowed to present evidence of the petitioner’s prior violent acts.

Trial counsel, who was retained by the petitioner’s family, testified that she sent numerous emails to the petitioner, who was released on bond pending trial, in an attempt to schedule meetings but that those emails were “ignored.” Trial counsel testified that when she and the petitioner did meet, trial counsel proposed a defense theory that would involve seeking a conviction for voluntary manslaughter but that the petitioner wanted to pursue a claim of self-defense. Trial counsel’s attempts to negotiate a plea agreement with the State were unsuccessful, so she knew “early on” that the case would proceed to trial. Trial counsel recalled that the State sought to admit evidence of prior incidents between Ms. Crowder and the petitioner during which the petitioner was the aggressor and that the trial court excluded “the majority” of the evidence. Trial counsel believed that any attempts to present evidence of the petitioner’s good character would have opened the door to the admission of the excluded evidence.

During cross-examination, trial counsel testified that she and the petitioner discussed trial strategy and the petitioner’s version of the events. Trial counsel recalled that the petitioner stated that she fell on her knee and shot upward at Ms. Crowder. Trial counsel stated that at trial, she questioned Special Agent Cervinia Braswell of the Tennessee Bureau of Investigation regarding the issue during cross-examination, and trial counsel believed Special Agent Braswell offered testimony that was favorable to the defense. Trial counsel acknowledged that she did not retain an expert to analyze the crime scene.

Trial counsel testified that she retained an investigator, Racheal Geiser, who interviewed witnesses and assisted her in preparing for trial. Trial counsel recalled that the petitioner provided her and Ms. Geiser with the names of several witnesses whom the petitioner wanted them to interview but that they were unable to locate the witnesses.

At the conclusion of the hearing, the post-conviction court took the matter under advisement, and on September 16, 2022, the court entered an order denying the petitioner's petition for post-conviction relief. The court found that trial counsel's testimony was "very credible" and that the petitioner's testimony was "not credible." The court stated that during the evidentiary hearing, the petitioner did not provide the names of the witnesses whom she claimed trial counsel failed to interview or present the testimony of those witnesses and that "[t]his court has been given no proof other than the unsupported testimony of the petitioner, which this court finds not credible, that such witnesses ever existed." The court also stated that had the petitioner presented character evidence against Ms. Crowder at trial, the State would have been permitted to present the damaging evidence of the petitioner's character that the trial court had excluded, which could have led to a conviction for first degree premeditated murder. The court noted that the petitioner also failed to present expert testimony at the post-conviction hearing to show that "there would be any way a crime scene expert could know at what position the bodies of the petitioner and [Ms. Crowder] were when the multiple shots were fired." The court concluded the proof did not establish any deficiency by trial counsel or any resulting prejudice.

In this timely appeal, the petitioner reasserts that she was deprived of effective assistance of counsel at trial. She maintains that trial counsel was ineffective in failing to interview and present witnesses regarding Ms. Crowder's prior violent acts and in failing to retain an expert to analyze the crime scene.

We view the petitioner's claim with a few well-settled principles in mind. Post-conviction relief is available only "when the 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." T.C.A. § 40-30-103. A post-conviction petitioner bears the burden of proving his or her factual allegations by clear and convincing evidence. *Id.* § 40-30-110(f). On appeal, the appellate court accords to the post-conviction court's findings of fact the weight of a jury verdict, and these findings are conclusive on appeal unless the evidence preponderates against them. *Henley v. State*, 960 S.W.2d 572, 578-79 (Tenn. 1997); *Bates v. State*, 973 S.W.2d 615, 631 (Tenn. Crim. App. 1997). By contrast, the post-conviction court's conclusions of law receive no deference or presumption of correctness on appeal. *Fields v. State*, 40 S.W.3d 450, 453 (Tenn. 2001).

Before a petitioner will be granted post-conviction relief based upon a claim of ineffective assistance of counsel, the record must affirmatively establish, via facts clearly and convincingly established by the petitioner, that "the advice given, or the services rendered by the attorney, are [not] within the range of competence demanded of attorneys in criminal cases," see *Baxter v. Rose*, 523 S.W.2d 930, 936 (Tenn. 1975), and that counsel's deficient performance "actually had an adverse effect on the defense," *Strickland v. Washington*, 466 U.S. 668, 693 (1984). In other words, the petitioner "must

show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.* at 694. Should the petitioner fail to establish either deficient performance or prejudice, he is not entitled to relief. *Id.* at 697; *Goad v. State*, 938 S.W.2d 363, 370 (Tenn. 1996). Indeed, “[i]f it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, . . . that course should be followed.” *Strickland*, 466 U.S. at 697.

When considering a claim of ineffective assistance of counsel, a reviewing court “begins with the strong presumption that counsel provided adequate assistance and used reasonable professional judgment to make all significant decisions,” *Kendrick v. State*, 454 S.W.3d 450, 458 (Tenn. 2015) (citation omitted), and “[t]he petitioner bears the burden of overcoming this presumption,” *id.* (citations omitted). We will not grant the petitioner the benefit of hindsight, second-guess a reasonably based trial strategy, or provide relief on the basis of a sound, but unsuccessful, tactical decision made during the course of the proceedings. *Adkins v. State*, 911 S.W.2d 334, 347 (Tenn. Crim. App. 1994). Such deference to the tactical decisions of counsel, however, applies only if the choices are made after adequate preparation for the case. *Cooper v. State*, 847 S.W.2d 521, 528 (Tenn. Crim. App. 1992).

Although the petitioner asserts that multiple witnesses were willing to testify at trial regarding Ms. Crowder’s prior violent acts, the petitioner did not provide the names of the witnesses during the evidentiary hearing, and the post-conviction court found that the petitioner’s testimony regarding the existence of the witnesses was not credible. Furthermore, the petitioner failed to present the testimony of the witnesses and the expert at the evidentiary hearing that she says trial counsel should have presented at trial. We will not speculate on the content of the testimony or the effect such testimony may have had on the trial. *See Black v. State*, 794 S.W.2d 752, 757 (Tenn. Crim. App. 1990) (“When a petitioner contends that trial counsel failed to discover, interview, or present witnesses in support of his defense, these witnesses should be presented by the petitioner at the evidentiary hearing.”).

Accordingly, the judgment of the post-conviction court is affirmed.

JAMES CURWOOD WITT, JR., JUDGE