

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
July 25, 2023 Session

FILED
09/14/2023
Clerk of the
Appellate Courts

MARIO DONTE KEENE v. STATE OF TENNESSEE

**Appeal from the Criminal Court for Greene County
No. 19-CR-150 Alex E. Pearson, Judge**

No. E2022-01410-CCA-R3-PC

Following his convictions for felony murder, especially aggravated robbery, and especially aggravated kidnapping, the Petitioner, Mario Donte Keene, filed a petition for post-conviction relief. The Petitioner alleged that his confession was unconstitutionally admitted into evidence during his trial. He also asserted that he was denied the effective assistance of counsel when his trial counsel failed to cross-examine a witness and failed to present an expert to testify that he did not have the physical ability to commit the crimes. After a hearing, the post-conviction court denied the petition. On appeal, we respectfully affirm the judgment of the post-conviction court.

**Tenn. Rule App. P. 3 Appeal as of Right;
Judgment of the Criminal Court Affirmed**

TOM GREENHOLTZ, J., delivered the opinion of the court, in which JOHN W. CAMPBELL, SR., and KYLE A. HIXSON, JJ., joined.

Jonathan Sevier Cave, Greenville, Tennessee, for the appellant, Mario Donte Keene.

Jonathan Skrmetti, Attorney General and Reporter; Katharine K. Decker, Senior Assistant Attorney General; Dan E. Armstrong, District Attorney General; and Ritchie D. Collins and Cecil Mills, Jr., Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

FACTUAL BACKGROUND

A. TRIAL PROCEEDINGS

The Petitioner's convictions stemmed from the murder of Donald Gunter by the Petitioner and Amanda Harris. *See State v. Keene*, No. E2017-00316-CCA-R3-CD, 2018 WL 389213, at *1 (Tenn. Crim. App. Jan. 12, 2018), *perm. app. denied* (Tenn. June 6, 2018). At the Petitioner's trial, Ms. Harris testified that she had a history of drug addiction and criminal activity. She met Mr. Gunter through a friend and often exchanged sexual favors with him for money or drugs.

Separately, Ms. Harris had a relationship with the Petitioner, and they used drugs together. *Id.* at *2. On February 10, 2014, she became "dope sick" when she and the Petitioner ran out of drugs. *Id.* After trying unsuccessfully to obtain money from various sources, Ms. Harris and the Petitioner went to the victim's house to ask for money or pills. *Id.* However, an altercation ensued, and the Petitioner assaulted the victim with a "metal stick[] with a ball on the end of it." *Id.* at *13. The Petitioner used blind and electrical cords to tie the victim's wrists and legs together in a "hogtied" position. *Id.* at *11. The pair stole Mr. Gunter's money, cell phone, and other papers. *Id.* Mr. Gunter sustained contusions, abrasions, broken ribs, and blunt force injuries, and he eventually died of a heart attack from the stress of the offenses. *Id.*

Following the robbery, the Petitioner and Ms. Harris drove away with the victim still bound, and they disposed of evidence. *Id.* at *2. Ms. Harris was arrested, and she later pled guilty to second degree murder. The Petitioner was found guilty by a jury of felony murder, especially aggravated robbery, and especially aggravated kidnapping. *Id.* at *8.

The trial court sentenced the Petitioner to serve an effective sentence of life imprisonment. *Id.* This Court affirmed the Petitioner's convictions and sentence on direct appeal, and our supreme court denied further review on June 6, 2018.

B. POST-CONVICTION PROCEEDINGS

On March 15, 2019, the Petitioner filed a petition for post-conviction relief that was later amended. As is relevant to this appeal, the Petitioner asserted that his conviction was obtained, in part, on the use of a coerced confession. He also alleged that his trial counsel rendered ineffective assistance by (1) failing to cross-examine Ms. Harris properly and (2)

failing to present a “vocational expert” to testify that he could not have committed the crimes alleged because of a physical limitation.¹

1. Witness Testimony

The post-conviction court held a hearing on August 18, 2022, and the Petitioner’s first witness was Detective James Randolph. The detective testified that the Petitioner came to the police station voluntarily and waived his *Miranda* rights. The Petitioner changed his statement after being confronted with conflicting information from Ms. Harris’s interview. Detective Randolph denied using coercion or threats to make the Petitioner change his statement.

The second witness called by the Petitioner was his lead attorney at trial. Trial counsel testified that he reached out to both a medical expert and a vocational expert to testify about the Petitioner’s abilities regarding his missing left arm. However, neither expert was interested in meeting with the Petitioner while he was in jail. Trial counsel then explained that he did not seek another expert because he did not believe the testimony would be of much value and did not feel that he could find another expert to testify.

In addition, trial counsel testified it was “open and obvious” that the Petitioner did not have an arm. In addition, trial counsel noted that co-counsel questioned another witness, Nicole Dixon, about the Petitioner’s physical limitations. Ms. Dixon had testified at trial that the Petitioner “couldn’t tie his shoes. He couldn’t dress himself.” Trial counsel stated that this testimony was “counter evidence” to Ms. Harris’s testimony about the Petitioner’s dexterity with his remaining arm.

Trial counsel further testified that he did not cross-examine Ms. Harris because her testimony was favorable and supported his theory that the Petitioner acted in defense of a third person. In addition, trial counsel did not wish to allow Ms. Harris to change her testimony or to attack her credibility while arguing that she was truthful about other matters. Finally, trial counsel testified that this was not a decision he made lightly and that he discussed the decision with the Petitioner and co-counsel.

¹ In his original and amended post-conviction petitions, the Petitioner raised several claims for relief, but he presents only three issues on appeal. As such, our opinion here focuses only on the issues raised for decision in this Court. *See State v. Bristol*, 654 S.W.3d 917, 923 (Tenn. 2022) (“[A]n appellate court’s authority ‘generally will extend only to those issues presented for review.’” (quoting Tenn. R. App. P. 13(b))).

The Petitioner next called co-counsel, who assisted trial counsel and represented the Petitioner pro bono. Co-counsel confirmed that the defense was surprised by how favorable Ms. Harris's testimony was for the Petitioner. He also mentioned that they did not have a strong argument for cross-examining Ms. Harris and were concerned that the State might have spent time preparing her for redirect examination.

Co-counsel explained that they did not call a vocational expert to testify about the Petitioner's physical limitations because the jury could easily see that he was missing an arm. Additionally, they chose not to call a vocational expert because they believed the State would present its own expert with an opposing viewpoint, thereby leading to conflicting testimony.

The Petitioner also testified at the hearing. The Petitioner explained that he lost his left arm in a shooting in Chicago. His dexterity has since been affected by buckshot in his right hand, and he testified that he could not tie his shoes due to the limitation. He asserted that it would have been impossible for him to have tied up the victim.

The Petitioner denied that trial counsel discussed the decision not to cross-examine Ms. Harris with him. He believed Ms. Harris lied in her testimony because he did not recall going to the victim's house. Instead, he remembered being in a hotel room with Ms. Harris, where she took money from a nightstand and left.

When his post-conviction attorney pointed out a contradiction between his statement to law enforcement and his post-conviction testimony, the Petitioner only recalled saying he was at the hotel. The Petitioner also mentioned that Detective Randolph told him that confessing was the only way to protect his family from harassment.

2. Denial of Post-Conviction Relief and Appeal

On September 22, 2022, after considering the arguments and evidence, the post-conviction court issued a written order denying the Petitioner's claims for relief. The court first accredited trial counsel's testimony and concluded that he was not ineffective in failing to call an expert to testify about his physical limitations. The court noted that a medical-limitation defense was contradicted by the Petitioner's confession and Ms. Harris's testimony. Additionally, the court observed that the Petitioner's physical abilities, as demonstrated during the post-conviction hearing, were not consistent with a medical-limitation defense.

The post-conviction court also found that trial counsel was not ineffective in failing to cross-examine Ms. Harris. The court again accredited trial counsel's testimony that, after review, he believed that not cross-examining Ms. Harris would help "lock down" the

positive aspects of her testimony and prevent her from changing it. This approach also prevented the prosecution from having an opportunity to redirect or rehabilitate her testimony. The post-conviction court concluded that this decision was “a reasonable approach.”

On October 4, 2022, the Petitioner filed a timely notice of appeal to this Court.

STANDARD OF APPELLATE REVIEW

Our supreme court has recognized that “the first question for a reviewing court on any issue is ‘what is the appropriate standard of review?’” *State v. Enix*, 653 S.W.3d 692, 698 (Tenn. 2022). As our supreme court has made clear,

Appellate review of an ineffective assistance of counsel claim is a mixed question of law and fact that this Court reviews de novo. Witness credibility, the weight and value of witness testimony, and the resolution of other factual issues brought about by the evidence are entitled to a presumption of correctness, which is overcome only when the preponderance of the evidence is otherwise. On the other hand, we accord no presumption of correctness to the post-conviction court’s conclusions of law, which are subject to purely de novo review.

Phillips v. State, 647 S.W.3d 389, 400 (Tenn. 2022) (citations omitted).

ANALYSIS

A. SUPPRESSION OF THE PETITIONER’S CONFESSION

The Petitioner first argues that the admission of his statement to law enforcement violated the Fifth Amendment to the United States Constitution because it was “coerced and not voluntary.” For its part, the State argues that the Petitioner waived this issue because he failed to raise this claim on direct appeal. It also asserts that neither of the statutory exceptions to waiver apply. *See* Tenn. Code Ann. § 40-30-106(g)(1)-(2). We agree with the State.

The Tennessee Post-Conviction Procedure Act (the “Act”) offers an avenue for relief “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.” Tenn. Code Ann. § 40-30-103. In a post-conviction proceeding, the petitioner

bears the burden of proving his or her allegations by clear and convincing evidence. *Id.* § 40-30-110(f). For evidence to be clear and convincing, “it must eliminate any ‘serious or substantial doubt about the correctness of the conclusions drawn from the evidence.’” *Arroyo v. State*, 434 S.W.3d 555, 559 (Tenn. 2014) (quoting *State v. Sexton*, 368 S.W.3d 371, 404 (Tenn. 2012)).

That said, a post-conviction claim may be dismissed if it has been waived. Tennessee Code Annotated section 40-30-106(g) provides that “[a] ground for relief is waived if the petitioner personally or through an attorney failed to present it for determination in any proceeding before a court of competent jurisdiction in which the ground could have been presented.” We have recognized that “section 40-30-106(g) seeks to prevent post-conviction proceedings from being used as a substitute for direct review and appeal. Essentially, a defendant may not withhold constitutional claims at trial for later litigation in post-conviction proceedings.” *Woodard v. State*, No. M2022-00162-CCA-R3-PC, 2022 WL 4932885, at *3 (Tenn. Crim. App. Oct. 4, 2022), *no perm. app. filed*; *see also* Tenn. Code Ann. § 40-30-110(f) (“There is a rebuttable presumption that a ground for relief not raised before a court of competent jurisdiction in which the ground could have been presented is waived.”); *Brown v. State*, 489 S.W.2d 268, 270 (Tenn. Crim. App. 1972) (“Our procedure does not permit one the practice of deliberately withholding the timely assertion of his Constitutional rights upon his trial, to save them back for post-conviction attack in the event of a conviction.”).

In this case, the Petitioner could have properly presented this stand-alone claim to the original trial court because the claim existed at the time of his trial. He also failed to raise this claim in his direct appeal. Because this claim could have been previously presented to a court of competent jurisdiction for resolution, we conclude that the Petitioner has waived this stand-alone claim as a ground for post-conviction relief. *See Woodard*, 2022 WL 4932885, at *3; *Polochak v. State*, No. M2018-01524-CCA-R3-PC, 2019 WL 5692112, at *5 (Tenn. Crim. App. Nov. 4, 2019), *perm. app. denied* (Tenn. Mar. 26, 2020).

B. INEFFECTIVE ASSISTANCE OF COUNSEL

Next, the Petitioner alleges that trial counsel rendered ineffective assistance when counsel failed to cross-examine Ms. Harris. He also contends that trial counsel’s failure to call a vocational expert to testify regarding his inability to use his left arm similarly constitutes ineffective assistance of counsel.

For its part, the State contends that trial counsel “made a reasoned and strategic decision not to cross-examine Ms. Harris” and that the Petitioner failed to show that trial counsel’s decision prejudiced him. As to the failure to call a vocational expert, the State

argues that the Petitioner failed to show prejudice because he did not call an expert to testify at the post-conviction hearing. We again agree with the State.

Article I, section 9 of the Tennessee Constitution establishes that every criminal defendant has “the right to be heard by himself and his counsel.” Similarly, the Sixth Amendment to the United States Constitution, made applicable to the states by the Fourteenth Amendment, guarantees that all criminal defendants “shall enjoy the right . . . to have the [a]ssistance of [c]ounsel.” “These constitutional provisions guarantee not simply the assistance of counsel, but rather the reasonably effective assistance of counsel.” *Nesbit v. State*, 452 S.W.3d 779, 786 (Tenn. 2014). Accordingly, a petitioner’s claim that he or she has been deprived “of effective assistance of counsel is a constitutional claim cognizable under the Post-Conviction Procedure Act.” *Moore v. State*, 485 S.W.3d 411, 418 (Tenn. 2016); *see also Howard v. State*, 604 S.W.3d 53, 57 (Tenn. 2020).

“To prevail on a claim of ineffective assistance of counsel, a petitioner must establish both that counsel’s performance was deficient and that counsel’s deficiency prejudiced the defense.” *Moore*, 485 S.W.3d at 418-19 (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Goad v. State*, 938 S.W.2d 363, 369 (Tenn. 1996)). A petitioner may establish that counsel’s performance was deficient by showing that “counsel’s representation fell below an objective standard of reasonableness.” *Garcia v. State*, 425 S.W.3d 248, 256 (Tenn. 2013) (quoting *Strickland*, 466 U.S. at 688). As our supreme court has also recognized, this Court must look to “all the circumstances” to determine whether counsel’s performance was reasonable and then objectively measure this performance “against the professional norms prevailing at the time of the representation.” *Kendrick v. State*, 454 S.W.3d 450, 457 (Tenn. 2015) (quoting *Strickland*, 466 U.S. at 688).

“If the advice given or services rendered by counsel are ‘within the range of competence demanded of attorneys in criminal cases,’ counsel’s performance is not deficient.” *Phillips*, 647 S.W.3d at 407 (quoting *Baxter v. Rose*, 523 S.W.2d 930, 936 (Tenn. 1975)). Notably, because this inquiry is highly dependent on the facts of the individual case, “[c]onduct that is unreasonable under the facts of one case may be perfectly reasonable under the facts of another.” *State v. Burns*, 6 S.W.3d 453, 462 (Tenn. 1999).

In addition, a petitioner must establish that he or she has been prejudiced by counsel’s deficient performance such that the performance “render[ed] the result of the trial unreliable or the proceeding fundamentally unfair.” *Kendrick*, 454 S.W.3d at 458 (quoting *Lockhart v. Fretwell*, 506 U.S. 364, 372 (1993)). In other words, a petitioner “must establish ‘a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.’” *Davidson v. State*, 453 S.W.3d 386, 393-94 (Tenn. 2014) (quoting *Strickland*, 466 U.S. at 694). “A reasonable probability is

a probability sufficient to undermine confidence in the outcome.” *Howard*, 604 S.W.3d at 58 (quoting *Strickland*, 466 U.S. at 694).

Importantly, when considering a claim of ineffective assistance of counsel, this Court begins with “the strong presumption that counsel provided adequate assistance and used reasonable professional judgment to make all strategic and tactical significant decisions.” *Davidson*, 453 S.W.3d at 393. “The petitioner bears the burden of overcoming this presumption.” *Kendrick*, 454 S.W.3d at 458. This Court 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.” *Berry v. State*, 366 S.W.3d 160, 172 (Tenn. Crim. App. 2011) (citation omitted). Of course, “the fact that a particular strategy or tactic failed or hurt the defense, does not, standing alone, establish unreasonable representation.” *Goad*, 938 S.W.2d at 369. However, this Court will defer to the tactical decisions of counsel only if counsel’s choices were made after adequate preparation of the case. *Moore*, 485 S.W.3d at 419.

In this case, we address each of the Petitioner’s claims in turn.

1. Cross-Examination of Ms. Harris

The Petitioner first argues that trial counsel rendered ineffective assistance because he failed to cross-examine Ms. Harris. The Petitioner argues that trial counsel left important parts of Ms. Harris’s trial testimony unrefuted. Conversely, the State argues that trial counsel made a reasonable, strategic decision not to cross-examine Ms. Harris. The State also contends that the Petitioner did not meet his burden of establishing that he was prejudiced by trial counsel’s decision because “the petitioner did not present any witness at the post-conviction hearing to establish how he would have benefited by any particular question on cross-examination.” We agree with the State.

Counsel’s decision regarding the manner and subject matter of cross-examination “is a strategic or tactical choice, if informed and based upon adequate preparation.” *Brown v. State*, No. W2021-01331-CCA-R3-PC, 2022 WL 16919956, at *8 (Tenn. Crim. App. Nov. 14, 2022), *perm. app. denied* (Tenn. Mar. 9, 2023). As such, “strategic decisions during cross-examination are judged from counsel’s perspective at the point of time they were made in light of all the facts and circumstances at that time.” *Reeves v. State*, No. M2004-02642-CCA-R3-PC, 2006 WL 360380, at *10 (Tenn. Crim. App. Feb. 16, 2006), *perm. app. denied* (Tenn. May 30, 2006).

When evaluating trial counsel’s performance on cross-examination, the petitioner must show “what additional beneficial evidence could have been elicited” through his or her preferred cross-examination. *See Ortiz v. State*, No. M2020-01642-CCA-R3-PC, 2021

WL 5080514, at *4 (Tenn. Crim. App. Nov. 2, 2021), *perm app. denied* (Tenn. Jan. 14, 2022). This means simply that a petitioner should first provide “specifics regarding what questions trial counsel should have asked” the witness. *McDonald v. State*, No. E2016-02565-CCA-R3-PC, 2017 WL 4349453, at *4 (Tenn. Crim. App. Sept. 29, 2017), *no perm. app. filed*. In addition, the petitioner must also present that witness at the post-conviction evidentiary hearing to show how the witness would have responded to trial counsel’s questioning. *See Brown*, 2022 WL 16919956, at *8; *Britt v. State*, No. W2016-00928-CCA-R3-PC, 2017 WL 1508186, *4, *7 (Tenn. Crim. App. Apr. 25, 2017), *no perm. app. filed*.

In this case, the Petitioner complains that trial counsel’s decision not to cross-examine Ms. Harris left the following areas unrefuted: that Ms. Harris was afraid of the Petitioner; that the victim had done nothing to Ms. Harris; that the Petitioner “always” carried a metal stick and hit the victim with it; and that the Petitioner tied up the victim. However, the Petitioner does not identify any specific questions that trial counsel should have asked her about these areas. More importantly, the Petitioner did not present Ms. Harris as a witness at the post-conviction hearing. This omission is significant because, without her testimony, we cannot know how Ms. Harris would have answered had she been asked questions in the areas suggested by the Petitioner. Because we may not speculate how she would have testified, we conclude that the Petitioner has failed to show that he suffered prejudice from trial counsel’s decision not to cross-examine Ms. Harris. *Black v. State*, 794 S.W.2d 752, 757 (Tenn. Crim. App. 1990).

Nevertheless, the Petitioner argues that prejudice should be presumed pursuant to *United States v. Cronin*, 466 U.S. 648 (1984). He argues that trial counsel’s failure to cross-examine Ms. Harris “was so extreme that a presumption of prejudice would be appropriate without inquiry in the actual conduct of the trial.” We respectfully disagree.

In *Cronin*, the United States Supreme Court held that a presumption of prejudice may apply to a deprivation of the Sixth Amendment right to counsel when, among other things, there has been a complete failure to subject the State’s case to adversarial testing. *Cronin*, 466 U.S. at 658-60. However, the Supreme Court has since clarified that counsel’s “failure to test the prosecutor’s case . . . must be complete” and must have occurred “throughout the . . . proceeding as a whole” rather than “at specific points.” *Bell v. Cone*, 535 U.S. 685, 697 (2002). Thus, even where counsel fails to cross-examine a particular witness, a *Cronin* violation is not present where counsel otherwise “negotiated with the State prior to trial, cross-examined most of the witnesses presented by the State, made objections, called witnesses on the defendant’s behalf, and made a compelling closing argument.” *State v. Frye*, No. E2019-00686-CCA-R3-CD, 2021 WL 1971982, at *26 (Tenn. Crim. App. May 17, 2021), *perm. app. denied* (Tenn. Sept. 22, 2021).

The Petitioner's claims do not come close to establishing a *Cronic* violation. As the post-conviction court found, trial counsel made a reasonable strategic decision not to cross-examine Ms. Harris to prevent her from changing favorable testimony. Beyond this strategic decision, however, counsel effectively tested the State's case by making evidentiary objections and cross-examining other witnesses.² In the Petitioner's case-in-chief, trial counsel also called witnesses to testify about the Petitioner's physical limitations. He further presented closing arguments that attempted to blame Ms. Harris and asserted that the Petitioner lacked any motive or intent to rob or kill Mr. Gunter. In so doing, he urged an acquittal from the lack of forensic evidence and the disputed nature of Mr. Gunter's injuries. Nothing in the record establishes that trial counsel completely failed to test the State's case throughout the entire trial. Respectfully, the Petitioner's claim is wholly without merit. *See Leach v. State*, No. M2008-02386-CCA-R3-PD, 2010 WL 2244113, at *24 (Tenn. Crim. App. June 4, 2010) (“[T]he Appellant proffered no proof during the post-conviction hearing to counter counsel’s decisions regarding cross-examination. To claim now that his trial counsel *entirely* abandoned his defense ignores the evidence to the contrary which is replete throughout the record.”), *perm. app. denied* (Tenn. Oct. 18, 2010). Therefore, we affirm the post-conviction court’s judgment denying relief on this ground.

2. Vocational Expert

Finally, the Petitioner argues that trial counsel was ineffective because he did not call an expert vocational witness to testify at trial. The Petitioner contends that this expert could have testified about the Petitioner's physical limitations from his missing arm.

It is well established that when a petitioner contends trial counsel failed to discover, interview, or present a witness supporting his defense, the petitioner must generally call that witness to testify at an evidentiary hearing. *Black*, 794 S.W.2d at 752. Indeed, this is the only way a petitioner can establish

that (a) a material witness existed and the witness could have been discovered but for counsel's neglect in his investigation of the case, (b) a known witness was not interviewed, (c) the failure to discover or interview a witness inured to his prejudice, or (d) the failure to have a known witness present or call the

² *See Felts v. State*, 354 S.W.3d 266, 275 n.2 (Tenn. 2011) (observing that a court “may take judicial notice of prior proceedings” in a post-conviction case, even when “the trial record was not introduced at the post-conviction proceeding”).

witness to the stand resulted in the denial of critical evidence which inured to the prejudice of the petitioner.

Id. at 757; *see also Taylor v. State*, 443 S.W.3d 80, 85 (Tenn. 2014).

These principles “apply equally to claims that trial counsel should have retained or called an expert witness to testify.” *Brown*, 2022 WL 16919956, at *9. However, the Petitioner here did not present the testimony of a vocational expert at the post-conviction hearing. Because we may not speculate that any such expert existed or how this expert may have testified, we conclude that the Petitioner has failed to establish how he was prejudiced by trial counsel’s decision not to call an expert to testify. *Delosh v. State*, No. W2019-01760-CCA-R3-PC, 2020 WL 5667487, at *9 (Tenn. Crim. App. Sept. 23, 2020) (“Initially, we note, that the petitioner failed to present an expert at the post-conviction hearing. As previously stated, a petitioner who claims ineffective assistance of counsel for failing to call a witness must present the witness during the post-conviction hearing.” (citing *Black*, 794 S.W.2d at 757)), *perm. app. denied* (Tenn. Jan. 14, 2021). Therefore, we affirm the post-conviction court’s judgment denying relief on this ground.

CONCLUSION

In summary, we hold that the Petitioner has waived any issue related to the admission of his pretrial statement to law enforcement officers. We also hold that the post-conviction court properly found that the Petitioner was not denied the effective assistance of counsel during his trial. Accordingly, because the Petitioner’s convictions or sentences are not void or voidable because of a violation of a constitutional right, we respectfully affirm the denial of post-conviction relief in all respects.

TOM GREENHOLTZ, JUDGE