IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs February 23, 2017

CAMERON COOK v. STATE OF TENNESSEE

Appeal from the Criminal Court for Knox County
No. 105768 Bob R. McGee, Judge

No. E2016-00826-CCA-R3-PC

The petitioner, Cameron Cook, appeals the denial of post-conviction relief from his 2012 Knox County Criminal Court jury convictions of attempted first degree murder and employing a firearm during the commission of a dangerous felony, for which he received a sentence of 30 years. In this appeal, the petitioner contends only that he was denied the effective assistance of counsel. Discerning no error, we affirm.

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

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which D. KELLY THOMAS, JR., and ROBERT H. MONTGOMERY, JR., JJ., joined.

Leslie M. Jeffers, Knoxville, Tennessee, for the appellant, Cameron Cook.

Herbert H. Slatery III, Attorney General and Reporter; Renee W. Turner, Assistant Attorney General; Charme P. Allen, District Attorney General; and TaKisha Fitzgerald, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Originally charged with attempted first degree murder, theft, driving with a suspended license, possession of cocaine, possession of marijuana, two counts of employing a firearm during the commission of a dangerous felony, and two counts of evading arrest, a Knox County Criminal Court jury convicted the petitioner of two counts of evading arrest and one count each of employing a firearm during the commission of a dangerous felony, driving with a suspended license, possession of cocaine, and possession of marijuana; the jury acquitted the petitioner of theft and was unable to reach a verdict on the charges of attempted first degree murder and the second count of employing a firearm during the commission of a dangerous felony, and the trial court declared a mistrial as to those two charges. Nearly three months later, the petitioner was

tried by another Knox County Criminal Court jury, which convicted him of attempted first degree murder and employing a firearm during the commission of a dangerous felony, and the trial court imposed a 30-year sentence. This court affirmed the convictions on direct appeal. *See State v. Cameron Cook*, No. E2012-02617-CCA-R3-CD (Tenn. Crim. App., Knoxville, Feb. 21, 2014), *perm. app. denied* (Tenn. June 23, 2014).

In *Cameron Cook*, this court stated the facts of the case as follows:

> On February 26, 2011, Officer Andrew Olson of the Knoxville Police Department [("KPD")] was on patrol when he received a call from another officer that the [petitioner] was driving a stolen green Volkswagen. Officer Olson was aware that the [petitioner] had an outstanding warrant at the time. Officer Olson observed a green Volkswagen driving in the opposite direction on Martin Luther King, Jr. Avenue and began following the car in an attempt to verify whether it was the stolen vehicle. He lost sight of the car for about a minute and then caught up with it at a red light. As Officer Olson positioned his car behind the Volkswagen at the red light, the driver, later determined to be the [petitioner], ran the red light. Officer Olson activated his blue lights, and a pursuit ensued. Officer Olson reported the pursuit to dispatch and requested assistance from additional officers.
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> During the pursuit, Officer Olson observed the [petitioner] make several movements toward the passenger side of the car "not typical with operating a vehicle." The [petitioner] pulled his hood of his sweatshirt up on his head, turned down several streets, and then turned west onto Washington Pike. The [petitioner] abruptly stopped the car and got out with a shotgun. Officer Olson exited his car and the [petitioner] shot him in the leg. He crawled to the back of his car and observed the [petitioner] flee on foot into a nearby neighborhood. At that time, other officers arrived on the scene and rendered aid to Officer Olson.
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> George Donahue testified that on the day of the offense he was traveling east on Washington Pike when he saw a green Volkswagen being pursued by a police car. He said, "[T]hey pulled out in traffic[] [a]nd the [petitioner]

jumped out of the car, went toward the rear. And I heard [a] sound like two gunshots . . . [T]hen [the petitioner] turned r[a]n back toward me carrying the shotgun in his right hand." After the [petitioner] fled the scene, Mr. Donahue got out of his car to check on the police officer and saw that the officer was "bleeding pretty bad" from a wound to his right leg.

Lisa Lane testified that her family owns a store on the corner of Washington Pike and Alice Bell Road, very close to where the offense occurred. She stated that on the morning of the offense, she drove to her family's store with her young son to pick up a few items. As she was about to leave the parking lot, she heard a police siren and saw a police car following a green car. She thought it was a routine traffic stop and looked down to get her keys. She then heard a gunshot and looked up. She saw a man, whom she identified in court as the [petitioner], standing diagonally to the police car and observed him fire a second shot in the direction of the police car. She recalled that the gun was pointed "directly to [] the front door . . . directly to the policeman." She explained that it really scared her because "it was a really big rifle and I knew being that close, it was just too dangerous that – that the policeman had to be shot or killed, hurt." After the [petitioner] shot the police officer, he ran in the opposite direction, towards Ms. Lane and her son. She quickly pulled out of the parking lot and drove away, keeping an eye on the [petitioner] in the rearview mirror. She observed the [petitioner] carrying the gun as he ran from the scene. On cross-examination, she acknowledged that she did not see the first shot and could not recall whether the police car door was open or closed at the time of the shooting.

Matthew Turner testified that on the morning of the offense, he was traveling on Washington Pike when he saw a police car with its blue lights activated following a green Volkswagen on Alice Bell Road. The two cars turned onto Washington Pike in front of Mr. Turner and abruptly stopped. He saw the police officer and the driver of the car get out of their cars and then heard two gunshots. After the [petitioner] fled the scene, Mr. Turner got out of his car and tried to help the officer until help arrived. He stated that the officer

> "wasn't in good shape . . . he was shot in the thigh [and] looked in pain." On cross-examination, he stated that the [petitioner] looked scared as he got out of his car and recalled that he held the gun at about hip level. On redirect, he further testified that he believed the [petitioner] intended to shoot the officer because "if you get out of a car with a gun, point it at someone that's – that just seems like to me, that's what he was intend[ing] to do."

Cameron Cook, slip op. at 2-3. KPD officers responded to the scene and, acting on a report from an area resident, located the petitioner fleeing from a nearby neighborhood. *Id.*, slip op. at 3. The petitioner ignored the officers' commands to stop, and the officers chased the petitioner on foot before catching him and taking him into custody. *Id.*

Once apprehended, the petitioner told officers that "he was the passenger in the car and that another man had done the shooting and then carjacked a silver car to flee the scene," a story which officers later determined to be false. *Id.*, slip op. at 3. KPD Officer Brian Leatherwood "testified that at the time of the [petitioner's] arrest, he did not appear to be intoxicated" and that the petitioner "was able to communicate with the officers and his speech was not slurred." *Id.* Officer Leatherwood did concede that the petitioner "was talking fast" when he was captured and that he had vomited in the officer's patrol car after being arrested. *Id.*

> The officers recovered a shotgun and a cell phone in a large shrub near where the shooting took place. Inside of the Volkswagen, police officers found marijuana and cocaine. The [petitioner's] cell phone records confirmed that the [petitioner] used his cell phone to access the internet twice and call his mother and girlfriend multiple times in between the shooting and his arrest. After his arrest, the [petitioner] placed a phone call from the Knox County Jail to his girlfriend. During the call, the [petitioner's] girlfriend asked the [petitioner], "What made you do it?" The [petitioner] responded, "That m[*****]f[*****] was trying to get me." His girlfriend pressed the [petitioner] further and asked, "If the police didn't shoot at you, what made you do it?" He answered, "I don't know, but f[***] them."

Id., slip op. at 4.

Paul Lauderback, Jr., a "life-long father figure" to the petitioner, testified at trial that the petitioner had been shot and hospitalized a few weeks prior to his arrest and that his shooting had caused the petitioner to be fearful and scared "'to go out or anything.'" *Id.*, slip op. at 4. Mr. Lauderback admitted on cross-examination that the petitioner's shooting had taken place several months rather than several weeks prior to the officer's shooting. *Id.* Mr. Lauderback also acknowledged that the petitioner, while a teenager, had been placed in a group home for several years by the juvenile court "for the illegal possession of a handgun"; that the petitioner "had led police on car chases in the past"; that the petitioner had an outstanding warrant for his arrest at the time of the officer's shooting; and that the petitioner had been incarcerated while he was an adult. *Id.*

The petitioner testified at trial and admitted to fleeing from and shooting Officer Olson. *Id.*, slip op. at 4. The petitioner stated that he was 18 years old at the time of the shooting. *Id.* He explained that, prior to the shooting, he had been shot "by a masked man on the street and started 'taking a lot of drugs . . . using ecstasy [and] smoking marijuana' so that he would not feel stressed out or worried." *Id.*, slip op. at 5. The petitioner testified about his actions on the day of the officer's shooting thusly:

> The [petitioner] admitted that he borrowed the green Volkswagen from a friend on the day of the offense, but denied knowing that it was stolen. He explained that he was using the car to drive to the store and to his mother's house, and that he brought the shotgun with him to defend himself in case he encountered the masked man that shot him. He asserted that he did not know that there was a warrant out for his arrest. He testified that he "was smoking marijuana and using ecstasy and a couple other drugs" that day, and estimated that he took "like four and a half, almost five [ecstasy] pills" that morning. When asked whether he felt the influence of drugs while driving that day, he stated, "I was kind of, like, tired, you know, but I wasn't – I wasn't tired, my body was tired, but I wasn't tired." The [petitioner] recalled that he wrecked the car while being pursued by Officer Olson but did not know why he fled from the officer. He testified that he finally stopped because the car got a flat tire and "was barely moving." He admitted that he shot the shotgun twice, but claimed that he was not aiming at Officer Olson and did not intend to harm him. He testified, "I was just shooting – just free shooting. . . . I was not trying to shoot that man. I was not trying to kill him in no way. I was

not trying to harm him. . . . I wasn't trying to aim it at him, it just – it's like he just jumped out there into the shot[.]"

The [petitioner] testified that Officer Olson was still in his patrol car when he fired the first shot, and that he fired "out towards the side of the car, like, down the street." He asserted that Officer Olson opened his door and jumped out of the patrol car at the same time that the [petitioner] fired the second shot, which is when the officer was hit. After shooting the officer, the [petitioner] claimed that he turned to run and pulled the trigger a third time but the gun was empty. He maintained that he was not trying to shoot the officer again. He acknowledged that he told officers that another suspect was involved when he was taken into custody, but stated that he "wasn't thinking" and "didn't really understand what was going on." He asserted that the video after his arrest shows him talking faster than normal, which he claimed to be a result of the drugs in his system. He maintained that he did not realize why he was in jail until several days later because he was in withdrawal from the drugs he had been using.

On cross-examination, the [petitioner] acknowledged that he was not supposed to be driving because his license was suspended and that he was aware that it was illegal for him to have the shotgun. When asked whether Officer Olson's shooting was his fault, the [petitioner] stated, "Not exactly. . . . It's really nobody's fault." He agreed that he applied the brakes and stopped the car, put the car in park, and grabbed the shotgun off of the passenger floorboard knowing that it was loaded and ready to fire. He maintained that he did not intend to scare Officer Olson or harm him in any way. He agreed that he knew he would likely go to jail if apprehended by Officer Olson and wanted to get away from the officer. He also acknowledged that he pulled the trigger a third time after Officer Olson had been shot, and agreed that it was still pointing in the same direction as Officer Olson but insisted that he was not trying to shoot him again.

Id., slip op. at 5-6.

On June 22, 2015, the petitioner filed, pro se, a timely petition for post-conviction relief, alleging, *inter alia*, that he was deprived of the effective assistance of counsel. Following the appointment of counsel and the amendment of the petition, the post-conviction court conducted an evidentiary hearing on April 20, 2016.

At the evidentiary hearing, the petitioner testified that trial counsel was ineffective by failing to object to numerous instances of prosecutorial misconduct. Specifically, the petitioner stated that the prosecutor committed misconduct by "announc[ing]" or "us[ing]" his presentence report in the presence of the jury, which report referenced his prior juvenile criminal history; by informing the jurors that the shooting was the fault of the petitioner and not the victim; by stating that the petitioner "didn't learn from [his] stint in the group home"; and by commenting that the petitioner "was shot around the same time someone else was shot and placing [him] around there or using that to say the reason that that situation happened." The petitioner opined that statements such as these "prejudiced" the jury against him and portrayed him as possessing bad character. The petitioner testified that if trial counsel had objected to any of these statements at trial, there was "a rich possibility" that the outcome of his case would have been different.

With respect to sentencing, the petitioner testified that he had been erroneously sentenced as a Range II offender for the Class C felony of employing a firearm during the commission of a dangerous felony. The petitioner believed that, because he had no prior convictions as an adult, he should have received a Range I sentence of three to six years instead of a Range II, eight-year sentence. According to the petitioner, trial counsel's failure to raise this issue in the motion for new trial precluded appellate counsel from raising it on appeal.

The petitioner also testified that trial counsel was ineffective by failing to object to Officer Olson's testimony that he had undergone "numerous surgeries" when "no medical records or no documents or nothing [was] presented to prove that he had numerous surgeries." The petitioner stated that trial counsel had not provided him with any of his discovery materials until after the conclusion of both of his trials.

The petitioner testified that he had been evaluated by a psychologist, Doctor Pamela Jones, prior to his trial but that Doctor Jones had been unable to offer a professional opinion as to whether the narcotics the petitioner had been taking on the day of the offense had been "mind altering." The petitioner believed that if trial counsel had located an expert witness who could have testified to the mind-altering effects of the drugs the petitioner had taken, then he might have received a lighter sentence.

On cross-examination, the petitioner initially was argumentative and refused to answer any of the prosecutor's questions. Following a brief recess, the petitioner began responding to the prosecutor's questions. The petitioner admitted that he did not have the name of an expert witness who could have supported his claim of being under the influence of mind-altering drugs, and he conceded that he had no expert present to testify on his behalf at the evidentiary hearing.

Trial counsel testified that he had practiced law for over 30 years, that he primarily handled criminal defense matters, and that he had represented the petitioner at both of his trials in the underlying matter. Trial counsel did not recall much about Doctor Jones's evaluation of the petitioner or her potential trial testimony regarding voluntary intoxication. Trial counsel testified that he did not believe there was "a lot of evidence that the [petitioner] was intoxicated." Trial counsel did not recall whether the prosecutor had made any statements at trial that were reflective of her personal opinions, but he stated that he typically was "not bashful about objecting" should he hear statements that were in fact objectionable. With respect to the lack of Officer Olson's medical records, trial counsel stated that he did not recall whether he had obtained the records but he did not believe that such records would have been a priority because "it would have just inflamed the jury even more, if we'd made an issue out of how many surgeries he had."

With this evidence, the post-conviction court denied relief, finding no clear and convincing evidence that the defendant's rights were violated with respect to his sentencing, to any prosecutorial misconduct, or to the failure to provide medical records confirming the victim's surgeries. With regard to the expert testimony, the court found that trial counsel "did what he could to get" the issue of voluntary intoxication negating the petitioner's ability to premeditate before the jury but that it would be "pure speculation" that trial counsel could have found another expert to establish such evidence. The post-conviction court concluded its findings as follows:

> So the [c]ourt finds that the – neither the ineffective assistance of counsel argument, nor the prosecutorial misconduct argument are supported by clear and convincing evidence sufficient to establish a violation of a Constitutional right of [the petitioner's].
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> The [c]ourt would further rule that even if – even if some – some errors were made in the – in the trial, the [petitioner] would still have to establish actual prejudice. And given the fact that – as the [petitioner] finally conceded, the jury was shown a video of him actually getting out of the car, turning toward the victim, raising the shotgun and

> shooting him and then, of course, taking him down. And then he walked over and shot him again.
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> In light of that evidence, this [c]ourt could not find that any of these claimed errors would have been – would have been actually prejudicial. They would have been harmless, in this [c]ourt's view, in light of the overwhelming evidence of the [petitioner's] guilt.

In this appeal, the petitioner reiterates his claim of ineffective assistance of counsel, claiming that trial counsel performed deficiently by failing to object to the prosecutor's inflammatory statements, by failing to challenge his sentencing, by failing to locate a favorable expert witness, and by failing to provide him with his discovery materials. The State contends that the court did not err by denying relief.

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." *Strickland*, 466 U.S. 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) (citing *Strickland*, 466 U.S. at 689), 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).

A claim of ineffective assistance of counsel is a mixed question of law and fact. *Kendrick*, 454 S.W.3d at 457; *Lane v. State*, 316 S.W.3d 555, 562 (Tenn. 2010); *State v. Honeycutt*, 54 S.W.3d 762, 766-67 (Tenn. 2001); *State v. Burns*, 6 S.W.3d 453, 461 (Tenn. 1999). When reviewing the application of law to the post-conviction court's factual findings, our review is de novo, and the post-conviction court's conclusions of law are given no presumption of correctness. *Kendrick*, 454 S.W.3d at 457; *Fields*, 40 S.W.3d at 457-58; *see also State v. England*, 19 S.W.3d 762, 766 (Tenn. 2000).

In our view, the record fully supports the ruling of the post-conviction court. The petitioner's three-sentence argument regarding prosecutorial misconduct is not supported by argument, citation to authorities, or citation to the record; thus, it is waived. *See* Tenn. Ct. Crim. App. R. 10(b) ("Issues which are not supported by argument, citation to authorities, or appropriate references to the record will be treated as waived in this court."). That trial counsel did not challenge the petitioner's sentencing in his motion for new trial did not preclude petitioner's appellate counsel from raising the issue on direct appeal, which appellate counsel failed to do. Because the petitioner did not seek relief on the basis of the ineffective assistance of appellate counsel, he has likewise waived review of any error in sentencing. Regarding the expert testimony, the petitioner failed to present the testimony of an alternative expert at the evidentiary hearing. As such, we cannot speculate how such an expert might have testified at 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."). Finally, the petitioner failed to establish that he was prejudiced by trial counsel's alleged failure to provide him with his discovery materials. Given the overwhelming evidence against the petitioner, he cannot establish that, but for counsel's alleged errors, the outcome would have differed. *See Strickland*, 466 U.S. at 694. As

such, we hold the petitioner has failed to prove by clear and convincing evidence any facts that demonstrate that trial counsel's representation was deficient or prejudicial.

The petitioner failed to establish that he was denied the effective assistance of counsel at trial. Accordingly, the judgment of the post-conviction court is affirmed.

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JAMES CURWOOD WITT, JR., JUDGE