

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs March 26, 2014

JOHN E. LANE v. STATE OF TENNESSEE

**Appeal from the Circuit Court for Grainger County
No. 5268 O. Duane Slone, Judge**

No. E2013-01788-CCA-R3-PC - Filed April 7, 2014

Petitioner, John E. Lane, stands convicted of one count of first degree murder. The trial court imposed an effective sentence of life imprisonment in the Tennessee Department of Correction. On appeal, petitioner argues that he received ineffective assistance of counsel when trial counsel failed to object to two pictures of the deceased victim's body and wounds that were displayed on a projector during the trial. Following our review of the parties' arguments, the record, and the applicable law, we affirm the judgment of the post-conviction court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

ROGER A. PAGE, J., delivered the opinion of the court, in which CAMILLE R. MCMULLEN and JEFFREY S. BIVINS, JJ., joined.

Pepper Bowser, Rutledge, Tennessee, for the appellant, John E. Lane.

Robert E. Cooper, Jr., Attorney General and Reporter; Ahmed A. Safeullah, Assistant Attorney General; James B. Dunn, District Attorney General; and Tonya D. Thornton, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Facts

A. Trial

At trial, the proof showed that petitioner shot the victim, Joe Brooks, in the victim's home on January 25, 2007. *State v. John E. Lane*, E2009-02225-CCA-R3-CD, 2011 WL 2120120, *1-4 (Tenn. Crim. App. May 24, 2011). The victim's girlfriend, Cindy Woody,

stated that she was at the victim's home when petitioner and his brother arrived. *Id.* at *1. She asserted that she heard loud voices and that when she looked into the living room where petitioner and the victim were conversing, "she saw the [petitioner] stand and pull a gun out of his jacket pocket. The [petitioner] told the victim, 'You will never talk about me again,' then fired the gun." *Id.* Ms. Woody stated that as petitioner exited the home, he said, "'Now you can go check and see if he's dead.'" *Id.* However, petitioner claimed that he acted in self-defense. *Id.* at *3. He stated that he had known the victim for thirty years and knew of several instances of the victim's violence towards other individuals. *Id.* at *2-3. He explained that on January 25, 2007, when he visited the victim, an argument ensued, and the victim displayed a pistol. *Id.* at *3. Petitioner stated he heard the sound of a bullet being chambered into the weapon. *Id.* He fired his own weapon in response to the victim's actions. *Id.*

A jury found petitioner guilty of first degree murder and conspiracy to commit first degree murder. *Id.* at *4. Petitioner received concurrent sentences of life in prison and twenty years, respectively. *Id.* However, this court determined that there was insufficient evidence to support his conviction for conspiracy to commit first degree murder and reversed that conviction. *Id.* at *7. Petitioner now stands convicted of first degree murder. *Id.*

B. Post-Conviction Hearing

Petitioner filed his petition for post-conviction relief on May 29, 2012. The post-conviction court held an evidentiary hearing on April 22, 2013.¹

At the hearing, the State requested that the post-conviction court dismiss petitioner's allegation that trial counsel was ineffective for failing to object to the two photographs of the deceased victim. The State argued that the photographs were not "bloody and gruesome" and only showed one bullet wound. The State also argued that the pictures were relevant "because the exit wound [was] in the front, meaning he was shot in the back." The post-conviction court responded by stating that:

[The photographs were] not particularly gruesome or overly inflammatory. It's extremely probative of how the events transpired causing this victim's death. And any danger of unfair prejudice was outweighed by the extremely high

¹ Petitioner raised several allegations in the post-conviction court; however, he has abandoned all of those allegations on appeal except that trial counsel was ineffective by failing to object to two photographs of the deceased victim that were displayed on a projector during the trial. Therefore, our recitation of the facts from the post-conviction hearing will be limited to this issue.

probative value of these photographs.² Even if [trial counsel] had objected to the entry of these photographs, the Court would have overruled on that objection for the foregoing reasons, so that is -- there's no reason to go into any further proof. However, the Court will admit into this hearing the two photographs that are on one single page as Exhibit One.

Both petitioner and trial counsel testified later in the hearing, but neither testified regarding the two pictures. In the post-conviction court's order denying the petition, the court stated:

The Court finds that even if the photo had been objected to, it would have been admissible. The photo was not gruesome or inflammatory and was extremely probative. No proof was necessary on this allegation, [trial] counsel was not ineffective[,] and this allegation is over-ruled.

II. Analysis

As set forth earlier, petitioner argues that his trial counsel provided ineffective assistance by failing to object to two photographs of the deceased victim that were displayed on a projector during the trial. The State responds that the post-conviction court properly denied the petition for post-conviction relief. We agree with the State.

To obtain relief in a post-conviction proceeding, a petitioner must demonstrate that his or her "conviction or sentence is void or voidable because of the abridgement of any right guaranteed by the Constitution of Tennessee or the Constitution of the United States." Tenn. Code Ann. § 40-30-103. A post-conviction petitioner bears the burden of proving his or her factual allegations by clear and convincing evidence. Tenn. Code Ann. § 40-30-110(f). "Evidence is clear and convincing when there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence." *Lane v. State*, 316 S.W.3d 555, 562 (Tenn. 2010) (quoting *Grindstaff v. State*, 297 S.W.3d 208, 216 (Tenn. 2009)). As a mixed question of law and fact, this court's review of petitioner's ineffective assistance of counsel claims is de novo with no presumption of correctness. *Felts v. State*, 354 S.W.3d 266, 276 (Tenn. 2011) (citations omitted).

² The proper inquiry under Tennessee Rule of Evidence 403 is whether the "probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." However, it is clear from the post-conviction court's comments that the court ruled that the evidence met the Rule 403 standard for admissibility.

The Sixth Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment, and article I, section 9 of the Tennessee Constitution require that a criminal defendant receive effective assistance of counsel. *Cauthern v. State*, 145 S.W.3d 571, 598 (Tenn. Crim. App. 2004) (citing *Baxter v. Rose*, 523 S.W.2d 930 (Tenn. 1975)). When a petitioner claims that he received ineffective assistance of counsel, he must demonstrate both that his lawyer’s performance was deficient and that the deficiency prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Finch v. State*, 226 S.W.3d 307, 315 (Tenn. 2007) (citation omitted). It follows that if this court holds that either prong is not met, we are not compelled to consider the other prong. *Carpenter v. State*, 126 S.W.3d 879, 886 (Tenn. 2004).

To prove that counsel’s performance was deficient, petitioner must establish that his attorney’s conduct fell below an objective standard of “‘reasonableness under prevailing professional norms.’” *Finch*, 226 S.W.3d at 315 (quoting *Vaughn v. State*, 202 S.W.3d 106, 116 (Tenn. 2006)). As our supreme court held:

“[T]he assistance of counsel required under the Sixth Amendment is counsel reasonably likely to render and rendering reasonably effective assistance. It is a violation of this standard for defense counsel to deprive a criminal defendant of a substantial defense by his own ineffectiveness or incompetence. . . . Defense counsel must perform at least as well as a lawyer with ordinary training and skill in the criminal law and must conscientiously protect his client’s interest, undeflected by conflicting considerations.”

Id. at 315-16 (quoting *Baxter*, 523 S.W.2d at 934-35).

To prove that petitioner suffered prejudice as a result of counsel’s deficient performance, he “must establish a reasonable probability that but for counsel’s errors the result of the proceeding would have been different.” *Vaughn*, 202 S.W.3d at 116 (citing *Strickland*, 466 U.S. at 694). “A ‘reasonable probability is a probability sufficient to undermine confidence in the outcome.’” *Id.* (quoting *Strickland*, 466 U.S. at 694). As such, petitioner must establish that his attorney’s deficient performance was of such magnitude that he was deprived of a fair trial and that the reliability of the outcome was called into question. *Finch*, 226 S.W.3d at 316 (citing *State v. Burns*, 6 S.W.3d 453, 463 (Tenn. 1999)).

The post-conviction court found that trial counsel was not deficient for failing to object to the two photographs of the deceased victim. This determination is supported by the record. The post-conviction court placed the two photographs at issue in the record. One of the photographs shows an exit wound from a bullet on the front of the victim’s upper torso. The second photograph is also of the victim’s upper torso; however, there is a cloth covering

the injury. Trial counsel was not deficient for failing to object to the admission of these photographs because they were admissible pursuant to Tennessee Rules of Evidence 401 and 403.

Rule 401 defines relevant evidence as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Tenn. R. Evid. 401. Rule 403 states that “[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Tenn. R. Evid. 403.

The post-conviction court determined that the photographs were relevant under Rule 401 because they were “extremely probative of how the events transpired causing this victim’s death.” The court also determined that the photographs were admissible under Rule 403 because “any danger of unfair prejudice was outweighed by the extremely high probative value of these photographs.” Our review of the photographs supports the post-conviction court’s determination. Therefore, because the photographs were admissible, even if trial counsel had objected, he would have been unsuccessful. Petitioner has failed to prove that his attorney’s conduct fell below an objective standard of “reasonableness under prevailing professional norms.” *Finch*, 226 S.W.3d at 315 (quoting *Vaughn v. State*, 202 S.W.3d 106, 116 (Tenn. 2006)). Thus, petitioner has failed to show deficient performance, and his argument that he received ineffective assistance of counsel is without merit.

CONCLUSION

Based on the record and the applicable law, we affirm the judgment of the post-conviction court.

ROGER A. PAGE, JUDGE