

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs April 25, 2023

FILED

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Clerk of the
Appellate Courts

ANTHONY MARTIN v. STATE OF TENNESSEE

**Appeal from the Criminal Court for Knox County
No. 118070 G. Scott Green, Judge**

No. E2022-00688-CCA-R3-PC

Anthony D. Martin, Petitioner, was convicted of rape of a child and sentenced to 40 years in incarceration. His conviction and sentence were affirmed on direct appeal. *State v. Anthony Martin, Alias*, No. E2018-01066-CCA-R3-CD, 2019 WL 2714379, at *1 (Tenn. Crim. App. June 28, 2019), *perm. app. denied* (Tenn. Oct. 11, 2019). Petitioner sought post-conviction relief based on several alleged instances of ineffective assistance of counsel. The post-conviction court denied relief and dismissed the petition after a hearing. This appeal followed. After a review, we affirm the denial of post-conviction relief.

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

TIMOTHY L. EASTER, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., P.J., and TOM GREENHOLTZ, J., joined.

Gerald L. Gulley, Knoxville, Tennessee, for the appellant, Anthony Martin.

Jonathan Skrmetti, Attorney General and Reporter; Garrett D. Ward, Assistant Attorney General; Charme P. Allen, District Attorney General; and Nathaniel R. Ogle, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Petitioner was indicted on one count of rape of a child by the Knox County Grand Jury. Before trial there was a notice filed by the State pursuant to Tennessee Rule of Evidence 609 seeking to cross-examine Petitioner about his prior convictions for statutory rape by an authority figure, aggravated assault, and misdemeanor theft if he chose to testify. The trial court reserved a ruling on the motion. *Id.* at *1. At trial, the victim testified that he was a friend of Petitioner's son. *Id.* at *1-2. When the victim was 12, he spent the night

at Petitioner's house more than 10 times. The victim testified that Petitioner made him sleep in the bed with him and one of Petitioner's older sons each time he spent the night and that on one occasion Petitioner anally raped him after providing him with marijuana, vodka, and "some blue pills." *Id.* at *2. The victim identified Petitioner by his distinctive hairstyle and pants.

After the first day of trial, there was additional discussion about the admissibility of Petitioner's prior criminal record in the event he chose to testify. The trial court determined that the State could question Petitioner about his aggravated assault conviction and expressed reservation about whether the State could question Petitioner about the conviction for statutory rape by an authority figure. The State "agreed not to ask" about the statutory rape conviction unless Petitioner opened the door during his trial testimony. *Id.*

Petitioner chose to testify at trial. *Id.* at *4. He admitted that he knew the victim and that the victim spent the night at his home over 10 times during a four to five-month period of time. Petitioner denied giving the victim marijuana, alcohol, or pills and denied having sexual contact with the victim. Petitioner denied ever sleeping with the victim in his bed but admitted that the victim fell asleep in his bed on one occasion after playing video games. Petitioner admitted that he told the victim he loved him but that he meant he loved him like a son. Petitioner acknowledged his prior conviction for misdemeanor theft and his status as a convicted felon. On cross-examination, Petitioner admitted that he smoked marijuana, drank alcohol, and had a conviction for aggravated assault. On re-direct, Petitioner testified that he "never got in bed" with any of the children who fell asleep in his bed but instead made them move. In a jury-out hearing, the State argued that Petitioner opened the door to questioning about his prior statutory rape conviction. The State relayed the facts of Petitioner's guilty plea to statutory rape by an authority figure conviction. The facts, which Petitioner agreed to at the guilty plea on that offense were substantially similar to the facts testified to by the victim albeit at a different residence – that Petitioner gave him marijuana and alcohol, that the victim laid down in Petitioner's bedroom to sleep, and that he awoke to Petitioner raping him. The State argued that Petitioner opened the door to being questioned about the prior offense when he denied any children had slept in his bed. The trial court ruled Petitioner "opened the door to questions about his conduct with other young men." *Id.* at *8. The State was permitted to ask Petitioner about his conduct without getting into the specific facts of the prior conviction or the fact of the conviction. Petitioner was convicted as charged and sentenced to 40 years in incarceration. *Id.* at *1.

On direct appeal, Petitioner challenged the trial court's evidentiary ruling. This Court determined that the facts surrounding the prior offense were "not unfairly prejudicial" where the jury was already aware that Petitioner was a convicted felon and

had other prior convictions and the jury did not learn about any of the intimate facts or the actual conviction. *Id.* at *9.

Subsequently, Petitioner filed a pro se petition for post-conviction relief. Counsel was appointed, and an amended petition was filed. Petitioner argued that trial counsel was ineffective by failing to: (1) perform an adequate investigation; (2) discuss possible defenses with Petitioner; (3) contact witnesses; (4) prepare Petitioner to testify at trial; (5) properly question Petitioner during the trial which resulted opening the door such that the State was permitted to question Petitioner about some of the facts surrounding his prior statutory rape conviction.

Post-conviction Hearing

At the post-conviction hearing, Petitioner testified that he met with trial counsel once via video conference and once in person prior to trial. Petitioner discussed a plea offer with trial counsel. Petitioner rejected the plea offer. Petitioner claimed that he did not receive any discovery prior to trial. As a result, Petitioner claimed he did not know the specifics of the victim's allegations against him and was unable to provide trial counsel with potential witnesses that could have impeached or rebutted the victim's allegations.

Petitioner recalled a short discussion with trial counsel about whether he should testify but did not recall discussing a defense theory. Petitioner did not feel prepared to testify, claiming that he "went into the trial blind." Specifically, he complained that trial counsel did not explain to him the potential perils of testifying, particularly with regard to the potential exposure of evidence about his prior convictions. Petitioner testified that trial counsel told him he "should go up there and testify" but agreed that he ultimately decided to testify.

Trial counsel testified that she was appointed to represent Petitioner and that she met with him multiple times prior to trial. Each meeting lasted at least an hour. Trial counsel reviewed discovery with Petitioner and described him as "hesitant" to answer questions regarding the allegations. Trial counsel relayed a plea deal to Petitioner.

Trial counsel recalled Petitioner claimed that the sex between him and the victim, who was 12 at the time, was consensual. Trial counsel determined that the victim's age made this assertion unhelpful, ultimately developing a defense that the incident did not occur on the couch where the victim claimed.

Trial counsel explained that she helped Petitioner prepare for trial by role-playing questions. Trial counsel instructed Petitioner to answer questions with "yes" or "no" without elaborating extraneous facts and told Petitioner what to expect on the stand.

Despite preparation, trial counsel told Petitioner it was entirely his decision whether to testify.

Trial counsel testified Petitioner did not give her the names of potential witnesses other than his son but that Petitioner told her he did not want his son involved. Trial counsel specifically denied being told about any of the witnesses Petitioner mentioned in his post-conviction petition.

Trial counsel testified prior to trial, Petitioner did not tell her that his son's friends occasionally slept in his bed. Trial counsel recalled trying to avoid any questions related to minors being in his bed purely because she was aware of Petitioner's prior statutory rape conviction. Trial counsel recalled that Petitioner answered a question at trial with "I would never do that" instead of merely "no," opening the door to additional questioning.

Petitioner testified on rebuttal that trial counsel was lying in her testimony at the hearing. Petitioner denied telling trial counsel that he had consensual sex with the victim. Petitioner was under the impression that trial counsel was "trying to get back at him" for something.

The post-conviction court entered a written order denying relief. The post-conviction court specifically accredited the testimony of trial counsel, finding that trial counsel and her investigator met with Petitioner on multiple occasions prior to trial and adequately investigated the case. The post-conviction court determined that the record contradicted Petitioner's allegation that there was no discussion of defense strategies. The post-conviction court determined that there was no evidence presented at the hearing that there were witnesses that trial counsel failed to call at trial. The post-conviction court noted that Petitioner did not present any witnesses at the hearing and therefore failed to carry his burden on that issue.

With regard to whether trial counsel was ineffective in allowing Petitioner to "open the door" to questioning on his statutory rape conviction, the post-conviction court determined that there was no prejudice to Petitioner. The post-conviction court, who also presided at Petitioner's trial in 2017, noted that the trial proof centered around the credibility of the witnesses. The post-conviction court recalled the victim was a "credible and compelling" witness, and the trial was devoid of proof that the victim fabricated his story. The post-conviction court pointed out that it took "great pains to limit the evidence the jury heard on recross," making sure that the jury did not hear about Petitioner's actual conviction. The post-conviction court determined that Petitioner failed to show "the result of the trial would have been different if trial counsel had not asked the challenged questions on re-direct."

As a result of the findings, the post-conviction court denied relief and dismissed the petition. Petitioner filed a timely notice of appeal.

Analysis

On appeal, Petitioner argues that the post-conviction court improperly denied relief based on ineffective assistance of counsel because trial counsel failed to prepare Petitioner to testify and improperly questioned Petitioner which led to opening the door for the State to question Petitioner about his prior crimes.¹ Petitioner also argues that cumulative error requires reversal. The State argues that “[n]either of these claims is persuasive.”

To be successful in a claim for post-conviction relief, a petitioner must prove the factual allegations contained in the post-conviction petition by clear and convincing evidence. *See* Tenn. Code Ann. § 40-30-110(f). “Clear and convincing evidence means evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence.” *State v. Holder*, 15 S.W.3d 905, 911 (Tenn. Crim. App. 1999) (quoting *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896, 901 n.3 (Tenn. 1992)). Issues regarding the credibility of witnesses, the weight and value to be accorded their testimony, and the factual questions raised by the evidence adduced at trial are to be resolved by the post-conviction court as the trier of fact. *See Henley v. State*, 960 S.W.2d 572, 579 (Tenn. 1997). Therefore, the post-conviction court’s findings of fact are entitled to substantial deference on appeal unless the evidence preponderates against those findings. *See Fields v. State*, 40 S.W.3d 450, 458 (Tenn. 2001).

A claim of ineffective assistance of counsel is a mixed question of law and fact. *See State v. Burns*, 6 S.W.3d 453, 461 (Tenn. 1999). We will review the post-conviction court’s findings of fact de novo with a presumption that those findings are correct. *See Fields*, 40 S.W.3d at 458. However, we will review the post-conviction court’s conclusions of law purely de novo. *Id.*

When a petitioner seeks post-conviction relief on the basis of ineffective assistance of counsel, “the petitioner bears the burden of proving both that counsel’s performance was deficient and that the deficiency prejudiced the defense.” *Goad v. State*, 938 S.W.2d 363, 369 (Tenn. 1996) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). To establish deficient performance, the petitioner must show that counsel’s performance was below “the range of competence demanded of attorneys in criminal cases.” *Baxter v. Rose*, 523

¹ Petitioner’s brief also includes an argument that the post-conviction court improperly determined “that there was no deficient performance by appellate counsel in failing to raise the issue about denial of the Petitioner’s expert witness testimony regarding alcohol-induced dementia as a defense to premeditation.” We are perplexed as to this argument as Petitioner was not indicted on any charges that required premeditation, and we fail to find any reference to an expert witness in the trial transcript.

S.W.2d 930, 936 (Tenn. 1975). To establish prejudice, 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. Further,

[b]ecause a petitioner must establish both prongs of the test, a failure to prove either deficiency or prejudice provides a sufficient basis to deny relief on the ineffective assistance claim. Indeed, a court need not address the components in any particular order or even address both if the [petitioner] makes an insufficient showing of one component.

Goad, 938 S.W.2d at 370 (citing *Strickland*, 466 U.S. at 697).

Petitioner complains that trial counsel did not prepare him to testify at trial. The post-conviction court accredited trial counsel’s testimony that she met with Petitioner several times prior to trial and role-played potential questions with Petitioner in the event he chose to testify. Trial counsel testified that she instructed Petitioner to answer “yes” or “no” to questions rather than elaborating so as to limit the ability of the State to question Petitioner. The post-conviction court determined that the record “contradicts [] Petitioner’s assertion that no defenses, nor defense strategies, were discussed.” The evidence does not preponderate against the post-conviction court’s determination. *See Henley*, 960 S.W.2d at 579; *Fields*, 40 S.W.3d at 458. Petitioner is not entitled to relief on this issue.

Petitioner also complains that trial counsel was ineffective because trial counsel opened the door to questions about his prior conduct. As explained in detail above, during trial, Petitioner’s counsel asked him whether he got into bed with any of his son’s friends. Petitioner said no. Petitioner was asked if he had sexual contact with the victim, and Petitioner said he never had sexual contact with any of them. The trial court ruled that Petitioner opened the door, allowing the State to ask Petitioner only if he had slept in the bed with one of his son’s friends. The trial court ruled that the State could not question Petitioner about his statutory rape conviction. When the State asked whether Petitioner had slept in bed with one of his son’s friends, Petitioner denied it happened. The trial court again would not permit the State to ask Petitioner about his prior conviction because of the potential prejudice to Petitioner. The State asked Petitioner again if he had slept in the same bed as one of his son’s friends. Petitioner admitted that he had done so.

After the hearing, the post-conviction court determined that while the issue was not technically previously determined, this Court engaged in an “extensive discussion of the same within its [o]pinion [on direct appeal,]” in which the court concluded that Petitioner was not “unfairly prejudiced by the introduction of the evidence admitted upon recross examination.” The post-conviction court agreed with this Court’s assessment on direct

appeal, that Petitioner was not prejudiced by the State’s questioning him about whether he slept in a bed with any of his son’s friends. The post-conviction court determined that the jury “never learned that the Petitioner suffered a prior statutory rape conviction” and that Petitioner did not show “clear and convincing evidence that the result of his trial would have been different.” In our opinion on Petitioner’s direct appeal, this Court determined that the facts admitted during questioning of Petitioner surrounding Petitioner’s prior offense “were not unfairly prejudicial.” *Anthony Martin, Alias*, 2019 WL 2714379, at *9. We agree with this assessment and that of the post-conviction court that Petitioner failed to show the result of his trial would have been different if the jury did not hear that Petitioner “once slept in” bed with one of his son’s friends. *Id.* Petitioner is not entitled to relief on this issue.

Lastly, Petitioner claims that the cumulative error doctrine should give him relief because of the prejudicial effect of trial counsel’s errors. Because we have not found trial counsel’s performance to be deficient, we decline to apply the cumulative error doctrine. Moreover, cumulative error does not apply in post-conviction cases where the petitioner has failed to show any instance of deficient performance by counsel. *See Aaron Reinsberg v. State*, No. W2019-02279-CCA-R3-PC, 2021 WL 2176887, at *4 (Tenn. Crim. App. May. 3, 2021) (citing *Thompson v. State*, 958 S.W.2d 156, 161 (Tenn. Crim. App. 1997) (finding “[i]neffective assistance of counsel is generally a ‘single ground for relief’ under the post-conviction statute.”), *no perm. app. filed*). Petitioner is not entitled to relief on this issue.

Conclusion

For the foregoing reasons, the judgment of the post-conviction court is affirmed.

TIMOTHY L. EASTER, JUDGE