

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Casey Myers,
Appellant-Petitioner,

v.

State of Indiana,
Appellee-Respondent

August 8, 2023

Court of Appeals Case No.
23A-PC-493

Appeal from the
Dubois Circuit Court

The Honorable
Mark McConnell, Special Judge

Trial Court Cause No.
19C01-1807-PC-455

Memorandum Decision by Judge Vaidik
Judges Mathias and Pyle concur.

Vaidik, Judge.

Case Summary

- [1] Casey Myers appeals the post-conviction court’s denial of his petition for post-conviction relief. We affirm.

Facts and Procedural History

- [2] The underlying facts are taken from this Court’s opinion on direct appeal:

Myers and Kristen Myers (Kristen) met in 2011 and were married in 2012. They had a daughter together, and Kristen also had two older children from a previous marriage. Myers and Kristen had a contentious relationship, arguing frequently about Myers’s drinking and his accusations that Kristen had been unfaithful. Myers and Kristen separated in July 2014.

During the separation, Kristen became engaged to another man and obtained a protective order against Myers. When Myers learned of the engagement on December 7, 2014, he made a threatening phone call to Kristen in violation of the protective order. Kristen recorded the call, in which Myers told Kristen that if she wore her engagement ring anywhere near him, he would “f**king choke [her] in [his] kitchen. That shit is not gonna happen.” . . .

Myers and Kristen were divorced in February 2015, but they had reconciled by April 2015. One of Kristen’s conditions for moving back in was that Myers stop drinking. Within a few months, however, Myers had started drinking again and become verbally abusive. When Kristen came home from her third-shift job on the morning of December 19, 2015, Myers accused her of cheating

on him. Later that day, Myers came home from work drunk. Myers and Kristen got into a huge fight, and Kristen told him that she was leaving and called her mother to come pick her and the children up. During the phone call, Myers was heard yelling that Kristen would not leave the house alive. Eventually, Kristen's uncle came and picked her and the children up and took them to Kristen's mother's house.

During the evening of December 19 and into the morning of December 20, Myers sent Kristen numerous text messages. In many of the messages, Myers expressed anger over the fact that Kristen had changed her Facebook status to single. Myers accused Kristen of cheating, called her derogatory names, and generally expressed great hostility toward her.

On December 21, 2015, Kristen and her friend, Rachel Smitson, went back to the house to retrieve Kristen's and her children's personal property and the children's Christmas presents. Myers had been drinking and started arguing with Kristen immediately. When Kristen threatened to call the police, Myers said "I'll kill you then I'll kill her," referring to Smitson. While Kristen was in the bedroom gathering her belongings, Myers told her "you're going to fucking die." Myers then grabbed Kristen by the throat, slammed her down onto the bed, and started choking her and punching her in the face. Smitson started screaming and hitting and biting Myers, but he would not let Kristen go. Smitson fled the house and called 911 while running across the street to get the address of the Myers home from a neighbor. Smitson tried to re-enter the house, but the door had been locked.

Meanwhile, Myers choked Kristen into unconsciousness before retrieving a knife. Myers then slashed Kristen's throat, creating a six- to seven-inch laceration and coming within millimeters of completely severing her trachea. Myers also stabbed Kristen in the back and shoulder where she had tattoos of her children's

names. Myers then came out onto the front porch with a beer and a cigarette in his hand and said “I’m done. She’s dead.”

When police arrived, Kristen was alive but writhing in pain, in and out of consciousness, and breathing through the hole in her neck. Police called for an ambulance, and Myers was immediately placed in handcuffs. . . .

Myers v. State, No. 19A04-1704-CR-834, 2017 WL 5346402, *1-2 (Ind. Ct. App. Nov. 14, 2017) (record citations omitted), *trans. denied*.

[3] The State charged Myers with attempted murder, strangulation, two counts of intimidation, and domestic battery. He was represented by attorneys Gloria Rahman and Gerald Thom. Thom had over forty years of experience, mostly in criminal law. According to Attorney Thom, he engaged in plea negotiations with the State from the time discovery was completed until the start of trial in February 2017, and the State ultimately offered Myers thirty years. Attorneys Rahman and Thom explained the offer to Myers, answered his questions, and recommended that he accept it. Although Myers initially said he would accept the offer, he changed his mind before he could appear in front of the judge.

[4] As discussed in this Court’s opinion on direct appeal, Myers did not appear for parts of his jury trial:

Myers was present in court during jury selection. However, the next day, when the presentation of evidence was scheduled to begin, Myers refused to come to court. The trial court noted that jail personnel had stated that Myers did not wish to be present. Over defense counsel’s objection, the court proceeded with trial and admonished the jury that Myers was not required to be

present and that his absence should not be considered by the jury. At the court's instruction, jail personnel asked Myers twice a day, once in the morning and once at lunch, whether he had changed his mind and wanted to go to court. Each time, Myers refused. After the State rested, the trial court had Myers escorted to the courtroom to inquire whether Myers intended to testify on his own behalf. Myers indicated that he wanted to testify and he was present for the rest of the trial.

Id. at *2. According to Attorney Thom, he and Attorney Rahman discussed with Myers, on more than one occasion, the effect his absence would have on the jury and the benefit he would provide to them by being present during trial. The jury found Myers guilty as charged, and the trial court sentenced him to an aggregate term of forty-two years.

[5] Myers appealed, raising three issues. As relevant here, Myers argued that he did not knowingly and voluntarily waive his right to be present at trial. We disagreed:

In this case, Myers was in custody and chose to be present for jury selection, but he refused to appear the next day when the presentation of evidence was scheduled to commence. At the trial court's direction, jail personnel asked Myers two times per day if he had changed his mind and wished to appear for trial after all. Myers steadfastly refused to attend until after the State rested and the trial court summoned him to determine whether he wished to testify. Under these circumstances, it strains credulity to suggest that Myers was unaware of his right to be present during the proceedings. *Cf. Taylor [v. United States]*, 414 U.S. 17, 20 (1973) (finding it "wholly incredible" to suggest that a defendant who was free on bail and had attended the opening session of his trial had any doubts concerning his right to be present).

When Myers finally appeared in court after the State rested, the following exchange occurred on the record:

THE COURT: ... I know that you were present here on the first day of trial during the voir dire process, and I have been advised by the sheriff's department that on each day since that time that you have been asked in the morning and after lunch if you wish to appear in court, and I've been told that on each occasion that you have declined the opportunity to be present in court. Is that correct, sir?

THE DEFENDANT: Yes, sir.

...

THE DEFENDANT: Well, I feel like I need to say something so that all of you in here know that it's not because I'm disrespectful and I think this is just a joke because I don't think that. I was under the impression that if I didn't sign a plea agreement that it was going to make you mad, and I was going to get maxed out regardless of what happened at trial. It could've been a misunderstanding between me and my lawyer, but that's what I got out of it.

And I also was told that I was going to be able to discuss nothing that has happened between her and I except for the night of this incident, and I feel like everything that's led up to the night of this incident is why this incident happened, not just the night that it happened. So I just felt like I had no chance of actually defending myself.

In other words, Myers confirmed that he knowingly and voluntarily chose not to attend his trial because he believed the

proceedings would be unfair to him. Although Myers's choice may have been a misguided one, it is not necessary to prove that a defendant's decision was wise, prudent, or the product of sound strategic decision-making. As wrongheaded as Myers's excuses may have been, they demonstrate that he was aware that his trial was underway and that he could attend if he so chose.

Id. at *3-4 (footnote and record citations omitted).

[6] In 2018, Myers filed a petition for post-conviction relief arguing his trial counsel were ineffective for (1) failing to adequately engage in plea negotiations with the State and appropriately advise him regarding plea options and (2) failing to adequately confer with him regarding his attendance at trial. Myers waived his right to be present at the evidentiary hearing, and “the parties agreed to submit written affidavit and memoranda concerning their arguments.” Appellant's App. Vol. II p. 222. In support, Myers submitted this Court's memorandum decision from his direct appeal and the deposition of Attorney Thom.¹ He did not submit any other evidence, such as an affidavit from himself or a deposition or affidavit from Attorney Rahman.

[7] The post-conviction court denied Myers relief. As to the first allegation of ineffective assistance, the post-conviction court found:

¹ Myers included the deposition of Attorney Thom in his appendix on appeal. However, the print is so light that it is unreadable. A readable copy of the deposition can be accessed through the post-conviction court's docket under Cause Number 19C01-1807-PC-455, where it is attached to Myers's memorandum of law filed on September 14, 2022. We cite to the deposition by the page number of the pdf.

3. The record, and uncontroverted deposition testimony of counsel Gerald Thom establishes that defense counsel did engage in on-going plea negotiations with the State; that he and co-counsel discussed potential pleas with petitioner; and that petitioner indicated on the eve of trial that he was willing to accept a plea agreement that would have been a better outcome for him than what ultimately occurred, but that before the plea could be presented to the Court, the petitioner changed his mind and chose to proceed to trial. Counsel further asserted that he felt that he was able to properly, professionally, and correctly approach the client, explain any plea offer, answer the client's questions and advise the client whether to accept or reject the offer. In fact he advised the petitioner to accept the plea offered on the eve of trial that would have resulted in a sentence of thirty years. Petitioner ultimately rejected this advice to his detriment.

Id. at 227-28. As to the second allegation, the court found:

10. The uncontroverted evidence is that the petitioner on his own chose not to attend trial for two days. The evidence was further that he did so after attempts by counsel to convince him that he should attend; after discussions with him as to what counsel believed the effect of his absence would be on the jury; after discussing the benefit that he could possibly provide to the cross-examination of witnesses if he appeared; and after discussing the difficulty in refuting the testimony of other witnesses if petitioner wasn't present during their testimony or for he himself to testify.

11. Petitioner has failed to establish as alleged, that trial counsel failed to adequately confer with the petitioner with regard to petitioner attending the trial. To the contrary, counsel's efforts were reasonable based on prevailing professional norms.

Id. at 228-29.

[8] Myers now appeals.

Discussion and Decision

[9] Myers appeals the denial of his petition for post-conviction relief. A defendant who petitions for post-conviction relief must establish the grounds for relief by a preponderance of the evidence. *Hollowell v. State*, 19 N.E.3d 263, 268-69 (Ind. 2014). If the post-conviction court denies relief, and the petitioner appeals, the petitioner must show the evidence leads unerringly and unmistakably to a conclusion opposite that reached by the post-conviction court. *Id.* at 269.

[10] Myers argues his trial counsel were ineffective. When evaluating a defendant's ineffective-assistance-of-counsel claim, we apply the well-established two-part test from *Strickland v. Washington*, 466 U.S. 668 (1984). *Bobadilla v. State*, 117 N.E.3d 1272, 1280 (Ind. 2019). The defendant must prove (1) counsel rendered deficient performance, meaning counsel's representation fell below an objective standard of reasonableness as gauged by prevailing professional norms, and (2) counsel's deficient performance prejudiced the defendant, i.e., but for counsel's errors, there is a reasonable probability the result of the proceeding would have been different. *Id.*

[11] Myers first alleges that his trial counsel were ineffective because they "did not engage in any meaningful plea negotiations." Appellant's Br. p. 16. In support, Myers cites pages 25-32 of Attorney Thom's deposition. *Id.* But he doesn't identify anything specific from those pages to support his argument. Notably,

the post-conviction court relied on those same pages when it found that trial counsel started plea negotiations with the State after discovery was completed and continued negotiations up until the start of trial when Myers initially agreed to a plea of thirty years. Appellant’s App. Vol. II pp. 224-26 (citing Deposition pp. 25-32). Also relying on those pages, the post-conviction court found that Attorney Thom believed the plea was “beneficial” and said that “there was no plea offer on the table within the confines of what [Myers] indicated he would plead to.” *Id.* at 224-25 (citing Deposition pp. 28, 30). Given the strength of the State’s case and the horrific nature of the crimes, trial counsel managed to obtain a favorable plea offer under which Myers would have been sentenced to thirty years (twelve years less than what he received). Trial counsel did not perform deficiently in this regard.²

² As part of this argument, Myers claims that his trial counsel did not investigate the severity of Kristen’s injury. As the State points out, Myers does not explain how that alleged failure impacted the plea process. In any event, the post-conviction court rejected this argument:

Petitioner claims that counsel did not sufficiently investigate the severity of the victim’s wound and that a more advantageous plea could have been elicited [sic] had he done so. In fact, counsel concluded, quite properly that the victim’s injuries were very serious, that attempts to show otherwise through medical experts or witness would be fruitless and that the best strategy was to argue in plea negotiations or at trial that the victim’s appearance some 15 months later supported the proposition that her injuries were not as serious as the State alleged. This defense strategy to minimize the injury by focusing attention on the victim herself and the lack of scarring visible at the time of trial was a strategic decision within the purview of defense counsel. “It is well established that trial strategy is not subject to attack through an ineffective assistance of counsel claim, unless the strategy is so deficient or unreasonable as to fall outside of the objective standard of reasonableness.” *Garret[t] v. State*, 602 N.E.2d 139, 142 (Ind. 1992). Here, counsel had little else to work with. Although ultimately unsuccessful, pursuing this strategy was not ineffective on counsel’s part.

Appellant’s App. Vol. II p. 228. Trial counsel did not perform deficiently in this regard.

[12] Next, Myers alleges that his trial counsel were ineffective because they failed to “properly advise [him] of the collateral risks and consequences of not accepting a plea agreement[.]” Appellant’s Br. p. 17. Myers, however, neither identifies the collateral risks and consequences he claims he should have been advised of nor cites anything in the record to support his assertion that he was not properly advised. The only evidence before the post-conviction court on this issue was Attorney Thom’s deposition. As the post-conviction court found, according to that deposition trial counsel conveyed the offer to Myers, answered his questions, and advised him to accept it. Deposition pp. 30, 38-39. Attorney Thom recalled going to the jail “two weekends for sure” with Attorney Rahman to discuss plea negotiations with Myers. *Id.* at 40. Myers, however, ultimately rejected the State’s offer of thirty years. Attorney Thom explained that although he didn’t have a great relationship with Myers, that didn’t impact his ability to convey the State’s offer to him and recommend accepting it. The decision whether to plead guilty is controlled by the defendant; trial counsel could not force Myers to accept the offer. *See McCoy v. Louisiana*, 138 S. Ct. 1500, 1508 (2018). That Myers rejected the advice of his trial counsel to his disadvantage does not mean that they performed deficiently.

[13] Finally, Myers alleges that his trial counsel were ineffective for failing to “properly advise[] [him] of the risks and consequences of being trial [sic] in absentia.” Appellant’s Br. p. 18. Again, Myers cites nothing in the record to support his assertion that he was not properly advised. As the post-conviction court found, the evidence showed that trial counsel discussed with Myers, on

more than one occasion, the effect his absence would have on the jury and the benefit he would provide to them by being present during trial. Trial counsel did not perform deficiently in this regard.

[14] Myers has failed to show that his trial counsel performed deficiently and therefore the post-conviction court did not err in finding no ineffective assistance of counsel.

[15] Affirmed.

Mathias, J., and Pyle, J., concur.