

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Karen Fielder,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

October 17, 2023

Court of Appeals Case No.
23A-CR-1264

Appeal from the Hamilton
Superior Court

The Honorable David K. Najjar,
Judge

Trial Court Cause No.
29D05-2210-PC-7249

Memorandum Decision by Judge Crone
Judges Riley and Mathias concur.

Crone, Judge.

Case Summary

- [1] Karen Fielder appeals the denial of her petition for post-conviction relief (PCR). She asserts that she is entitled to post-conviction relief because her trial counsel provided ineffective assistance by failing to raise the parental privilege defense during her trial for domestic battery. Concluding that the post-conviction court properly determined that Fielder failed to demonstrate that her counsel’s performance was deficient, we affirm.

Facts and Procedural History

- [2] Fielder and her ex-husband have a daughter, K.F. In April 2021, fifteen-year-old K.F. lived primarily with her father and spent every other weekend with Fielder. On April 3, K.F. was spending the weekend with Fielder. That morning, K.F. became upset because Fielder made derogatory comments about K.F.’s father and his family. K.F. and Fielder also argued about whether K.F. would go to a baptism that morning. Fielder was “loud” and “angry[,]” which made K.F. cry, and K.F. also developed a headache. Ex. Vol. 3 at 18.¹ K.F. called the police from the family room with her cell phone because she “didn’t feel safe” at Fielder’s house. *Id.* The police came to Fielder’s house, spoke with both K.F. and Fielder, and left without arresting Fielder. Afterward, Fielder was “more angry.” *Id.* at 19. K.F. still had a headache and went to her

¹ The sole exhibit in exhibit volume 3 is Fielder’s domestic battery trial transcript. We cite to the page number of the exhibit volume itself rather than the trial transcript.

bedroom. Fielder turned off the Wi-Fi, which disabled K.F.'s phone. *Id.* at 27-28.

[3] An hour later, Fielder “came rushing” into K.F.’s room and said that it was time to leave for the baptism. *Id.* at 20. Fielder was “still angry.” *Id.* K.F., who was wearing a sweatshirt, leggings, and socks, told Fielder that she “didn’t want to go anymore because [her] head had hurt [and she] didn’t want to sit through the whole thing ... in the condition that [she] was in.” *Id.* at 21. Fielder then grabbed K.F. by her arms and pulled her off the bed. Fielder took K.F.’s shoes and threw them downstairs. K.F. went downstairs to retrieve her shoes, but Fielder threw them out the front door.

[4] Fielder went to her car and backed it out of the garage. K.F. went outside to get her shoes, and Fielder got out of the car, grabbed K.F.’s arms, and “tried forcing [her] into the car,” causing her pain and inflicting scratches. *Id.* at 23. K.F. tried to get away, but Fielder grabbed K.F.’s shirt collar and her hair, ripping K.F.’s shirt over her head and causing pain to her head and scalp. At that point, K.F. was in the front yard wearing only her bra, leggings, and socks. A neighbor who lived across the street heard arguing outside and looked out her window. She saw Fielder and K.F. in their driveway. K.F. did not have her shirt on, was crying, and “seemed really upset.” *Id.* at 38. The neighbor opened a window and asked K.F. if she needed help. K.F. said that she didn’t know.

[5] Fielder told K.F. that she was going to call the police and went inside the house. K.F. put her sweatshirt back on and went to the side of the house. About

five minutes later, the police arrived. The police spoke to Fielder, K.F., and the neighbor who lived across the street. Fielder admitted to Westfield Police Sergeant Steffan Short that she pulled K.F.'s arm but denied pulling her hair. Sergeant Short found K.F. on the side of the house and spoke to her for fifteen to twenty minutes. Sergeant Short did not observe any injuries to her body. However, according to K.F., her head, arms, and wrist still hurt. The police left without arresting Fielder.

[6] In September 2021, the State charged Fielder with class A misdemeanor domestic battery. In May 2022, a bench trial was held. K.F., Sergeant Short, and Fielder's neighbor testified for the State. Fielder's counsel cross-examined all the State's witnesses. On cross, K.F. testified that she did not want to go to the baptism and was mad about the things her mother was saying about her father and that her mother had turned off the Wi-Fi so she could not use her cell phone. K.F. also admitted that the day after the incident, she and her mother went out for tea or coffee and played board games. On cross, Sergeant Short testified that on April 3, he did not think that the situation warranted arresting Fielder or required that K.F. be taken into protective services and that the police left them together. He further testified that K.F.'s testimony at trial was not consistent with everything that K.F. had told him on the day of the incident. Specifically, he testified that K.F. had admitted that she pulled off her sweatshirt herself and that she had told him that she kicked her mother when she was trying to get away from her.

[7] After the State rested, Fielder and her trial counsel discussed whether Fielder should testify. Counsel advised Fielder that she did not think it was in Fielder's best interest to testify, and Fielder decided not to testify. In closing argument, Fielder's counsel argued that the State had failed to prove beyond a reasonable doubt that Fielder committed battery upon K.F. because K.F. gave conflicting statements regarding the incident and had no visible signs of injury. The trial court found Fielder guilty as charged. At sentencing, Fielder told the court that "there was no physical contact whatsoever[,] the evidence wasn't there[, and she] didn't lay a hand on [K.F.]" *Id.* at 63. The court sentenced Fielder to one year suspended to probation.

[8] Fielder filed a notice of appeal. She then filed a motion to stay the appeal and remand to the trial court so that she could file a PCR petition. The motion was granted, Fielder filed the petition, and the post-conviction court held a hearing. Fielder's trial counsel testified that she had continuous conversations with Fielder, who consistently maintained that she never had any physical contact with K.F. and that the allegations against her were lies. Fielder's counsel also testified that had Fielder "ever given any indication that she touched her daughter, even in the slightest way[,] counsel would have considered the parental privilege defense. Appealed Order at 3. Fielder's counsel also testified that she did not think that asserting the parental privilege defense was reasonable because Fielder had adamantly denied that any touching occurred. The post-conviction court denied Fielder's PCR petition, concluding in relevant part as follows:

[Fielder's] only allegation in her filed PCR [petition] was that [trial counsel] was ineffective for failing to raise a parental privilege defense as to the touching of her daughter, which was the subject of the Domestic Battery charge. Because [Fielder] adamantly maintained her innocence and expressly denied any touching of any kind, counsel's strategy was consistent with those assertions. Electing to try to create reasonable doubt by cross examining the State's witnesses was the strategy. Electing to not have [Fielder] testify to open her up to cross-examination by the State was the strategy. Presenting an alternate strategy that depended on [Fielder] touching her daughter in rude, insolent, or angry manner as an established fact would not only have contradicted the initial strategy but could undermine it as well. Defense counsel's performance was not deficient.

Id. at 5. This appeal ensued.

Discussion and Decision

[9] “Post-conviction proceedings are civil proceedings in which a defendant may present limited collateral challenges to a conviction and sentence.” *Gibson v. State*, 133 N.E.3d 673, 681 (Ind. 2019) (citing Ind. Post-Conviction Rule 1(1)(b)), *cert. denied* (2020). The defendant “bears the burden of establishing grounds for relief by a preponderance of the evidence.” Ind. Post-Conviction Rule 1(5); *Humphrey v. State*, 73 N.E.3d 677, 681 (Ind. 2017). Because the defendant is appealing from the denial of post-conviction relief, she is appealing from a negative judgment:

Thus, the defendant must establish that the evidence, as a whole, unmistakably and unerringly points to a conclusion contrary to the post-conviction court's decision. In other words, the defendant must convince this Court that there is *no* way within

the law that the court below could have reached the decision it did. We review the post-conviction court's factual findings for clear error, but do not defer to its conclusions of law.

Wilkes v. State, 984 N.E.2d 1236, 1240 (Ind. 2013) (citations and quotation marks omitted). “We will not reweigh the evidence or judge the credibility of witnesses, and will consider only the probative evidence and reasonable inferences flowing therefrom that support the post-conviction court’s decision.” *Hinesley v. State*, 999 N.E.2d 975, 981 (Ind. Ct. App. 2013), *trans. denied* (2014).

[10] Fielder maintains that she is entitled to post-conviction relief because she was denied the right to effective assistance of trial counsel guaranteed by the Sixth Amendment to the United States Constitution. *See Strickland v. Washington*, 466 U.S. 668, 686 (1984) (“[T]he right to counsel is the right to effective assistance of counsel.”) (quoting *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970)). To succeed on an ineffective assistance of counsel claim, the defendant must satisfy the two-part standard articulated in *Strickland*. *Humphrey*, 73 N.E.3d at 682. This requires the defendant to show that “1) counsel’s performance was deficient based on prevailing professional norms; and 2) that the deficient performance prejudiced the defense.” *Weisheit v. State*, 109 N.E.3d 978, 983 (Ind. 2018), *cert. denied* (2019).

[11] To establish deficient performance, the defendant must show that counsel’s representation “fell below an objective standard of reasonableness, committing errors so serious that the defendant did not have the ‘counsel’ guaranteed by the Sixth Amendment.” *Humphrey*, 73 N.E.3d at 682 (quoting *McCary v. State*, 761

N.E.2d 389, 392 (Ind. 2002)). In reviewing counsel’s performance, “[a] strong presumption arises that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.”

Morgan v. State, 755 N.E.2d 1070, 1073 (Ind. 2001). “[C]ounsel’s performance is presumed effective, and a defendant must offer strong and convincing evidence to overcome this presumption.” *Williams v. State*, 771 N.E.2d 70, 73 (Ind. 2002).

[12] “[T]o demonstrate prejudice from counsel’s deficient performance, a petitioner need only show a *reasonable probability* that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Middleton v. State*, 72 N.E.3d 891, 891 (Ind. 2017) (quoting *Strickland*, 466 U.S. at 694) (emphasis in *Middleton*). “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.* at 891-92 (quoting *Strickland*, 466 U.S. at 694). “Although the performance prong and the prejudice prong are separate inquiries, failure to satisfy either prong will cause the claim to fail.” *Baer v. State*, 942 N.E.2d 80, 91 (Ind. 2011).

[13] Fielder claims that trial counsel provided deficient performance because she failed to raise the parental discipline privilege as a defense to her domestic battery charge. It is well established that “[c]ounsel is afforded considerable discretion in choosing strategy and tactics and these decisions are entitled to deferential review.” *Weisheit*, 109 N.E.3d at 983. “[T]rial 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.” *Davidson v. State*, 763 N.E.2d 441, 446 (Ind. 2002) (quoting

Autrey v. State, 700 N.E.2d 1140, 1141 (Ind. 1998)). “This is so even when such choices may be subject to criticism or the choice ultimately prove detrimental to the defendant.” *Id.* (quoting *Autrey*, 700 N.E.2d at 1141).

[14] To convict Fielder of class A misdemeanor domestic battery, the State was required to prove that she knowingly or intentionally “touche[d] a family or household member in a rude, insolent, or angry manner[.]” Ind. Code § 35-42-2-1.3(a). The parental discipline privilege provides legal authority for a parent to engage in “reasonable parental discipline” of her child, even if such conduct would otherwise constitute battery. *Willis v. State*, 888 N.E.2d 177, 181 (Ind. 2008). *See also* Ind. Code § 35-41-3-1 (“A person is justified in engaging in conduct otherwise prohibited if he has legal authority to do so.”). Accordingly, “[a] parent is privileged to apply such reasonable force or to impose such reasonable confinement upon his or her child as he or she reasonably believes to be necessary for its proper control, training, or education.” *Willis*, 888 N.E.2d at 182 (quoting Restatement (Second) of Torts § 147(1) (Am. Law Inst. 1965)) (brackets in *Willis* omitted). “[T]o sustain a conviction for battery where a claim of parental privilege has been asserted, the State must prove that either: (1) the force the parent used was unreasonable or (2) the parent’s belief that such force was necessary to control her child and prevent misconduct was unreasonable.” *Id.*

[15] Fielder asserts that trial counsel should have reconsidered her defensive strategy at the close of the State’s evidence because “the trier of fact was left with [K.F.’s] testimony, and [Fielder’s] admission to the police officer that she had

in fact grabbed [K.F.'s] arm.” Appellant’s Br. at 9. According to Fielder, this evidence rendered the “this never happened strategy” unreasonable and required trial counsel to argue the applicability of the parental discipline privilege to the trier of fact. *Id.* We disagree.

[16] Throughout the trial proceedings, Fielder “adamantly maintained her innocence and expressly denied any touching of any kind.” Appealed Order at 5. Even at sentencing, Fielder insisted that she had never touched K.F. Counsel pursued a strategy that was consistent with her client’s position. At trial, the only evidence that Fielder had committed battery was K.F.’s testimony. Counsel’s strategy was to call into question K.F.’s credibility to create reasonable doubt. This was reasonable in light of Sergeant Short’s testimony that K.F. was not visibly injured and that K.F.’s trial testimony was not consistent with her previous statement to him. It is also worth noting that Fielder’s neighbor did not witness any physical touching. Further, during counsel’s cross-examination of K.F., counsel brought to light possible motivations for K.F. to lie by eliciting her testimony that she did not want to go to the baptism and was mad that her mother had made derogatory comments about her father and had turned off the Wi-Fi. Given Fielder’s position, the evidence at trial, and K.F.’s credibility issues, we conclude that Fielder has failed to show that her trial counsel’s trial strategy was “so deficient or unreasonable as to fall outside of the objective standard of reasonableness.” *Davidson*, 763 N.E.2d at 446 (quoting *Autrey*, 700 N.E.2d at 1141). *See also Rondon v. State*, 711 N.E.2d 506, 520 (Ind. 1999) (“Trial counsel’s strategy to

put the State to its burden and not present a defense, like other strategic decisions, is a legitimate trial strategy.”). Therefore, we affirm the post-conviction court’s denial of Fielder’s PCR petition.

[17] Affirmed.

Riley, J., and Mathias, J., concur.