

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



ATTORNEYS FOR APPELLANT

Amy E. Karozos
Deidre R. Eltzroth
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana
Indianapolis, Indiana

Ian McLean
Supervising Deputy Attorney
General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Dwayne A. Springfield,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

May 22, 2023

Court of Appeals Case No.
22A-PC-1724

Appeal from the Marion County
Superior Court

The Honorable Angela Dow
Davis, Judge

The Honorable Patrick Murphy,
Magistrate

Trial Court Cause No.
49D27-2011-PC-035789

Memorandum Decision by Judge May
Judges Crone and Weissmann concur.

May, Judge.

[1] Dwayne A. Springfield appeals the denial of his petition for post-conviction relief. He presents two issues for our consideration, which we restate as:

1. Whether the post-conviction court erred when it concluded his trial counsel was not ineffective; and
2. Whether the post-conviction court erred when it concluded his appellate counsel was not ineffective.

We affirm.

Facts and Procedural History

[2] During Springfield's direct appeal, this court stated the underlying facts as follows:

In August 2004, Springfield and DeCarlos Rollins encountered three women, Kristin Battle, Tiffany Daniels, and Laurie Dudley, who were in a car in a restaurant parking lot. Following a brief interaction with the women, the two men followed them across the street to a gas station and invited them to Rollins' aunt's house at a nearby location. The girls followed and, once at the house, had a discussion with the men regarding mutual friends. Then, Rollins pulled a gun on the girls and informed them that they were being robbed. Rollins instructed Springfield to take various items of personal property from each of the women, which Springfield did. Rollins then ordered the women to lift their shirts and to put their car in reverse and not look back. The two men then drove away. The women pursued the vehicle and phoned the police with a description of the car and

the license plate number, but they lost track of the men before they could be apprehended.

The following day, all three women viewed several hundred photos at the police department and identified Rollins as the gunman in the robbery. A couple of weeks later, Battle and Daniels saw Springfield at the same gas station and in the same vehicle as on the night of the robbery. They again followed the car and phoned the police, who were able to apprehend Springfield. Following his arrest and after voluntary waiver of his *Miranda* rights, Springfield stated to the detective on the case, Detective King, that he was not involved in the robbery and gave police the names of two other men who might have been involved. Detective King assembled a photo array that included Springfield and both of the men he named, and both women selected Springfield's photo from those presented.

The two men were set to be tried together, and Rollins requested a speedy trial pursuant to Criminal Rule 4(B). [Springfield's trial counsel] entered an appearance as Springfield's attorney forty-eight days before the trial date. Defense counsel twice requested a continuance, stating that she had been involved in two murder trials and had been unable to properly prepare for Springfield's defense because one of those trials had ended one week before Springfield's trial and one was scheduled to begin five days after. Specifically, she stated that she had not had time to interview all the witnesses or review all discovery materials. The trial court denied both motions to continue, reasoning that the court needed to balance Rollins' right to a speedy trial with Springfield's right to competent counsel and finding that [Springfield's trial counsel], an experienced public defender, had adequate time remaining to prepare for the trial. [Springfield's trial counsel] acknowledged the trial court's decisions and indicated that she would be ready at trial.

At trial before a different judge, defense counsel notified the court that she had previously moved for a continuance and was told that the trial would proceed as scheduled. During the trial, the State called Detective King to testify, in part, about her interview with Springfield following his arrest. Defense counsel, at sidebar, indicated that she had been unable to interview Detective King and had not been able to familiarize herself with any discovery related to her testimony. The State agreed to terminate their direct examination of Detective King and call her for rebuttal testimony in order to give defense counsel an opportunity to interview the witness. Following this interview and defense counsel's questioning of Detective King, the State pursued a line of questioning regarding Springfield's statement to the detective. Defense counsel objected, and the judge ruled the statement admissible inasmuch as it did not include hearsay. Defense counsel again brought her repeated requests for a continuance to the trial judge's attention, arguing essentially that Springfield's defense was compromised here because counsel was unable to prepare for the questioning of Detective King. The trial judge reiterated that the court had decided the issue of a continuance and would not revisit that decision.

Following the close of evidence, the trial court proposed several jury instructions, including Proposed Instruction No. 33 regarding accomplice liability. Defense counsel objected to this instruction, arguing it was incorrect, incomplete, and misleading. The trial judge amended the instruction to remove the language objected to by counsel, but counsel continued to object, though without stating further grounds. The trial judge tendered the instruction over this objection.

Springfield v. State, 49A02-0501-CR-18, slip op. at *4 - *5 (Ind. Ct. App. September 27, 2005) (footnote omitted). The jury returned a verdict of guilty

on all three charges of Class B felony robbery and imposed three ten-year sentences to be served concurrently.

[3] In his direct appeal, Springfield argued:

[B]y denying his motions to continue, the trial court balanced Rollins' right to a speedy trial with Springfield's right to effective counsel in a manner that prejudiced him at trial. Specifically, Springfield contends that his counsel was unable to interview witnesses or to review discovery properly and that this resulted in the admission of prejudicial testimony by Detective King that otherwise would have been addressed by counsel in a motion to exclude evidence or a motion for severance of the trial against the co-defendants.

Id. at *5-*6. This court rejected Springfield's argument, holding the trial court properly balanced Rollins's right to a speedy trial and Springfield's request for a continuance when it considered defense counsel's experience level and the time necessary to prepare for trial. *Id.* at *6. This court further noted that defense counsel told the trial court she would be ready for trial. *Id.* Finally, this court stated, "Springfield could have moved for a separate trial at this point but did not." *Id.* This court determined Springfield was not prejudiced by the trial court's denial of his motion to continue because Springfield did not indicate what portion of Detective King's testimony was prejudicial or "what he would have done, if given more time, that could have demonstrated legal grounds for excluding this testimony." *Id.* at *7. Based thereon, this court concluded the trial court did not abuse its discretion when it denied Springfield's motion to

continue. After analysis of a separate issue,¹ this court affirmed Springfield's three convictions. *Id.* at *11.

- [4] On November 30, 2020, Springfield filed a pro se petition for post-conviction relief. On December 21, 2020, counsel from the Indiana Public Defender's Office entered an appearance. On August 31, 2021, and January 3, 2022, counsel amended Springfield's petition for post-conviction relief. Springfield, via counsel, argued Springfield's trial counsel was ineffective because she did not request a separate trial for Springfield after the trial court denied Springfield's motion to continue and she "fail[ed] to adequately challenge the inconsistencies between the victim's initial descriptions given of the second perpetrator and that described by the detective at trial." (App. Vol. II at 35.) Springfield also argued his appellate counsel was ineffective because on appeal she did not argue "the joint trial of the two co-defendants constituted fundamental error, depriving Springfield of his constitutional right to due process." (*Id.*)
- [5] On February 22, 2022, the post-conviction court held a hearing on Springfield's petition. The post-conviction court admitted the appellate record into evidence. Additionally, Springfield presented his trial counsel and appellate counsel as witnesses. Regarding the severance of trials, Springfield's trial counsel testified

¹ In his direct appeal, Springfield also argued the trial court erred in instructing the jury, but this court determined there was no error. As this issue from Springfield's direct appeal is not relevant to the issues before us, we need not analyze that portion of the memorandum decision.

she “briefly considered” requesting a separate trial for Springfield but “chose not to pursue” it because she did not “have the impression it would be granted.” (PCR² Tr. Vol. II at 7.) His trial counsel noted, “I should have filed for severance.” (*Id.*)

[6] Springfield’s appellate counsel testified she did not raise fundamental error based on his trial counsel’s failure to request that Springfield’s trial be severed from Rollins’s trial on appeal because she did not think it would be successful. Instead, Springfield’s appellate counsel challenged the denial of Springfield’s motion to continue as a Sixth Amendment issue, arguing the denial of his motion resulted in Springfield going to trial with unprepared counsel.

[7] On June 29, 2022, the post-conviction court issued its order denying Springfield’s petition for post-conviction relief. It concluded Springfield’s trial counsel did not render ineffective assistance of counsel because, while his trial counsel admitted she should have asked for a separate trial,

[trial counsel’s] trial strategy did not compromise Petitioner’s defense. She maintained a theory of the case, effectively argued it, cross-examined witnesses and cast doubt on the identity of her client as a perpetrator. No amount of conjecture can convince [this court] that a different outcome would result from more time or a separate trial. The review by the Court of Appeals says as

² “PCR Tr.” refers to the transcript of the post-conviction relief hearing before the post-conviction court. “Trial Tr.” refers to the transcript of Springfield’s trial.

much. No prejudice has been shown by Petitioner regarding his trial counsel.

(App. Vol. II at 74.) The post-conviction court also determined Springfield's appellate counsel did not render ineffective assistance of counsel:

Earlier discussion of IC 35-34-1-1 shows no mandatory ground for severance of trial, and nothing during the course of the trial demonstrated any need for corrective course by the trial court, therefore the requirement of arguing fundamental error regarding severance would be fruitless. Nothing in the record demonstrates the error in trying the two defendants together, whether raised by counsel or not. No prejudice has been shown by Petitioner.

(*Id.*)

Discussion and Decision

[8] Springfield argues the post-conviction court erred when it denied his petition for post-conviction relief.

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), *reh'g denied, cert. denied*; Ind. Post-Conviction Rule 1(1)(b). “The scope of potential relief is limited to issues unknown at trial or unavailable on direct appeal.” *Gibson*, 133 N.E.2d at 681. “Issues available on direct appeal but not raised are waived, while issues litigated adversely to the defendant are res judicata.” *Id.* The petitioner bears the burden of establishing his claims by a preponderance of the evidence. *Id.*; P.-C. R. 1(5). When, as here, the petitioner “appeals from a negative judgment denying post-conviction relief, he ‘must establish that the

evidence, as a whole, unmistakably and unerringly points to a conclusion contrary to the post-conviction court’s decision.” *Gibson*, 133 N.E.2d at 681 (quoting *Ben-Yisrayl v. State*, 738 N.E.2d 253, 258 (Ind. 2000)).

Bell v. State, 173 N.E.3d 709, 714-15 (Ind. Ct. App. 2021). Where the post-conviction court enters findings of fact and conclusions of law in accordance with Post-Conviction Rule 1(6), we do not defer to the post-conviction court’s legal conclusions, but we do review the post-conviction court’s factual findings for clear error. *McDowell v. State*, 102 N.E.3d 924, 929 (Ind. Ct. App. 2018), *trans. denied*. We do not reweigh the evidence or judge the credibility of the witnesses. *Id.* We consider the probative evidence and all reasonable inferences therefrom in the light most favorable to the post-conviction court’s ruling. *Id.*

1. Ineffectiveness of Trial Counsel

[9] Springfield first challenges the post-conviction court’s determination that his trial counsel did not provide ineffective assistance. The Sixth Amendment to the United States Constitution entitles a defendant in a criminal prosecution to “the assistance of counsel for his defense.” U.S. Const., Am. VI. This right requires counsel to be effective. *Strickland v. Washington*, 466 U.S. 668, 686, 104 S. Ct. 2052 (1984), *reh’g denied*. “Generally, to prevail on a claim of ineffective assistance of counsel a petitioner must demonstrate both that his counsel’s performance was deficient and that the petitioner was prejudiced by the deficient performance.” *Davis v. State*, 139 N.E.3d 246, 261 (Ind. Ct. App.

2019), *trans. denied*. “Failure to satisfy either prong will cause the claim to fail.” *Id.* Counsel is deficient if her performance falls below the objective standard of reasonableness established by prevailing professional norms. *Id.* There is a strong presumption trial counsel provided effective representation, and the petitioner must rebut that presumption with strong evidence. *Warren v. State*, 146 N.E.3d 972, 977 (Ind. Ct. App. 2020), *trans. denied, cert. denied*, 141 S. Ct. 858 (2020).

[10] “Isolated poor strategy, inexperience, or bad tactics does not necessarily constitute ineffective assistance of counsel.” *McCullough v. State*, 973 N.E.2d 62, 74 (Ind. Ct. App. 2012), *trans. denied*. “To meet the appropriate test for 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.” *Davis*, 139 N.E.3d at 261 (internal citation omitted). If we determine the petitioner cannot succeed on the prejudice prong of his claim, we need not address whether counsel’s performance was deficient. *Lee v. State*, 892 N.E.2d 1231, 1233 (Ind. 2018).

[11] Springfield argues his trial counsel was ineffective because she did not request severance of his trial from Rollins’s trial and thus began a consolidated trial admittedly unprepared. Additionally, he contends he was prejudiced by his trial counsel’s ineffective assistance because there was a reasonable probability that he would not have been convicted but for his trial counsel’s ineffective representation. However, we need not address whether Springfield’s trial

counsel's performance fell below an objective standard of reasonableness because Springfield cannot satisfy *Strickland's* prejudice requirement.

Springfield's argument rests on his counsel being unprepared to cross-examine Detective King,³ but his argument ignores the unwavering testimony of all three victims.

[12] At the consolidated trial, Battle testified that, on the day of the crime, she saw Rollins and Springfield in a black car. After Rollins followed the vehicle in which Battle, Daniels, and Dudley were traveling, both vehicles stopped in a residential area. Battle testified Rollins exited the car and “pulled out [a] handgun.” (Trial Tr. Vol. I at 60.) Springfield, at Rollins's direction, “started taking the stuff” including Battle's “purse and [] necklace.” (*Id.* at 60-1.) As part of a photo array with possible suspects conducted by Detective King shortly after the crime, Battle identified Springfield as the man that robbed her. During trial, Battle identified Springfield in the courtroom as the person who robbed her, Daniels, and Dudley.

[13] Springfield's trial counsel cross-examined Battle, challenging her identification of Springfield as one of the men who robbed her. Battle noted she identified Springfield as part of the photo array based on “[t]he way his hair was . . . two

³ Springfield argues his trial counsel's inability to interview Detective King prior to trial prejudiced him because she was unable to cross examine her. Specifically, regarding the preparation and use of the photo array of possible suspects, we note counsel for Springfield's co-defendant, Rollins, conducted extensive cross-examination and asked multiple questions about the photo array, including questions about Springfield's presence therein and the process used to select suspects for the array and the way the victims identified Springfield and Rollins.

puffs, two ponytails.” (*Id.* at 107.) Battle also identified Springfield as a man she later saw at a gas station in a black car. She testified the car was the same car Rollins and Springfield were in on the night of the crime. Battle testified she followed the car in an effort to obtain a license plate number to give to the police. This pursuit ultimately led to Springfield’s arrest.

[14] Similarly, Dudley testified she saw Rollins and Springfield in a black car on the night of the crime. She testified that, after the women pulled over their vehicle in a residential area, Battle and Dudley spoke with Rollins and Springfield. Rollins then pulled out a gun and told Springfield, “get they stuff.” (*Id.* at 124) (errors in original). Dudley testified she gave Springfield her purse and Springfield took her ID. She testified Springfield then “patted [her] down” after taking her purse. (*Id.* at 129.) Dudley identified Springfield in the courtroom as the man who robbed her. Springfield’s trial counsel cross-examined Dudley and challenged her identification of Springfield as the man involved in the crime. Dudley testified she identified Springfield because she “remember[ed] his skin complexion and then he had that gap between his teeth.” (*Id.* at 143.)

[15] Daniels’ testimony was consistent with that of Battle and Dudley. She testified she saw Rollins and Springfield in a black car on the night of the crime. During her testimony, Daniels positively identified Springfield in the courtroom as the person who took her “whole purse” after Rollins pointed a gun at the women. (*Id.* at 160.) She also testified she was with Battle when they later saw Springfield in a black car and followed him to get his license plate number for police. Springfield’s trial counsel cross-examined Daniels and, as with the other

two women, challenged her identification of Springfield as part of the photo array, suggesting Daniels may have misidentified Springfield. Daniels testified she was “certain” it was Springfield in the photo array because “I know how to identify the person I seen that night. That picture is familiar with the guy who it was, but I know who the guy was that did it – what he did to me that night.” (*Id.* at 178.)

[16] All three victims told nearly identical versions of the events and, as part of the photo array and during trial, identified Springfield as the man that robbed them. Springfield’s trial counsel cross-examined each witness based on her trial strategy of casting doubt on the victims’ identification of Springfield. While Springfield’s trial counsel testified she should have requested a separate trial, Springfield has not demonstrated a reasonable probability that her doing so would have changed the outcome of the trial given the testimony presented from the three victims. Thus, we conclude Springfield was not prejudiced and the post-conviction court did not err when it determined Springfield’s trial counsel did not render ineffective assistance. *See, e.g., Williams v. State*, 706 N.E.2d 149, 159 (Ind. 1999) (defendant not prejudiced by counsel’s failure to investigate the crime scene or to call expert witnesses because overwhelming evidence supported his conviction).

2. Ineffective Assistance of Appellate Counsel

[17] Springfield also argues he received ineffective assistance from his appellate counsel because she did not argue fundamental error resulted from Springfield’s trial counsel’s failure to request Springfield be tried separately from Rollins

because Rollins's speedy trial request interfered with Springfield's counsel's preparedness. Claims of ineffective assistance of appellate counsel are reviewed using the same standard as claims of ineffective assistance of trial counsel.

Taylor v. State, 717 N.E.2d 90, 94 (Ind. 1999). These claims generally fall into three categories: (1) denying access to appeal; (2) waiver of issues; and (3) failure to present issues well. *Bieghler v. State*, 690 N.E.2d 188, 193-95 (Ind. 1997), *cert. denied* 525 U.S. 1021 (1998). Relief is appropriate only when we are confident that we would have ruled differently if counsel had performed adequately. *Id.* at 196.

[18] On appeal, Springfield's appellate counsel argued the trial court's denial of Springfield's motion to continue left his counsel unprepared for trial, which she alleged violated Springfield's Sixth Amendment right to counsel and prejudiced Springfield's defense. During that argument, she mentioned Springfield's trial counsel did not request severance of Springfield's trial but did not suggest fundamental error resulted from that omission. Instead, Springfield's appellate counsel argued the trial court should have severed the trials sua sponte pursuant to Indiana Code section 35-34-1-11(b).

[19] At the hearing on Springfield's petition for post-conviction relief, Springfield's appellate counsel testified that, when she considered the issues to bring on appeal, it was "kind of shocking to [her] that you would say well this one person has to have a speedy trial because somebody else wanted one" but then she noted the trial court's decision to deny Springfield's motion to continue because she "didn't think so much about the constitutional issues of denying [a]

continuance . . . that's just the discretion of the court.” (PCR Tr. Vol. II at 13.) Additionally, she testified that, while she considered raising fundamental error regarding the trial court's decision to deny Springfield's motion to continue, she ultimately decided not to because she chose to raise a Sixth Amendment argument: “[W]hen you think of speedy trial you know there's constitutional issues and I thought of one versus the other.” (*Id.*) She also testified she did not present fundamental error because

on the record . . . there wasn't a lot of effort [to challenge the continuance] because generally and especially if you're asking for a continuance the judge is pressing you, you kind of have to show all the reasons why you're not prepared and all the prejudice that could result or perhaps did result, you know, after you're going through trial or afterwards. And I can see that there were some issues that arose in the trial. But I don't think they were laid out very well in advance of the asking for it. I mean the judge kind of said you're a good attorney which certainly she is, and she was. But that's I mean, that kind of like a very nice thing for the judge to say (inaudible). But the judge can't know what's in someone's mind or how much time the attorney had to spend on other things or what things you have if someone's good.

(*Id.* at 14-5.)

[20] Based thereon, we conclude that, even if his appellate counsel had presented a fundamental error argument as Springfield contends should have occurred, there would not have been a reasonable probability it would have resulted in reversal because the record was not sufficient to support a fundamental error argument. Thus, Springfield has not demonstrated prejudice from his appellate

counsel's representation, and the post-conviction court did not err when it determined Springfield's appellate counsel did not render ineffective assistance. *See, e.g., Garrett v. State*, 992 N.E.2d 710, 724 (Ind. 2013) (suggested appellate arguments were not clearly stronger than issues appellate counsel raised on appeal and thus no prejudice demonstrated).

Conclusion

[21] Springfield has not demonstrated prejudice based on the performance of his trial counsel or his appellate counsel. Thus, the post-conviction court did not err when it denied his petition for postconviction relief. Accordingly, we affirm.

[22] Affirmed.

Crone, J., and Weissmann, J., concur.