

STATE OF LOUISIANA : 14TH JUDICIAL DISTRICT COURT
VS. NO. 20179-01 : PARISH OF CALCASIEU
JASON M. REEVES : STATE OF LOUISIANA
FILED: _____ : _____
DEPUTY CLERK OF COURT

JUDGMENT

History

On December 13, 2001, Mr. Jason Reeves (Referred to hereafter as “the petitioner”) was indicted for first degree murder, a violation of LSA-R.S. 14:30. The State filed its Notice of Intent to Seek the Death Penalty on January 7, 2002. The first trial began on October 27, 2003, but was declared a mistrial after the jury was unable to meet a unanimous verdict. The second trial began on October 12, 2004, and the jury found the petitioner guilty of first degree murder on November 5, 2004. The jury unanimously recommended a sentence of death on November 8, 2004. On December 10, 2004, this Court sentenced the Petitioner to death by lethal injection. The sentence was affirmed by the Louisiana Supreme Court. *State v. Reeves*, 2006-2419 (La. 05/05/09); 11 So. 3d 1031. The United States Supreme Court denied the Petitioner’s certiorari petition on November 16, 2009. *Reeves v. Louisiana*, 558 U.S. 1031, 130 S. Ct. 637, 175 L. Ed. 2d 490 (2009).

The Petitioner filed a “Petition for Post-Conviction Relief and Request for Counsel” on December 23, 2009. The Petitioner raised twelve claims, but none were briefed. In addition, none of the claims related to the Petitioner’s competency to stand trial or be sentenced to death. On March 19, 2010, Mr. Gary P. Clements of the Capital Post-Conviction Project of Louisiana filed a “Motion and Order to Enroll as Counsel of record,” which was signed by this Court on March 24, 2010. On May 31, 2012, the State filed for a death warrant for the petitioner’s execution. Petitioner filed a “Motion to Recall the Warrant and Stay the Execution.” The warrant was then recalled.

On March 4, 2013, the Petitioner amended his “Petition for Post-Conviction Relief,” and filed a motion to enroll Mr. Alan Freedman as co-counsel. The State then timely filed its procedural objections to the petitioner’s application for post-conviction relief.

On May 1, 2015, the Petitioner’s intellectual disability/mental retardation and competency claims were denied. The Louisiana Supreme Court, subsequently, denied the

Petitioner's Writ of Certiorari on April 4, 2016. *State v. Reeves*, 2015-1668 (La. 04/04/16); 188 So. 3d 257. The Petitioner then sought to amend his application for post-conviction relief, which was denied. The Louisiana Supreme Court ultimately denied this application in January 2017. *State v. Reeves*, 2016-KP-2199. The Petitioner now brings forth claims of ineffective assistance of trial counsel in the guilt and penalty phases. A hearing was held on April 18, 2017, to determine the merits of the Petitioner's claims. The State and Defense subsequently filed post-hearing briefs.

Legal Standard

A criminal defendant has a constitutional right to effective assistance of counsel, but not to his choice of court appointed counsel. *State v. Kirkpatrick*, 443 So. 2d 546 (La. 1983).

The United States Supreme Court set out the standard for claims of ineffective assistance of counsel in *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). The test articulated by *Strickland* is whether (1) counsel's performance fell below an objective standard of reasonableness under prevailing professional norms; and (2) counsel's inadequate performance prejudiced relator to the extent that the proceedings were rendered unfair and the convictions suspect. *Id.*

Defense attorneys are entitled to deferential review of their actions. *State v. Harris*, 540 So. 2d 1226 (La. App. 3 Cir. 1989). Defense attorneys do not need to be errorless to be found effective. *Id.* "A fair assessment of an attorney's performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of the attorney's challenged conduct and to evaluate the conduct of the attorney from his perspective. A reviewing court may only then decide if a petitioner was prejudiced by ineffectiveness. *Id.* at 1230.

In the penalty phase of a capital trial, a defendant is "entitled to the assistance of a reasonably competent attorney acting as a diligent, conscientious advocate for his life." *State v. Sparks*, 1988-0017 (La. 05/10/11), 68 So. 3d 435, 481-82, citing *State v. Hamilton*, 92-2639, p.6 (La. 7/1/97), 699 So. 2d 29, 32. The test in determining the effectiveness of defendant's counsel is whether "there is a reasonable probability that, absent counsel's errors, the sentencer would have concluded that the balance of aggravating and mitigating circumstances did not warrant death." *Hamilton*, 699 So. 2d at 32. Defense counsel is entitled to "formulate a strategy that was reasonable at the time and to balance limited resources in accord with effective trial tactics and strategies." *Harrington v. Richter*, 562 U.S. 86, 107, 131 S. Ct. 770, 789, 178 L. Ed. 2d 624, 644

(2011). The quality of counsel's representation may not be determined by whether a strategy was successful. *State v. Brooks*, 505 So. 2d 714 (La. 1987).

Defense counsel is not required to file frivolous, unnecessary motions. *State v. Pettibone*, 626 So. 2d 66, 69 (La. App. 3 Cir. 1993). The decision to file or not to file pretrial motions is generally within the realm of trial strategy. *State v. Pendelton*, 98-367 (La. App. 5 Cir. 5/28/97), 696 So. 2d 144. To prove defense counsel was ineffective for not making motions or objections, the defendant "must show specific prejudice." *State v. Seiss*, 428 So. 2d 444, 447 (La. 1983).

Petitioner's Claims

Judge Ware was ineffective for failing to introduce compelling, readily available evidence in support of Petitioner's claim that the State utilized peremptory challenges to purposefully discriminate against African-Americans in jury selection in violation of *Batson v. Kentucky*.

This claim is without merit. There was no evidence to support a *Batson* challenge. *Batson v. Kentucky*, 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986). In addition, the failure to make a *Batson* objection does not show a defendant was prejudiced. *State v. Snyder*, 98-1078 (La. 4/14/99), 750 So. 2d 832. The Court in *Snyder* expanded, "Where a rule does not have 'such a fundamental impact on the integrity of factfinding,' *Allen v. Hardy*, 478 U.S. 255, 259, 106 S. Ct. 2878, 2881 (1986), it cannot be said that the violation of such rule renders the trial unfair and the verdict suspect." *Snyder*, 750 So. 2d at 842

In the instant case, the defendant cannot show he was prejudiced. Therefore, defense counsel did not provide ineffective assistance by failing to introduce evidence in support of a *Batson* challenge.

Judge Ware did not have a reasonable strategy reason not to use the expert witnesses attorney Cuccia used in the first trial. Therefore, he should be found to have provided Petitioner constitutionally ineffective representation.

This claim is also without merit. As stated in *Strickland*, "Even the best criminal defense attorneys would not defend a particular client in the same way." 466 U.S. at 689, 104 S. Ct. at 2065. The decision to call or not to call a particular witness is within the purview of trial strategy. *State v. Folse*, 623 So. 2d 59 (La. App. 1 Cir. 1993). Defense counsel is entitled to "formulate a strategy that was reasonable at the time and to balance limited resources in accord

with effective trial tactics and strategies.” *Harrington v. Richter*, 562 U.S. at 89, 131 S. Ct. at 789. The case law on this issue is clear. Judge Ware’s actions were reasonable considering the circumstances. Therefore, defense counsel did not provide ineffective assistance by failing to use the same expert witness.

Judge Ware did not have a reasonable strategy reason for his flawed cross-examination of Det. Mark Holmes at Trial. Therefore, he should be found to have provided Petitioner Constitutionally Ineffective Representation.

Petitioner argues his trial counsel should have retained an expert to assist in attacking the cadaver dog evidence. The record indicates, and the Petitioner concedes, his trial counsel cross-examined witnesses on this topic. As stated in *Harrington*, Defense counsel is entitled to “formulate a strategy that was reasonable at the time and to balance limited resources in accord with effective trial tactics and strategies.” 562 U.S. at 89, 131 S. Ct. at 789. Petitioner cannot show that Judge Ware’s actions violated either prong in *Strickland*. Therefore, defense counsel did not provide ineffective assistance for his cross-examination of Det. Mark Holmes.

Judge Ware did not have a Reasonable Strategy Reason not to use the witness statements of Faith Watson and Michelle Mathis at trial. Therefore, he should be found to have provided Petitioner Constitutionally Ineffective Representation.

This claim is without merit. The decision to call or not to call a particular witness is within the purview of trial strategy. *State v. Folse*, 623 So. 2d 59 (La. App. 1 Cir. 1993). The failure to cross-examine witnesses can be a reasonable trial strategy. *State v. Mitchell*, 44,008 (La. App. 2 Cir. 2/25/09), 4 So. 3d 320. This claim falls within the purview of trial strategy. Judge Ware testified that he did not use the statement of Michelle Mathis to cross-examine Det. Shannon Daughenbaugh because he felt it was hearsay. He also testified that there was no way to know whether these witnesses could have created reasonable doubt in the minds of the jurors. Defense counsel did not provide ineffective assistance for failing to call these witnesses or use their statements at trial.

Judge Ware did not have a reasonable strategy reason for failing to review the video recording of Petitioner's statement to the police prior to it being played in Court for the jury at trial. Therefore, he should be found to have provided Petitioner Constitutionally Ineffective Representation.

This claim is without merit. The video was supposed to be redacted to remove certain statements the Petitioner made in his taped confession. Both the State and the Petitioner's counsel believed the video to be redacted. This is not comparable to a failure to conduct a reasonable investigation, and certainly does not give rise to ineffective assistance of counsel. Defense counsel did not provide ineffective assistance for failing to review the video that he believed was redacted.

Attorney Charles St. Dizier did not have a reasonable strategy reason for failing to discover and present expert witnesses in the penalty phase of the trial to explain the effects of sexual abuse that Petitioner suffered as a child, or to provide multiple reports detailing Petitioner's childhood to the expert that was presented to the jury by the Defense at the penalty phase of the trial.

Petitioner cannot show this failure constituted ineffective assistance of counsel. Petitioner argues Mr. St. Dizier should have further investigated his adolescence and family, including his experiences as a sex abuse victim. The record indicates that evidence of his traumatic childhood, including the death of his sister, was submitted to the jury. The jury also heard evidence of his sister being abused and molested by their stepfather. In addition, testimony was presented by the Petitioner's mother, brother, Dr. Maureen Santana, and Dr. Marc Zimmerman. In fact, the Louisiana Supreme Court has already noted, "At trial, the defense presented extensive evidence of Reeves' character and behavioral disorders, both to challenge the validity of the confession and in the penalty phase as mitigation." *State v. Reeves*, 2006-2419 (La. 5/5/09), 11 So. 3d 1031, 1088.

Counsel is not required to "investigate every conceivable line of mitigating evidence no matter how unlikely the effort would be to assist the defendant at sentencing." *Wiggins v. Smith*, 539 U.S. 510, 533, 123 S. Ct. 2527, 2541 (2003). See, e.g., *Bobby v. Van Hook*, 558 U.S. 4, 130 S. Ct. 13 (2009).

Petitioner's claims fail to show that Mr. St. Dizier's representation during the penalty phase was deficient or prejudicial. It is unlikely that, absent counsel's alleged errors, the sentencer would have concluded the balance of aggravating and mitigating factors did not warrant death.

The Cumulative Errors of Trial Counsel should lead to a finding of ineffective assistance of counsel.

The Petitioner cannot establish relief through the cumulative error doctrine. The Louisiana Supreme Court has previously rejected the cumulative error doctrine. *State v. Draughn*, 2005-1825 (La. 01/17/07); 950 So. 2d 583. "the combined effect of the incidences complained of, none of which amounts to reversible error [does] not deprive the defendant of his right to a fair trial." *Id* at 629, citing *State v. Copeland*, 530 So. 2d 526, 544-45 (La. 1988). This Court will follow the guidance of Louisiana Supreme Court. Therefore, the Petitioner cannot show ineffective assistance of counsel through cumulative error.

The Trial Court held regularly scheduled contradictory and private hearings, regarding the funding and status of the defense, as the trial neared. The record demonstrates and knowing and purposeful defense that was given every opportunity to prepare and present as it deemed appropriate.

Conclusion

The Petitioner's claims of ineffective assistance of counsel do not meet the burden set out in *Strickland* and subsequent case law. The Jury verdict of "death by lethal injection" will be maintained.

THEREFORE, IT IS HEREBY ORDERED that Petitioner's Application for Post-Conviction Relief for claims of ineffective assistance of trial counsel in the guilty and penalty phases is **DENIED**.

IT IS FURTHER HEREBY ORDERED Jury verdict of "death by lethal injection" will be maintained.

Done and signed this 16th day of November, 2017, Lake Charles, Louisiana.


DISTRICT JUDGE, G. MICHAEL CANADAY

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