

In the Supreme Court of the United States

Patrick S. Crick,

Petitioner,

v.

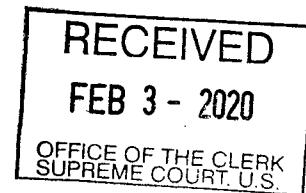
State of Washington,

Respondent.

On Petition For Writ Of Certiorari
To The Ninth Circuit Court Of Appeals

SUPPLEMENTAL APPENDIX

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAR 29 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

PATRICK S. CRICK,

NO. 18-35972

Petitioner-Appellant,

D.C. No. 2:17-cv-01348-JLR
Western District of Washington,
Seattle

v.

JAMES KEY,

ORDER

Respondent-Appellee.

Before: SILVERMAN AND CALLAHAN, Circuit Judges.

The request for a certificate of appealability (Docket Entry No. 2) is denied because the underlying 28 U.S.C. § 2254 petition fails to state any federal constitutional claims debatable among jurists of reason. See 28 U.S.C. § 2253(c)(2)-(3); *Gonzales v. Thaler*, 565 U.S. 134, 140-41 (2012) (“When ... the district court denies relief on procedural grounds, the petitioner seeking a COA must show both ‘that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.’”)(quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

Any pending motions are denied as moot.

DENIED.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

In the Matter of the Personal
Restraint of No. 75685-1-I

Patrick S. Crick Order of Dismissal
Petitioner,

Patrick Crick was convicted by a jury of child molestation in the first degree following a jury trial in Snohomish County Cause No. 13-1-00590-0 based upon testimony he inappropriately touched an eleven year-old friend of the family. This court upheld Crick's conviction on appeal. See State v. Crick, No. 71224-1-I. Crick filed this personal restraint petition seeking relief from his conviction. He claims the (1) appellate counsel was constitutionally deficient, (2) the State knowingly presented false evidence, (3) the prosecutor presented inadmissible evidence and impermissible vouched for the credibility of State witnesses, and (4) he was deprived of a fair trial due cumulative error. In order to obtain collateral relief by means of a personal restraint petition, Crick must demonstrate either an error of constitutional magnitude that gives rise to actual prejudice or a nonconstitutional error that inherently results in a "complete miscarriage of justice." In re Pers. Restraint of Cook, 114 Wn.2d 802, 813, 792 P.2d 506 (1990).

Crick asserts that appellate counsel was constitutionally deficient because he filed an untimely motion for reconsideration, which was then denied. Crick contends he was thus denied his right to appeal.

To prevail on a claim of ineffective assistance of appellate counsel, Crick must show that appellate counsel failed to raise a meritorious legal issue and that he was "actually prejudiced by the failure to raise or adequately raise the issue." In re Pers. Restraint of Dalluge, 152 Wn.2d 772, 787, 100 P.3d 279 (2004). Crick exercised his right to appeal. This court reviewed the following issues raised by counsel: (1) sufficiency of the evidence, (2) jury unanimity, (3) denial of motions for mistrial, and (4) ineffective assistance of trial counsel. Crick does not contend that appellate counsel failed to raise a legal issue upon which he would have prevailed.

Even if Crick could establish that filing an untimely motion for reconsideration amounts to constitutionally deficient performance, he fails to establish, prejudice.

Crick does not address the standard for granting reconsideration under RAP 12.4 and there is nothing in the record to suggest that such a motion would have been granted had it been timely filed. As explained, Crick cannot demonstrate that there is a reasonable likelihood that the outcome would have been different but for counsel's delay in filing the motion.

Next, Crick contends that the prosecutor committed misconduct with regard to the testimony of several witnesses who said that the victim did not attend a family Christmas celebration several months after the alleged touching incident. Crick contends that the prosecutor either deliberately elicited this false

testimony or "sat silent," knowing the statements to be untrue. He also suggests that the State withheld from the defense photographs proving that the victim was at a family Christmas gathering in 2011 and providing the evidence to the defense only after the jury returned its verdict. The record does not support Crick's argument. There is nothing in the record to support the claim that the State knowingly presented false testimony. The record indicates that Crick's partner, not the State, possessed and belatedly provided photographs to defense counsel purporting to show that the victim and Crick were both present at a family gathering. The photographs would not have undermined the evidence presented by the State that the victim did not wish to be around Crick after the incident and did not willingly return to his home. It does not appear that either of the photographs were taken at Crick's home, nor were they date-stamped. Crick fails to demonstrate deficient performance or prejudice.

Crick also contends that some of the prosecutor's closing remarks amounted to misconduct because he personally vouched for the credibility of State witnesses and thereby suggested that Crick had the burden to prove that the victim was not credible. "It is improper for a prosecutor personally to vouch for the credibility of a witness." State v. Brett, 126 Wn.2d 136, 175, 892 P.2d 29 (1995). Prosecutors, however, have wide latitude to argue reasonable inferences from the evidence, and prejudicial error will not be found unless it is clear and unmistakable that counsel is expressing a personal opinion. Brett, 126 Wn.2d at 175. Here, the prosecutor made legitimate arguments about credibility that were

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