



SUPREME COURT OF GEORGIA
Case No. S24H0311

November 19, 2024

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

MARGARITA LEANOS v. ALLEN DILLS, WARDEN.

Upon consideration of the application for certificate of probable cause to appeal the denial of habeas corpus, it is ordered that it be hereby denied.

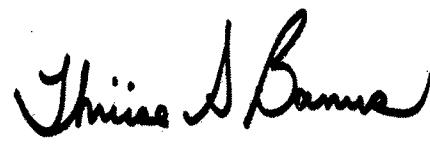
All the Justices concur, except Peterson, P. J., not participating.

Trial Court Case No. 22CV0341

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.


Thresa N. Barnes, Clerk

APPENDIX A

David C. Weller
David Weller, Clerk
Habersham County, Georgia

MARGARITA LEANOS, * CIVIL ACTION NO.
GDC #1001656695, * 22CV0341
*
Petitioner, *
*
v. * HABEAS CORPUS
*
ALLEN DILLS, Warden, *
*
Respondent. *

FINAL ORDER

Petitioner Leanos filed this petition for a writ of habeas corpus challenging the validity of her October 2015 Hall County jury trial convictions for felony murder, conspiracy to commit armed robbery, and two counts of participation in criminal gang activity, which were affirmed on appeal in 2018. Upon a review of the record as established at the evidentiary hearing on July 10, 2023,¹ the Court denies relief.

I. PROCEDURAL HISTORY

Petitioner was indicted with Misty Banda-Lopez (aka Misty Moran),² Nicholas Gonzalez, Justin Adams, and Ignacio Mondragon by a Hall County

¹ Citations to testimony and evidence adduced at the July 10, 2023, habeas corpus hearing are "HT" followed by the page number(s).

² Banda-Lopez was referred to as "Moran" at the evidentiary hearing. In the interest of consistency, the Court will refer to her as "Moran" in this order as well.

grand jury on March 26, 2015, for felony murder, criminal attempt to commit armed robbery, conspiracy to commit armed robbery, and two counts of participation in criminal gang activity.³ (HT 175-85). Following an October 2015 jury trial, Petitioner was found guilty of all counts against her. (HT 303-04).

Petitioner was sentenced to life for felony murder (count 2), ten years concurrent for conspiracy to commit armed robbery (count 7), fifteen years, serve five for participation in criminal gang activity (count 16) to run consecutively to count 2, and fifteen years on probation for participation in criminal gang activity (count 17) to run consecutively to count 16. (HT 305-21). Criminal attempt to commit armed robbery (count 5) was merged into count 2. (HT 305).

Petitioner changed counsel after trial and was represented by Arturo Corso on direct appeal. (HT 1210). Petitioner enumerated two errors on appeal:

- (1) there was insufficient evidence to support her convictions because the evidence showed that she did not knowingly participate in the crimes; and
- (2) trial counsel rendered ineffective assistance by: failing to advance any defense theory; failing to present witnesses; failing to offer good character evidence; failing to investigate or assess how Petitioner was

³ Moran was also indicted individually for malice murder, an additional count of felony murder, three counts of aggravated assault, and five counts of possession of a firearm during the commission of a crime. (HT 175-85).

being medicated at the jail in the weeks leading up to her trial; recommending that Petitioner not testify at trial; failing to object to improper arguments by the prosecutor; and failing to move for severance of counts.

(HT 1231).

The Supreme Court of Georgia affirmed Petitioner's convictions and sentences on May 7, 2018. *Leanos v. State*, 303 Ga. 666, 814 S.E.2d 332 (2018).

Petitioner filed this habeas corpus petition through counsel on August 25, 2022, in which she challenged her Hall County convictions and raised four grounds for relief. Petitioner filed an amended petition on July 9, 2023, in which she modified ground two and withdrew ground three. At the July 2023 evidentiary hearing, Petitioner's former trial counsel and Petitioner's former appellate counsel testified and were subjected to cross-examination, and documentary evidence was admitted.

II. THE GROUNDS FOR RELIEF

A. GROUND 1

In ground 1, Petitioner alleges that she received ineffective assistance of counsel in that appellate counsel failed to argue that trial counsel was ineffective for failing to object to gang evidence that had no nexus to the crimes charged.

Findings of Fact

Appellate counsel was admitted to the Georgia Bar in 1996. (HT 43).

Most of his practice consists of criminal defense, including appellate work. (HT 43). At the time he handled Petitioner's direct appeal, he had handled about twenty appeals. (HT 43).

While preparing the direct appeal brief, he reviewed the trial transcript and the discovery, met with trial counsel, met with Gainesville Police Investigator Joe Amerling and asked him about the case, and met with Petitioner a couple times. (HT 43, 59). At the time he submitted the appeal brief, he raised the issues that he felt were the most meritorious. (HT 60).

Appellate counsel considered raising an issue related to the State's presentation of gang testimony but felt that there would be a problem with raising such an issue because to be convicted of a violation of the Gang Act, a defendant does not have to be in a gang, but only has to be associated with the gang. (HT 54). He did not recall if he considered arguing that trial counsel was ineffective for failing to object to the gang evidence on the basis that it had no nexus to the crimes charged but felt that it is something he would have considered. (HT 64-65).

Trial counsel Leonard Parks was retired at the time of the evidentiary hearing, after having practiced criminal law for the majority of the 37 years he practiced, for both the prosecution and the defense. (HT 9-10). In

preparation for trial, he reviewed the discovery, and reviewed it with Petitioner. (HT 11). His defense strategy was that Petitioner was an unwitting participant in this incident, because she was asked to drive but was not informed of what was going on and had no idea that there was going to be an armed robbery until after everything happened. (HT 11).

Trial counsel did not consider filing a motion in limine to keep out any gang evidence because he knew that, since the gang charges were part of the case, the State would argue that such evidence was part of what it needed to prove those charges, and such a motion would have been fruitless. (HT 24, 33). At the time of trial, he was aware that the appellate courts of this state have taken an expansive view of what constitutes being associated with a gang. (HT 27, 34-35).

Petitioner was charged in counts 16 and 17 of the indictment with participation in criminal gang activity in that she, while being associated with a criminal street gang (SUR 13 for count 16 and BOE 23 for count 17), participated in criminal gang activity by attempting to commit armed robbery and by committing felony murder. (HT 185).

Investigator Amerling was admitted as an expert in criminal street gangs. (HT 568). He testified that the Hall County Sheriff's Department maintains a database of gangs and gang members in Hall County. (HT 568). He testified that SUR 13 and BOE 23 both have 25 to 50 members and

associates in Hall County. (HT 568-70). He testified that SUR 13 is involved in criminal trespass, criminal damage to property, armed robberies, homicides, rapes, child molestation, statutory rapes, drug sales, weapons possession, and aggravated assaults. (HT 569). He testified that BOE 23 is involved in criminal damage to property, criminal trespass, armed robberies, aggravated assaults, homicides, rapes, possession of firearms, drug sales, and drug possession. (HT 570).

Amerling testified that Petitioner and co-defendant Gonzalez were associated with both gangs, that co-defendant Mondragon was a member of BOE 23, and that co-defendant Moran was a member of SUR 13. (HT 569, 571, 574). Trial counsel felt that, based on the case law, Amerling's testimony was enough to prove that Petitioner was associated with the gangs. (HT 34-35).

In affirming Petitioner's convictions, the Supreme Court of Georgia found that the evidence adduced at trial showed that:

Leanos was a member of the local criminal street gang BOE 23, and BOE 23 was associated with SUR 13, a larger international criminal street gang. Both BOE 23 and SUR 13 were involved in various criminal activities, including armed robberies, drug sales, and homicides.

On March 15, 2015, Leanos called Valentin Hernandez and asked him to call Misty Moran. Moran, a co-defendant, was a member of SUR 13 and an aunt of Leanos's boyfriend. Moran asked Hernandez for a gun, and he gave her a 9-millimeter handgun.

Later that day, Leanos went to Moran's house. Moran had been shooting the handgun in her back yard when Leanos arrived and was carrying the gun when she greeted Leanos. Sometime later, according to statements made to police by co-defendants Moran and Nicholas Allen Gonzalez, who both testified at Leanos's trial, Leanos participated with Moran, Gonzalez, and two other co-defendants – Ignacio Mondragon and Justin Adams – in planning the robbery of a taxi driver. Gonzalez was a member of BOE 23 and SUR 13; Mondragon was a member of BOE 23. The group planned to summon a taxi for Moran, who would convince the driver to pull over after driving some distance, at which point Leanos's co-defendants would appear and rob the driver and Leanos would drive the get-away car.

Around 11:00 that night, Leanos drove her co-defendants to an apartment complex in Hall County and, once there, called for a taxi. Moran waited for the taxi at the complex while Leanos drove the other defendants a short distance away to wait. The taxi driver picked up Moran; the defendants followed in Leanos's vehicle. At some point, Gonzalez saw smoke come out of a window of the taxi; the taxi then drove off the road. The taxi driver had been shot in the back of the head and fell out of the vehicle as it continued traveling until it hit a tree. The driver died as a result of the gunshot wound.

When the taxi came to a stop, Moran exited the taxi and made her way to Leanos's vehicle, which Leanos had pulled over. Leanos remained in the vehicle while the three male passengers exited her car and went to the taxi hoping to retrieve money. The men left empty-handed, however, deciding not to enter the taxi once they saw that the interior was covered in blood and a light on the porch of a nearby home was on.

Moran confessed that she shot the taxi driver and hid the gun in the sunroof of Leanos's vehicle as the group drove away. The group then began planning another crime. Leanos suggested a home invasion of her mother's house, but the idea was rejected given the possibility that someone could get hurt. The co-defendants, including Leanos, burglarized a trailer instead. Afterward, the defendants returned to Moran's residence, where Moran had Leanos shine her car lights so that Moran could see

what she was doing as she hid the gun under a concrete slab. Moran later returned the gun to Hernandez and told him that she had used it to shoot a taxi driver.

Leanos at 667-68.

Conclusions of Law

Petitioner has not shown that appellate counsel's performance was deficient and that she was prejudiced by the alleged error of appellate counsel to satisfy the standard of *Strickland v. Washington*, 466 U.S. 688 (1984). A petitioner must satisfy both prongs of this test to obtain relief. *Id.* at 687. However, a reviewing court does not have to approach this test "in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one," as, "The object of an ineffectiveness claim is not to grade counsel's performance." *Id.* at 697. "If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed." *Id.*

The Georgia Supreme Court has adopted *Strickland* for analyzing an appellate attorney's performance. *Shorter v. Waters*, 275 Ga. 581, 571 S.E.2d 373 (2002). When the claim is that appellate counsel was ineffective for not raising a particular issue on appeal, a petitioner must overcome the "strong presumption" that appellate counsel's actions fell within the range of reasonable professional conduct and affirmatively show that appellate

counsel's decision not to raise the issue "was an unreasonable one which only an incompetent attorney would have made." *Griffin v. Terry*, 291 Ga. 326, 337, 729 S.E.2d 334 (2012) (citations omitted). To establish prejudice, a petitioner must show that, but for counsel's unprofessional errors, there is a reasonable probability that the result of the proceeding would have been different. *Griffin v. Terry*, 291 Ga. at 329.

An indigent defendant does not have a right to compel appointed counsel to argue non-frivolous points if counsel decides, as a matter of professional judgment, that those issues should not be raised. *Jones v. Barnes*, 463 U.S. 745, 751 (1983).

Where a claim of appellate counsel ineffectiveness is based on a failure to have raised claims of ineffective assistance of trial counsel, "two layers of fact and law are involved" in the analysis of the claim. *Gramiak v. Beasley*, 305 Ga. 512, 513, 820 S.E.2d 50 (2018). A reviewing court must determine that appellate counsel's failure to raise the issue was "deficient professional conduct." *Id.* To establish prejudice, a petitioner must establish a reasonable probability that the result of the appeal would have been different had appellate counsel raised the claim, and this requires a petitioner to show both that trial counsel's performance was deficient and that he was prejudiced by the error(s) of trial counsel. *Id.* at 513-14.

To prove a violation of the Gang Act, the State must prove: (1) the

existence of a criminal street gang; (2) the defendant's association with the gang; (3) the defendant's commission of an act of gang activity; and (4) the defendant's commission of such an act in furtherance of the gang. *Lupoe v. State*, 300 Ga. 233, 238, 794 S.E.2d 67 (2016); *Rodriguez v. State*, 284 Ga. 803, 806-07, 671 S.E.2d 497 (2009). Amerling's testimony established that Petitioner was associated with the gangs. See *Drennon v. State*, 314 Ga. 854, 864, 880 S.E.2d 139 (2022).

Further, given that the evidence showed that both gangs were involved in armed robberies, the attempted robbery of the victim was sufficient to establish a nexus between the crimes and furthering the interests of the gangs. See *Stripling v. State*, 304 Ga. 131, 134, 816 S.E.2d 663 (2018).

Any objection to the gang evidence by trial counsel on the basis that there was no nexus to the crimes charged thus would have been meritless, and the failure to make a meritless objection does not constitute deficient performance. *Ward v. State*, 313 Ga. 265, 273, 869 S.E.2d 470 (2022).

Petitioner has also failed to show that there is a reasonable probability that the outcome of the direct appeal would have been different had appellate counsel raised this issue. Based on the analysis above, trial counsel did not render deficient performance in failing to object to the gang evidence.

Accordingly, ground 1 provides no basis for relief.

B. GROUND 2

In ground 2, Petitioner alleges that she received ineffective assistance of counsel in that appellate counsel failed to argue that trial counsel was ineffective for failing to confront co-defendants Gonzalez and Moran, who testified against Petitioner, with the sentences they were avoiding by testifying and the benefit they received.

Findings of Fact

On direct examination of Gonzalez at Petitioner's trial, the State confirmed with Gonzalez that he was a co-defendant in this case, that he had already pled guilty to certain charges, and that a condition of his sentence was that he testify truthfully at Petitioner's trial. (HT 545). He testified that Petitioner called and had the taxi sent out. (HT 547). He testified that the plan between him, Moran, Adams, and Mondragon was to rob the cab driver. (HT 548). He testified that they planned to not let Petitioner know what the plan was so they could use her car, because if Petitioner had known what the plan was, she would have said no. (HT 548).

Gonzalez testified that later, after Petitioner started to ask them what was going on, they told her to just wait until Moran called her or follow the cab, and not to worry about anything. (HT 549). He testified that Moran said that she was just going to scare the cab driver and make him pull over to the side of the road, and that then he, Adams, and Mondragon would come out

and take everything the driver had. (HT 549). When the prosecutor asked Gonzalez about whether he remembered telling Amerling on the day he pled guilty that Petitioner knew about the plan before she called for the cab, he responded that he did not recall. (HT 550). The prosecutor then played a recording of Gonzalez's statement, and confirmed with Gonzalez that during that statement he said that the plan was discussed before Petitioner called the cab company. (HT 551-52).

On cross-examination, trial counsel did not ask Gonzalez any questions about what sentence he was avoiding or the benefit he received. Trial counsel confirmed with Gonzalez that part of their plan was to not let Petitioner know what the real plan was, and that this direction came from Moran, who did not want Petitioner to know what the real plan was because they needed Petitioner's vehicle. (HT 557). He also confirmed with Gonzalez that all they told Petitioner about the plan was that she needed to follow the cab, and that they did not tell Petitioner what Moran was going to do in the cab. (HT 559).

Trial counsel felt that the testimony Gonzalez gave at trial "gave a version of events that fit our defense narrative almost exactly." (HT 12-13). He felt that even when the jury heard Gonzalez's prior statement, Gonzalez explained it in a way that was still consistent with the defense. (HT 15). Trial counsel initially planned to cross-examine Gonzalez about his plea deal, but when Gonzalez got on the stand and essentially became a defense witness,

trial counsel “decided that discretion was the better part of valor on that and chose to leave that alone.” (HT 17). He did not see any benefit to exploring Gonzalez’s plea deal and the benefit he received because after Gonzalez testified favorably for the defense, he did not want to turn around and attack his credibility, so he made the strategic decision not to go down that road with Gonzalez. (HT 29-30).

Moran had already been convicted by a jury in this case at the time Petitioner went to trial. (HT 601). Her attorney was present when she was called as a witness at Petitioner’s trial; he stated that she intended to invoke the Fifth Amendment, that she could still assert that right until her conviction was final, and that he had filed her motion for new trial that morning. (HT 600, 602). The trial court agreed that she could still invoke the right. (HT 602).

Following the lunch break, the prosecutor stated that Moran could invoke her Fifth Amendment right unless the State granted her witness immunity from using her testimony against her in another proceeding, which it intended to do. (HT 608). Moran then testified, but refused to answer certain questions. On redirect, she confirmed that she did not accept the State’s plea offer, and went to trial and was found guilty. (HT 635). Moran gave multiple statements to law enforcement: an initial interview shortly after the murder, another statement about two months before Petitioner’s

trial when the State presented her with a plea offer that she ultimately rejected, and on the Friday before Petitioner's trial started, after she had been convicted. (HT 621-22, 633, 643-44).

Trial counsel felt that Moran's testimony was not helpful to the defense. (HT 17). He felt that the jurors looked at Moran as having been the killer in this case, because she admitted on the stand to having shot the victim, albeit accidentally. (HT 19-20). He did not feel much need to bring up what Moran's sentence was in relation to what the other defendants had received because the jury already knew that Moran had been convicted, which was the important thing to him. (HT 21). While in other trials he has handled in which witnesses had prior convictions he has presented the convictions as an attack on their credibility, he felt that the credibility issue with regard to Moran had already been raised because her conviction in this case was in the record. (HT 22).

Trial counsel acknowledged that Moran gave multiple statements, one of which was in conjunction with the State presenting her with a plea offer that she rejected. (HT 23). He felt that since there was just a brief reference to a plea offer that did not go anywhere, there was no need to go into a failed plea offer. (HT 23). Trial counsel cross-examined Moran about how her story shifted across the conversations she had with law enforcement. (HT 634). He also confirmed with Moran that when Petitioner called the cab, she did not

know anything about a plan to rob the cab driver. (HT 629-30).

Appellate counsel did not recall whether he considered raising an issue of trial counsel ineffectiveness based on a failure to cross-examine the co-defendants about their plea deals. (HT 49). He felt, to the best of his recollection, that trial counsel impeached witnesses where he could, and he raised as issues the times when he felt that trial counsel performed ineffectively. (HT 49).

Appellate counsel recalled that when Gonzalez testified, he gave testimony that was favorable to Petitioner, that she was not in the gang and that she did not know what was going to happen before the robbery. (HT 60-61). He recalled trial counsel mentioning during a conversation between them that “one of the State’s witnesses had been a much better witness for him unexpectedly.” (HT 60-61). Based on this, he felt that a claim of trial counsel ineffectiveness for failing to cross-examine Gonzalez about his plea deal would not have held water because it would have been “an obvious trial strategy decision.” (HT 61-62).

With regard to Moran, appellate counsel did not recall whether he considered raising an issue that trial counsel was ineffective for failing to impeach her regarding making statements in connection with a plea deal. (HT 53-54). He did not recall any actual evidence that there was any benefit given to Moran in exchange for her testimony, such as reduced charges or a

reduced sentence. (HT 62).

Conclusions of Law

“Although an attorney is permitted to thoroughly question a testifying co-defendant regarding the details of any plea agreement, it does not necessarily follow that counsel is ineffective for failing to elicit all details of the agreement.” *Daugherty v. State*, 291 Ga. App. 541, 544, 662 S.E.2d 318 (2008).

With regard to Gonzalez, “Decisions about what [particular] questions to ask on cross-examination are quintessential trial strategy and will rarely constitute ineffective assistance of counsel. In particular, whether to impeach prosecution witnesses and how to do so are tactical decisions.” *Davis v. State*, 306 Ga. 140, 146, 829 S.E.2d 321 (2019). In light of trial counsel’s testimony that Gonzalez’s testimony supported his theory of defense, trial counsel did not perform deficiently in failing to cross-examine Gonzalez about his plea deal, since efforts to impeach his testimony could have served to actually undermine the theory of defense. *See Bonner v. State*, 308 Ga. App. 827, 828, 709 S.E.2d 358 (2011) (counsel did not perform deficiently by choosing not to cross-examine a testifying co-defendant about his plea deal because of potential harm to the defense).

With regard to Moran, there was no accepted plea deal about which to cross-examine her to begin with. Further, as with Gonzalez, the decision

about how to conduct cross-examination is “quintessential trial strategy.” In light of trial counsel’s cross-examination of Moran, Petitioner has failed to show that it was patently unreasonable for trial counsel to forgo trying to impeach Moran’s credibility by asking her about any benefit from a plea deal which she rejected. *See Romer v. State*, 293 Ga. 339, 344-45, 745 S.E.2d 637 (2013).

Petitioner has also failed to show that there is a reasonable probability that the outcome of the direct appeal would have been different had appellate counsel raised this issue. Based on the analysis above, trial counsel did not render deficient performance in failing to cross-examine Gonzalez and Moran about any benefit they were receiving from plea deals.

Accordingly, ground 2 provides no basis for relief.

C. GROUND 3

In ground 3, Petitioner alleges that she received ineffective assistance of counsel in that appellate counsel failed to argue that Amerling testified that Petitioner was a member of a gang without any foundation or personal knowledge.

Findings of Fact and Conclusions of Law

Amerling was the first Gainesville Police Department officer assigned to the Hall County Gang Task Force. (HT 567). As stated above, the Hall County Sheriff’s Office maintains a database of gangs and gang members.

(HT 568). Amerling stated that he knew Petitioner, and identified her in the courtroom. (HT 569). He stated that she was associated with both SUR 13 and BOE 23. (HT 569).

Appellate counsel did not specifically recall whether he considered raising a claim regarding Amerling testifying about Petitioner being associated with a gang without any foundation or personal knowledge, but was sure he would have considered it. (HT 66).

Petitioner has failed to show that appellate counsel performed deficiently in failing to raise this issue or that she was prejudiced by his failure to do so. Amerling's testimony showed that he was familiar with Petitioner and knew that she was associated with both gangs. There is no reasonable probability that the outcome of Petitioner's direct appeal would have been different had appellate counsel raised this issue.

Accordingly, ground 3 provides no basis for relief.

CONCLUSION

Wherefore, the petition is denied.

If Petitioner desires to appeal this order, Petitioner must file an application for a certificate of probable cause to appeal with the Clerk of the Supreme Court of Georgia within thirty (30) days from the date of the filing of this order. Petitioner must also file a notice of appeal with the Clerk of the Superior Court of Habersham County within the same thirty (30) day period.

The Clerk of the Superior Court is hereby DIRECTED to provide a copy of this order to Petitioner's Counsel, Respondent, and the office of the Attorney General.

SO ORDERED, this 4th day of October _____, 2023.

 Digitally signed by B. Chan
Caudell
Date: 2023.10.04 15:05:16 -04'00'

B. CHAN CAUDELL, Judge
Mountain Judicial Circuit

Prepared by:
Matthew B. Crowder
Assistant Attorney General
Georgia Department of Law
40 Capitol Square, SW
Atlanta, Georgia 30334-1300
(404) 458-3269