Supreme Court of Missouri

SC101662

State ex rel. Zachary A. Smith,
Petitioner,

vs.

Kelly Morriss,
Respondent.

Mandate

Now at this day, on consideration of the petition for a writ of habeas corpus regarding Cole County Circuit Court Number 25AC-CC06081 herein to the said respondent, it is ordered by the Court here that the said petition be, and the same is hereby denied.

Certification

I, BETSY LEDGERWOOD, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the judgment of said Supreme Court, entered of record at the May Session, 2026, and on the 7th day of July, 2026, in the above-entitled cause.

Given under my hand and seal of said Court, at the City of Jefferson, this 7th day of July, 2026.

Clerk:

Deputy Clerk:

Pet. App X. A

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Pet. Appx. A

FILED
MAR 04 2026
COLE COUNTY
CIRCUIT COURT

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

ZACHARY A. SMITH, #521163,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. 25AC-CC06081
	)	
KELLY MORRISS,	)	
	)	
Respondent.	)	

DECISION, JUDGMENT, AND ORDER

Statement of Custody and Parties

The Circuit Court of Jackson County, Missouri convicted Zachary Smith, Petitioner, following a jury trial of first-degree murder of and armed criminal action. The court sentenced him to concurrent terms of life without parole and ninety-nine years. Petitioner serves his sentences in the Jefferson City Correctional Center in Cole County, where Kelly Morriss is the warden. This Court is the proper venue and Kelly Morriss is the proper respondent. *Hawley v. Midkiff*, 543 S.W.3d 604, 607–608 (Mo. 2018).

Statement of the Case

I. Facts of The Case

The facts of the facts of the case with transcript references are set out in the State's direct appeal brief. Resp. Ex. 4 at 5–11. The facts of the case are also set out by the Missouri Court of Appeal's direct appeal opinion. Resp. Ex.5

at 6–8. On June 23, 1995 around 10 p.m. Petitioner left his father's home in Kansas City and began driving around in a borrowed maroon Buick with K.G. and J.S. *Id.* at 6. Petitioner was armed with a black .45 caliber pistol. *Id.* The men stopped at a gas station to buy cigarettes. *Id.* Victim rode up on a bicycle. *Id.* Several weeks earlier Victim had confessed to stealing Petitioner's lawn mower and promised to pay him back for the lawn mower but never did. *Id.* About a week earlier Petitioner had shown Victim a pistol and said, "You better get my money." *Id.*

Petitioner asked Victim at the gas station if Victim had his money. *Id.* Victim said he did not, but it was at his house and he would go get it. *Id.* Victim then said they should follow him to Victim's cousin's house, but Petitioner insisted that they put the bike in the trunk and that Victim ride in the car. *Id.* A witness then heard what sounded like two guns being cocked. *Id.* After placing the bike in the trunk, the group drove to the cousin's house, where Cousin's younger brother said Cousin was not home. *Id.*

When Victim got back in the car, Petitioner told Victim he could work off the debt by burglarizing a house. *Id.* Petitioner placed Victim's bicycle in a field near Petitioner's house. *Id.* Petitioner drove to a house where K.G and Victim got out. *Id.* Victim knocked on the door and when no one answered, Victim kicked in the door, stole a television and a stereo, and placed them in the trunk.

Id. The men returned to Petitioner's home where they unloaded the television and stereo. *Id.* Petitioner then told Victim that he would have to perform another burglary to work off the debt. *Id.*

Petitioner drove the group to the northeast part of the city where they stopped to buy beer. *Id.* After driving around for about half an hour K.G. told Petitioner that he needed to urinate. *Id.* Petitioner stopped the car under a streetlight. *Id.* But then even though the street was deserted Petitioner backed the car out of the light. *Id.* Victim also asked if he could get out to urinate. *Id.* But Petitioner told him to remain in the vehicle. *Id.* Victim told K.G. that he had to urinate and got out anyway. *Id.*

While K.G. and Victim were at the curb urinating Petitioner got out of the car and stood behind and between them. *Id.* K.G heard a gunshot, looked up and saw a bright flash. *Id.* K.G. saw Petitioner holding a pistol one or two feet from Victim. *Id.* K.G. saw Victim go limp and fall to the ground. *Id.* After K.G. and Petitioner got back in the car Petitioner said something about "good measure" and fired another shot out the window at Victim. *Id.*

About sunrise the next day the three men went to the home of J.S.'s girlfriend R.M.S. The girlfriend saw them arrive in a newer four-door maroon or burgundy car, and Petitioner had a pistol in his waist band. *Id.* A neighbor, C.S., looked out her window and saw Petitioner standing next to the car. *Id.*

Petitioner drove to his father's house where his girlfriend, C.F., had been living for a month. *Id.* Petitioner gave his pistol to C.F. and told her to put it up. *Id.* The next day Petitioner took K.G. to his bedroom and showed him Victim's bike, which was now covered in black tape. *Id.* at 6–7. Petitioner told K.G. that he was going to give the bicycle to a little kid. *Id.* at 7. Petitioner gave the bicycle to a boy who was visiting Petitioner's father's house. *Id.*

Petitioner asked K.G. to accompanying him while Petitioner drove across a bridge and K.G. threw the gun in a river. *Id.* Petitioner told K.G. that J.S. did not know anything about the plan and Petitioner was the mastermind. *Id.* Petitioner told K.G. that Victim had it coming for stealing from him. *Id.*

On the morning of the murder between 3:00 a.m. and 4:00 a.m. two security officers heard gun shots in the area of the murder. *Id.* Later, a man reported that he had seen a man lying in the street who appeared to be seriously injured. *Id.* The security officers went to the scene and found Victim's body. *Id.* A detective and a crime scene technician arrived later and found two spent bullets and two shell casings near the body. *Id.*

An autopsy revealed Victim was killed by a gunshot wound to the right temple. *Id.* The bullet entered Victim's head and penetrated his brain at a 45-degree angle. *Id.* The bullet exited from Victim's left upper neck. *Id.* Victim was also wounded by a cluster of five superficial slit-like cuts in his upper left

chest and an abrasion. *Id.* These were consistent with a ricochet shot. *Id.*

Police seized Victim's bicycle. *Id.*

L.S., the next neighbor of Petitioner's father, told police that two weeks before the murder she had seen Petitioner fire a black .45 caliber pistol in the air. *Id.* C.S., the sister of L.S., also saw Petitioner fire a .45 caliber pistol in the air near Petitioner's father's home. *Id.*

Detectives spoke with C.F. who told them she co-owned a house with Petitioner. *Id.* C.F. consented to officers searching the house. *Id.* C.F. told officers that she was the co-owner of the safe in the house and officers could open it. *Id.* The safe contained a bag containing live .45 caliber rounds and an empty box of .45 caliber ammunition and identification cards of Petitioner and J.S. *Id.*

Two days later, officers found Petitioner hiding under a bed. *Id.* Petitioner told them that on the night of the murder he had gone bowling with several friends, then the group went to Petitioner's father's house where they remained until 11:00 a.m. the next morning. *Id.* Petitioner denied owning a gun, claimed he did not know K.G., and claimed he had not seen Victim in a month. *Id.* He also claimed he had not been to the street where the murder occurred for three or four months, he did not have Victim's bicycle, and he had not been in a maroon car. *Id.*

Police found Petitioner's fingerprint on the left inside door of the maroon Buick. Examination of the two shell casings found at the crime scene, the casings found at Petitioner's house, and the casings found at Petitioner's father's house showed that they had all been fired from the same .45 caliber pistol. *Id.* One of the flattened bullets at the crime scene was consistent with a ricochet as were the recovered fragments. *Id.* at 6–7. Petitioner had no explanation why the casings outside his house matched those at the crime scene. *Id.* at 6–7.

II. Direct Appeal

Point I: The Missouri Court of Appeals rejected an unpreserved claim that it was plain error for the trial court to allow the prosecution to ask K.G. if his memory loss about the events of the crime was caused by his encounter with Petitioner's brother in the hallway of the courthouse. Resp. Ex. 5 at 8–10. The Missouri Court of Appeals also rejected an unpreserved claim that it was plain error not to instruct the jury to not attribute any wrongdoing by Petitioner's brother to Petitioner. Resp. Ex. 5 at 10.

Point II: The Missouri Court of Appeals rejected a claim that the trial court erred in not suppressing the contents of the safe, finding a reasonable officer would have concluded C.F. had authority to the consent to the search of the safe. Resp. Ex. 5 at 10–11.

Point III: The Missouri Court of Appeals found that the trial court did not plainly error or abuse its discretion in allowing the jury to view K.G's videotaped statement during deliberations. Resp. Ex. 5 at 12–13.

III. Post-Conviction Motion

The post-conviction review court denied the amended post-conviction relief motion after an evidentiary hearing. Resp. Ex. 7 at 141–150.

Claim 1: The motion court rejected claims that counsel was ineffective for not requesting a limiting instruction, failing to object to prosecution questions, failing to object to playing a videotape during deliberations, and failing to interview and call witness A.C. Resp. Ex. 7 144–148.

Claim 2: The motion court rejected a claim that the prosecutor committed misconduct by questioning K.G. about his interaction with Petitioner's brother in the hallway and K.G.'s purported loss of memory about the crime. Resp. Ex. 7 at 148–149.

Claim 3: The motion court found that Petitioner's pro se claims b through g were without merit. Resp. Ex. 7 at 149.

These claims are the following:

b) Counsel should have called A.C. and D.S. to contest the testimony of K.S. and L.S. that Petitioner had fired a pistol on an earlier occasion near his father's home;

c) Counsel should have presented evidence that Victim had received a monetary settlement for a back injury to refute the claim that Petitioner killed Victim over money that Petitioner was owed by Victim;

d) Counsel was ineffective for failing to investigate an altercation between the prosecutor, D.M, and Petitioner's brother, failing to offer evidence in support of a motion in limine, and failing to object to the reading of prior testimony of K.S. and L.S. that Petitioner's brother had threatened them;

e) Counsel was ineffective for not inquiring into bias by juror 18, and not moving to strike her for cause or peremptorily;

f) Counsel was ineffective for not investigating and not moving for sanctions against the State for failure to disclose exculpatory evidence;

g) Counsel was ineffective for not making an oral motion in limine, offering evidence showing a pattern of misconduct by the prosecutor, and not objecting and requesting a mistrial due to prosecutorial misconduct.

IV. Post-Conviction Appeal

Point I: The Missouri Court of Appeals rejected a claim that counsel ineffectively failed to object to improper questioning and failed to request a limiting instruction. Resp. Ex. 11 at 8–10.

Point II: The Missouri Court of Appeals rejected a claim that counsel was ineffective for not objecting to replaying K.G.'s videotaped statement to the

jury. Resp. Ex. 11 at 10–11.

Point III: The Missouri Court of Appeals rejected a claim that trial counsel was ineffective for failing to impeach K.G.'s testimony. Resp. Ex. 11 at 12–12.

Point IV: The Missouri Court Appeals found that there was no prejudice from any of the claims in Point I. Resp. Ex. 11 at 13–14.

Point V: The Missouri Court of Appeals rejected a claim that counsel was ineffective for not calling A.C. Resp. Ex. 11 at 14–16.

Point VI: The Missouri Court of Appeals rejected a claim of prosecutorial misconduct. Resp. Ex.11 at 16–17.

Point VII: The Missouri Court of Appeals rejected a claim that prejudice should be cumulated from individual claims. Resp. Ex. 11 at 17–19.

Point VIIII: The Missouri Court of Appeals rejected a claim for remand based on allegedly defective findings of fact and conclusions of law. Resp. Ex. 11 at 19–21.

V. Federal Habeas Litigation

The United States District Court denied a federal habeas petition. Resp. Ex. 13.

1) The district court denied a claim that counsel was ineffective for not interviewing and calling A.C. Resp. Ex. 13 at 5–6.

2) The district court denied a claim that counsel was ineffective for not timely objecting to the prosecutor's questioning of K.G. or requesting a limiting instruction. Resp. Ex. 13 at 6–8.

3) The district court denied a claim that trial counsel was ineffective for not objecting to the jury viewing a videotaped statement by K.G. during deliberations. Resp. Ex. 13 at 8.

4) The district court denied a claim that Petitioner ineffectively failed to impeach K.G. Resp. Ex. 13 at 9.

5) The district court rejected a claim that counsel was ineffective for not presenting certain evidence in support of the motion to suppress. Resp. Ex. 13 at 9–11.

6) The district court rejected a claim that the questioning of K.G. was prosecutorial misconduct. Resp. Ex. 13 at 11–12.

7) The district court rejected a claim that the prosecutor threatened witness C.S. Resp. Ex. 13 at 12.

8) The district court rejected a claim that it was trial error to allow the jury to view K.G.'s statement. Resp. Ex. 13 at 13.

Analysis

1) Petitioner alleges a *Brady* violation from the alleged failure to disclose letters from the prosecutor to witness K.G. encouraging him to testify, and a statement from J.R.P. that someone besides Petitioner and his brother had also discussed threatening or killing witnesses. Petition at 13–20.

In order for a constitutional violation to have occurred from a failure to disclose evidence the evidence must be material in the sense that it creates a reasonable probability that the outcome of the proceeding would have been changed by disclosure of the evidence. *United States v. Bagley*, 473 U.S. 667, 681–682 (1985).

Petitioner does not really allege a *Brady* violation here. Petitioner attaches to the petition letters from the prosecutor to witness K.G. apologizing that the case has to be tried again, thanking K.G. for his assistance to the victim and his family, and stating Petitioner cannot be allowed to walk away from a murder. There is nothing exculpatory or impeaching here and no violation for the alleged failure to disclose. The claim is without merit.

Similarly, Petitioner alleges that someone besides Petitioner or his brother discussed threatening or killing the witnesses. Assuming this was not

disclosed, that does not in any way lessen the overwhelming evidence of Petitioner's guilt. This claim is also without merit.

2) Petitioner alleges that the prosecutor failed to disclose that C.F., Petitioner's girlfriend, had a full order of protection against Petitioner, apparently on the theory that this undermines her apparent authority to consent to the search of the safe in the home she and Petitioner co-owned. Petition at 20–25.

In order for a constitutional violation to have occurred from a failure to disclose evidence the evidence must be material in the sense that it creates a reasonable probability that the outcome of the proceeding would have been changed by disclosure of the evidence. *United States v. Bagley*, 473 U.S. 667, 681–682 (1985).

This information appears to have been equally available to Petitioner. Petitioner would presumably be aware if his girlfriend had a full order of protection against him. So, there would be no failure to disclose. But in any event this information is not material in light of the overwhelming evidence of guilt. And it does not even cast into doubt that C.F. had apparent authority to consent to the search of the safe.

3) Petitioner alleges that the prosecutor committed misconduct in the way he questioned K.G. allegedly improperly attempting to

associate Petitioner's brother's interaction with the witness with Petitioner. Petition at 25–29.

Petitioner presented the claim as a trial error claim as opposed to a prosecutorial misconduct claim on direct appeal. The claim was rejected using plain error analysis by the Missouri Court of Appeals. Resp. Ex. 5 at 5–10. Insofar as Petitioner is attempting to raise the same claim in habeas corpus that he raised on direct appeal, he may not do so. "Habeas corpus review does not provide duplicative and unending challenges to the finality of a judgment so it is not appropriate to review claims already raised on direct appeal or through post-conviction proceedings." *State ex rel. Strong v. Griffith*, 462 S.W.3d 732, 733–34 (Mo. 2015) (quotations omitted).

Petitioner raised the claim as a prosecutorial misconduct claim in the post-conviction appeal and the Missouri Court of Appeals found the claim was both barred because Petitioner did not raise the misconduct theory on direct appeal and without legal merit. Resp. Ex. 11 at 16–17. "Habeas corpus review does not provide duplicative and unending challenges to the finality of a judgment so it is not appropriate to review claims already raised on direct appeal or through post-conviction proceedings." *State ex rel. Strong v. Griffith*, 462 S.W.3d 732, 733–34 (Mo. 2015) (quotations omitted). Petitioner cannot raise the claim again here.

The federal district court also found this claim was meritless. Resp. Ex. 13 at 11–12. The district court did not find that there was an impropriety in the questioning and found that even assuming that there was there was an impropriety no prejudice resulted. *Id.* This analysis is correct.

4) Petitioner alleges that his counsel failed to forward plea offers of 17 and 25 years to petitioner, then lied about Petitioner declining the offers. Petition at 29–30.

This claim is procedurally barred. Petitioner alleges that he discovered his claim when he found a memorandum in his defense file that indicated Petitioner had declined a plea offer that Petitioner now alleges counsel did not forward to him. But Petitioner's post-conviction counsel had access to the file and to Petitioner. Assuming Petitioner is telling the truth, which is not credible, counsel could have discovered and raised the claim in post-conviction litigation. But they did not. Resp. Ex. 7, 11. The United States Supreme Court held, in *Martinez v. Ryan*, that procedural default will not bar a *federal* habeas court from hearing a substantial claim of ineffective assistance of trial counsel if the petitioner's post-conviction counsel was ineffective in failing to assert the claim in the motion. *Martinez v. Ryan*, 566 U.S. 1, 17 (2012). *Martinez* simply does not apply in Missouri Rule 91 habeas cases. *See Barton v. State*, 486 S.W.3d 332 (Mo. 2016) (noting that aside from complete abandonment, claims

of ineffective assistance of post-conviction counsel are categorically unreviewable in Missouri, but may be raised as cause in *federal* court under *Martinez*).

5) Petitioner alleges that it no longer conforms to evolving standards of decency to sentence persons under 21 years of age to life without parole. Petition at 30–49.

This claim fails as a matter of law. *State v. Foster*, 616 S.W.3d 436, 441–445 (Mo. App. E.D. 2020) (holding that Missouri Supreme Court precedent dictates that life without parole sentences for offenders over age eighteen are not unconstitutional based on the offender's age). The claim is also barred as Petitioner did not raise the claim on direct appeal). Resp. Ex. 5.

Wherefore, this Court denies the petition for the writ of habeas corpus and all pending motions.

3/3/2026 — Date

Hon. Christopher K. Limbaugh

STATE OF MISSOURI } SS
COUNTY OF COLE }

Clerk of the Circuit Court of Cole County, Missouri, hereby certify that the above and foregoing is a full true and correct copy of

Decision, Judgment + Order

as fully as the same remains of record in my said office.
IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of my said office this 4 day of March

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Clerk
Circuit Court of Cole County, Missouri

IN THE MISSOURI COURT OF APPEALS

WESTERN DISTRICT

IN RE: ZACHARY A. SMITH, PETITIONER,

vs. WD88856

KELLY MORRISS, RESPONDENT.

ORDER

NOW ON THIS DAY the Court acknowledges Petitioner's Petition for Writ of Habeas Corpus filed April 14, 2026. Being fully informed, the Court does hereby DENY Petitioner's petition.

Dated this 15th day of April, 2026.

Karen K. King Mitchell

KAREN KING MITCHELL, PRESIDING JUDGE
WRIT DIVISION

Martin, J., concurs.

ecc: Stephen D. Hawke, Esq.
cc: Zachary A. Smith, Petitioner Acting Pro Se

Pet Appx. C