MISSOURI COURT OF APPEALS
WESTERN DISTRICT

MAURICE R. HOGAN,

Appellant

v.

STATE OF MISSOURI,

Respondent

DOCKET NUMBER WD83668

DATE: AUGUST 3, 2021

Appeal From:

Circuit Court of Cole County, MO
The Honorable Patricia S Joyce, Judge

Appellate Judges:

Division One
Alok Ahuja, Presiding Judge, Lisa White Hardwick, Judge, Anthony Rex Gabbert, Judge

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Attorneys:

Carol Jansen, Columbia, MO,
Counsel for Appellant

Attorneys:

Richard A Starnes, Jefferson City, MO,
Counsel for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

MAURICE R. HOGAN, Appellant,
v.
STATE OF MISSOURI, Respondent.

WD83668 **Cole County**

Before Division One Judges: Alok Ahuja, Presiding Judge, Lisa White Hardwick, Judge, and Anthony Rex Gabbert, Judge

Maurice R. Hogan appeals the denial, after an evidentiary hearing, of his Rule 29.15 motion for post-conviction relief. He contends the motion court clearly erred in, 1) denying Hogan's claim that trial counsel was ineffective to his prejudice for failing to object to Instruction No. 8, arguing the instruction failed to specify a particular incident of Hogan touching A.P.'s genitals in Count II, although the State presented evidence of multiple acts of Hogan touching A.P.'s genitals, thereby allowing for the possibility that the jurors failed to unanimously find him guilty of the same incident; 2) denying Hogan's claim that appellate counsel was ineffective to his prejudice for failing to raise a claim challenging the trial court's submission of Instruction No. 8, arguing that the instruction failed to specify a particular incident of Hogan touching A.P.'s genitals in Count II, although the State presented evidence of multiple acts of Hogan touching A.P.'s genitals, thereby allowing for the possibility that the jurors failed to unanimously find him guilty of the same incident; 3) denying Hogan's claim that trial counsel was ineffective to his prejudice for failing to object to Instruction No. 11, arguing the instruction failed to specify a particular incident of sexual misconduct involving a child by indecent exposure in Count V, although the State presented evidence of multiple acts of Hogan exposing his genitals to A.P., thereby allowing for the possibility that the jurors failed to unanimously find him guilty of the same incident; 4) denying Hogan's claim that appellate counsel was ineffective to his prejudice for failing to raise a claim challenging the trial court's submission of Instruction No. 11, arguing the instruction failed to specify a particular incident of indecent exposure to A.P. for Count V, although the State presented evidence of multiple acts of Hogan exposing his genitals to A.P., thereby allowing for the possibility that the jurors failed to unanimously find him guilty of the same incident; 5) and denying Hogan's claim that trial counsel was ineffective to his prejudice for failing to object to Ashton Eibel's improper "vouching" testimony during the State's publication of portions of A.P.'s forensic interview.

AFFIRMED.

Division One holds:

1) The motion court did not clearly err in concluding that trial counsel was not ineffective for declining to raise an objection to Instruction No. 8 for Count II. Hogan's motion

shows no evidence of multiple, distinct acts of hand-to-vagina contact between Hogan and A.P. such as would have necessitated a more particularized verdict director to protect Hogan's right to a unanimous verdict.

2) The motion court did not clearly err in denying Hogan's claim that appellate counsel was ineffective to his prejudice for failing to raise a claim challenging the trial court's submission of Instruction No. 8 for Count II. A more particularized verdict director was not required by the evidence at trial for Count II to ensure jury unanimity and, therefore, appellate counsel was not ineffective for failing to raise a unanimity claim on direct appeal.

3) The motion court did not clearly err in concluding that trial counsel was not ineffective for declining to raise an objection to Instruction No. 11 for Count V. Hogan's motion shows no evidence of multiple, distinct acts of indecent exposure by Hogan toward A.P. such as would have necessitated a more particularized verdict director to protect Hogan's right to a unanimous verdict.

4) The motion court did not clearly err in denying Hogan's claim that appellate counsel was ineffective to his prejudice for failing to raise a claim challenging the trial court's submission of Instruction No. 11 for Count V. A more particularized verdict director was not required by the evidence at trial for Count V to ensure jury unanimity and, therefore, appellate counsel was not ineffective for failing to raise a unanimity claim on direct appeal.

5) The motion court did not clearly err in denying Hogan's claim that trial counsel was ineffective to his prejudice in declining to object during Eibel's testimony. Hogan fails to show that he was prejudiced even if counsel was ineffective in failing to object.

Opinion by: Anthony Rex Gabbert, Judge Date: August 3, 2021

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