MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DOMINIQUE A. LINDSEY

APPELLANT,

v.

STATE OF MISSOURI

RESPONDENT.

DOCKET NUMBER WD84035

DATE: October 5, 2021

Appeal From:

Jackson County Circuit Court
The Honorable Joel P. Fahnestock, Judge

Appellate Judges:

Division Four: Cynthia L. Martin, Chief Judge, Presiding, Karen King Mitchell, Judge and Gary D. Witt, Judge

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Attorneys:

Jeannie M. Willibey, Kansas City, MO, for appellant.

Dora Fichter, Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DOMINIQUE A. LINDSEY, APPELLANT,
v.
STATE OF MISSOURI, RESPONDENT.

WD84035 Jackson County

Before Division Four Judges: Cynthia L. Martin, Chief Judge, Presiding, Karen King Mitchell, Judge, and Gary D. Witt, Judge

Dominique Lindsey appeals the denial of his 29.15 motion following an evidentiary hearing. Lindsey was convicted and sentenced for second-degree murder and armed criminal action for shooting and killing his step-father, Ewon Wright in his mother's presence. The case was affirmed on direct appeal. Lindsey argued in a post-conviction motion that trial counsel was ineffective for failing to investigate a potential alibi witness and then call that witness at trial. The motion court denied Lindsey's claims. In his sole point on appeal, Lindsey argues the motion court erred because trial counsel was ineffective for failing to investigate Lindsey's father, Damon Williams, as a potential alibi witness and then call Williams to testify at trial.

AFFIRMED.

Division Four holds:

At the hearing on the 29.15 motion Williams testified that during preparation for Lindsey's trial, he informed trial counsel he could be available as an alibi witness if it would be helpful to Lindsey's case. Lindsey alleges trial counsel did not investigate Williams's supposed alibi or call Williams to testify during trial. Williams testified at the Motion hearing that Lindsey was with him cleaning mold at one of his rental properties on the day and time of Wright's murder and he would have provided this testimony at Lindsey's trial. Trial counsel testified she understood Williams's offer to be an alibi witness as a desperate attempt of a father to help his son rather than a credible alibi witness. Trial counsel testified that on one occasion prior to trial, "[Williams] suggested that in the event an alibi defense would be helpful to his son, that he would be willing to offer that."

Trial counsel credibly testified she did not further investigate William's offer to be an alibi witness based on her long career as a trial attorney and her belief that Williams's alibi would not have been credible. It was reasonable for trial counsel to conclude that calling Williams may have hurt Lindsey's case more than it would have helped. Trial counsel reasonably pursued other defense strategies instead of an alibi defense. Trial counsel was not ineffective. Judgment is affirmed.

Opinion by: Gary D. Witt, Judge October 5, 2021

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