MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI, Respondent,
v.
JOHN W. CAUDILL, Appellant.

DOCKET NUMBER WD85603

DATE: September 26, 2023

Appeal From:

The Circuit Court of Nodaway County, Missouri
The Honorable Corey K. Herron, Judge

Appellate Judges:

Division One: Anthony Rex Gabbert, Presiding Judge, and Lisa White Hardwick and Mark D. Pfeiffer, Judges

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Attorneys:

Andrew Bailey, Attorney General, and Dora A. Fichter, Assistant Attorney General, Jefferson City, MO, Attorneys for Respondent.

John W. Caudill, Licking, MO, Appellant, *pro se*.

MISSOURI APPELLATE COURT OPINION SUMMARY

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v.
JOHN W. CAUDILL, Appellant.

WD85603 Nodaway County

Before Division One Judges: Anthony Rex Gabbert, Presiding Judge, and Lisa White Hardwick and Mark D. Pfeiffer, Judges

Mr. John Caudill ("Caudill") appeals *pro se* from the judgment of the Circuit Court of Nodaway County, Missouri ("motion court"), denying his motion for post-conviction DNA testing without a hearing.

On April 23, 1992, Caudill was found guilty of murder in the second degree, armed criminal action, and robbery in the second degree. His direct appeal and Rule 29.15 motion were denied. On April 8, 2022, Caudill filed a motion for post-conviction DNA testing, seeking to test certain pieces of evidence that he argued might yield usable and exculpatory results.

The motion court dismissed Caudill's motion without ordering an evidentiary hearing on the motion because Caudill's pleadings were insufficient. The motion court first noted that Caudill did not properly plead his motion under oath as required by section 547.035, RSMo, and denied it on that ground. Proceeding to the motion's merits nonetheless, the motion court concluded that Caudill would not have been entitled to a hearing even if he had properly submitted his motion under oath because he did not: demonstrate DNA evidence was available for testing, failing to satisfy section 547.035.2(1); provide a valid reason for not previously testing the evidence, failing to satisfy section 547.035.2(3); or demonstrate a reasonable probability the testing would have resulted in a different outcome at trial, failing to satisfy section 547.035.2(5). The motion court concluded each of these failures independently justified the denial of Caudill's motion.

Caudill asserts in two points on appeal that the trial court clearly erred in denying his motion without an evidentiary hearing and appointment of counsel, which deprived him of due process.

AFFIRMED.

Division One holds:

1. To be entitled to post-conviction DNA testing under section 547.035, a movant must satisfy section 547.035.2(1) by alleging facts demonstrating that there is evidence that can be tested for DNA. Caudill alleged that the items to be tested were collected by police during the original investigation, but he did not allege that they were still in the State's possession more than thirty years after his conviction. Additionally, Caudill did not allege any facts suggesting that DNA evidence would be on the items he sought testing for; he made only a conclusory assertion that touch DNA would be present. Therefore, Caudill failed to allege facts sufficient to demonstrate the presence of testable DNA evidence. The motion court did not clearly err in denying Caudill's motion without a hearing for failing to satisfy section 547.035.2(1).

2. To be entitled to post-conviction DNA testing, a movant must provide a statutorily valid reason, as enumerated in section 547.035.2(3), for failing to test DNA evidence before trial. A movant must plead: that the technology for testing was not reasonably available to movant at the time of trial, that neither movant nor his or her trial counsel was aware of the existence of the evidence at the time of trial, or that the evidence was otherwise unavailable to movant and movant's trial counsel. As his sole reason for not conducting DNA testing on the evidence before trial, Caudill claimed DNA testing technology was not reasonably available to him because he lacked access to modern DNA testing: the polymerase chain reaction method and the short tandem repeats method. However, Caudill alleged that the blood on his shoe was tested for DNA before his trial using the method available at the time: restriction length polymorphism. Lacking access to a particular method of DNA testing is insufficient to satisfy section 547.035.2(3) if a reliable method was available to movant before trial. Caudill did not allege the DNA testing performed before his trial was unreliable. Therefore, Caudill's motion established he had access to DNA testing. Without alleging any other reason for not testing the items, Caudill failed to satisfy section 547.035.2(3). The motion court did not clearly err in denying Caudill's motion without a hearing on this ground.

3. To be entitled to post-conviction DNA testing, a movant must satisfy section 547.035.2(5) by alleging facts demonstrating that there would have been a reasonable probability the jury would not have convicted movant if the exculpatory results of the DNA testing had been presented at trial. Caudill made only a bare, conclusory assertion that he would not have been convicted if he had access to DNA testing. In its response, the State cited numerous and comprehensive incriminating evidence which would have supported Caudill's conviction even if DNA testing established the presence of another perpetrator. Caudill did not allege facts explaining how the DNA testing would have exonerated him or even how it would have disproved any part of the State's overwhelming evidence. The motion court did not clearly err in denying Caudill's motion without a hearing for failing to satisfy section 547.035.2(5).

4. Although the practice is discouraged, a motion court may permissibly adopt a party's filings without alteration as its judgment. The motion court incorporated portions of the State's response to the show cause order in its judgment. But the motion court also explicitly found additional facts and performed its own legal analysis in denying Caudill's motion. The motion court did more than the legally permissible minimum of adopting the State's response verbatim and committed no error when it incorporated some of the State's response in its judgment.

5. Section 547.035.8 requires that a court deciding a post-conviction motion for DNA testing must issue findings of fact and conclusions of law regardless of whether an evidentiary hearing on the motion is held. A conclusory statement that the movant is not entitled to relief fails to satisfy this requirement. The motion court here, however, found several facts and provided analysis explaining each deficiency in Caudill's motion. The motion court's judgment satisfied section 547.035.8.

Opinion by: Mark D. Pfeiffer, Judge September 26, 2023

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