MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DRISS ZARHOUNI, APPELLANT,
v.
STATE OF MISSOURI, RESPONDENT.

DOCKET NUMBER WD85758

DATE: September 26, 2023

Appeal From:

Boone County Circuit Court
The Honorable Joshua C. Devine, Judge

Appellate Judges:

Division Four: Gary D. Witt, Chief Judge, Presiding, Cynthia L. Martin, Judge, and, Thomas N. Chapman, Judge

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Attorneys:

Ellen H. Flottman, Columbia, MO for appellant.

Nathan Jeremy Aquino, Jefferson City, MO for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DRISS ZARHOUNI, APPELLANT,
v.
STATE OF MISSOURI, RESPONDENT.

WD85758 Boone County

Before Division Four Judges: Gary D. Witt, Chief Judge, Presiding, Cynthia L. Martin, Judge, and, Thomas N. Chapman, Judge

Driss Zarhouni appeals from the denial of his Rule 29.15 motion for post-conviction relief and alleges ineffective assistance of counsel due to the failure to make reasonable efforts to subpoena a witness who could have provided testimony in support of a misidentification defense, and to the failure to call a psychiatrist at trial and during the sentencing hearing to support mental disease or defect or diminished capacity defenses, or to mitigate the sentences imposed.

AFFIRMED.

Division Four holds:

1. Zarhouni failed to sustain his burden to establish that trial counsel was ineffective because she failed to make reasonable efforts to subpoena a witness who could have testified at trial, and also failed to sustain his burden to establish that the witness's testimony would have provided him with a viable defense.

2. Zarhouni failed to sustain his burden to establish that trial counsel was ineffective for failing to call a psychiatrist to testify at trial or during the sentencing hearing because trial counsel's strategic decision to not call the psychiatrist was reasonable, and because the psychiatrist never expressed an expert opinion regarding Zarhouni's mental state at the time of the offenses.

Opinion by: Cynthia L. Martin, Judge September 26, 2023

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