MISSOURI COURT OF APPEALS
WESTERN DISTRICT

VICTOR R. LIBEER, Appellant,
v.
STATE OF MISSOURI, Respondent.

DOCKET NUMBER WD85892

DATE: March 5, 2024

Appeal From:

The Circuit Court of Jackson County, Missouri
The Honorable James F. Kanatzar, Judge

Appellate Judges:

Division Three: Mark D. Pfeiffer, Presiding Judge, and Lisa White Hardwick and W. Douglas Thomson, Judges

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Attorneys:

Rosemary E. Percival, District Defender, Area 52, Kansas City, MO, Attorney for Appellant.

Andrew Bailey, Attorney General, and Gregory L. Barnes, Assistant Attorney General, Jefferson City, MO, Attorneys for Respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

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v.
STATE OF MISSOURI, Respondent.

WD85892 Jackson County

Before Division Three Judges: Mark D. Pfeiffer, Presiding Judge, and Lisa White Hardwick and W. Douglas Thomson, Judges

Victor Libeer ("Libeer") appeals from the judgment entered by the Circuit Court of Jackson County, Missouri ("motion court"), denying, after an evidentiary hearing, his motion for post-conviction relief ("PCR") pursuant to Rule 29.15. We affirm.

In 2012, Libeer's then sixteen-year-old biological daughter, Victim, became pregnant and refused to disclose the father's identity. A paternity test identified Libeer as the father, and he eventually pleaded guilty to incest and second-degree statutory rape in Jasper County. Victim later revealed that Libeer's sexual abuse began years earlier while they lived in Blue Springs. The State then charged Libeer with two counts of first-degree statutory rape in Jackson County.

During *voir dire*, Libeer's counsel asked the members of the venire panel whether they could presume Libeer innocent. No members objected. Libeer's counsel then explained that Libeer had already pleaded guilty to similar charges with the same victim and asked whether these convictions would affect their ability to presume Libeer innocent. After several members objected, Libeer's counsel clarified that the key question was whether they could follow the trial court's instructions on the presumption of innocence, even if doing so would be difficult. Venireperson 24 stated, "It would definitely make it difficult. Could I still follow the instructions? Yes." Libeer's counsel did not move to strike Venireperson 24 for cause, and he was impaneled on the jury. Libeer was convicted of both charges and sentenced to two consecutive life terms in prison.

On direct appeal, Libeer argued a different venireperson should have been struck for cause *sua sponte* after she expressed uncertainty on whether she could presume Libeer innocent. We affirmed, finding the State successfully rehabilitated that venireperson. Libeer then filed this PCR motion, asserting that his counsel was ineffective for failing to challenge Venireperson 24 for cause. The motion court concluded Libeer's counsel was not ineffective for failing to raise the challenge, finding

that it would have been futile because Venireperson 24 was qualified to serve on the jury. In his sole point on appeal, Libeer asserts the motion court erred in concluding that his counsel was not ineffective.

AFFIRMED.

Division Three holds:

A trial court is not required to strike a venireperson for cause unless the challenged venireperson is unqualified to serve on the jury. A venireperson whose answers, based on the totality of the record, demonstrate an ability to follow the trial court's instructions is qualified. Given the full context of *voir dire*, Venireperson 24 unequivocally stated he could follow the court's instructions, making him a qualified juror, even though he recognized that following the instructions would be difficult. Therefore, Libeer failed to show that a for-cause challenge against Venireperson 24 had merit. Because counsel cannot be ineffective for failing to raise a futile challenge, the motion court did not clearly err in concluding that Libeer's counsel was not ineffective.

Opinion by: Mark D. Pfeiffer, Presiding Judge March 5, 2024

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