



In the Missouri Court of Appeals Eastern District

DIVISION TWO

TIMOTHY PERKINS,	)	No. ED113128
	)	
Appellant,	)	Appeal from the Circuit Court
	)	of St. Louis County
vs.	)	Cause No. 21SL-CC04353
	)	
STATE OF MISSOURI,	)	Honorable Ellen H. Ribaud
	)	
Respondent.	)	FILED: October 21, 2025

Introduction

Timothy Perkins (“Perkins”) appeals the judgment denying his Rule 29.15¹ amended motion for post-conviction relief. Perkins raises only one point on appeal: trial counsel was ineffective for failing to question Victim about his alleged “habits of stealing and lying” in order to undermine his credibility. Because trial counsel’s strategic decision not to pursue this line of questioning was reasonable, we affirm the motion court’s judgment.

Factual and Procedural Background

On September 23, 2019, Victim’s mother found Perkins sexually assaulting Victim, age 8, at their shared home and called police. Officer J.S. responded, and saw Victim’s mother and Perkins arguing outside. Officer J.S. then interviewed Victim alone, and Victim told Officer J.S. Perkins had made Victim touch Perkins’s “private area.” On October 15, 2019, Victim was

¹ All rule references are to the Missouri Supreme Court Rules (2024).

interviewed at the Child Advocacy Center (CAC) and a video recording was made. Perkins was subsequently arrested.

The State charged Perkins with two counts of first-degree statutory sodomy. In response to the State's motion in limine, trial counsel argued Victim fabricated the allegations based on coaching from his mother or to gain her sympathy. The trial court rejected Perkins's theory, but permitted limited inquiry into an alleged robbery by Victim's mother and her boyfriend on the night in question. The case proceeded to jury trial on June 8, 2021. Trial counsel's cross-examination of Victim included Victim's recantation of facts related to one of the charges. In an offer of proof, trial counsel cross-examined Victim about his alleged habit of lying and stealing. Trial counsel then moved to question Victim before the jury, which the trial court denied.² Perkins, for his part, testified he was robbed by Victim's mother and her boyfriend and Victim's mother then fabricated the sexual assault allegations.

The jury found Perkins guilty on both counts of first-degree statutory sodomy. The trial court sentenced Perkins to ten years of imprisonment on each count, sentences to run consecutively for a total of twenty years. This Court affirmed the convictions and sentences in *State v. Perkins*, 656 S.W.3d 285 (Mo. App. E.D. 2022). Appointed counsel timely filed an amended motion for post-conviction relief.

The motion court held an evidentiary hearing on February 23, 2024. Trial counsel testified he was barred at trial from arguing Victim was coached into making a false allegation by his mother. Trial counsel explained he had not asked Victim whether Victim fabricated the allegations because trial counsel did not "believe in asking the ultimate question." On cross-examination, trial counsel explained he believed these instances of Victim's alleged dishonest behavior were

² Perkins also conceded, in a deposition before evidentiary hearing, that trial counsel had tried to introduce this evidence.

inadmissible, but added he could perhaps have tried to introduce them in another way with the hope of undermining Victim's credibility.

The motion court denied Perkins's motion for post-conviction relief. This appeal follows.

Standard of Review

Our review of denial of a Rule 29.15 motion for post-conviction relief is limited to determining whether the motion court's findings and conclusions are clearly erroneous. *Anderson v. State*, 564 S.W.3d 592, 600 (Mo. banc 2018); Rule 29.15(k). "A judgment is clearly erroneous when, in light of the entire record, the court is left with the definite and firm impression that a mistake has been made." *Dorsey v. State*, 448 S.W.3d 276, 282 (Mo. banc 2014) (internal quotation omitted).

Discussion

Perkins asserts the motion court clearly erred in denying his Rule 29.15 motion because trial counsel failed to impeach Victim by questioning him about his alleged history of lying and stealing. We disagree because trial counsel's decision was reasonable trial strategy.

To establish ineffective assistance of counsel and be eligible for post-conviction relief, Perkins must satisfy the two-prong *Strickland*³ test. *Anderson*, 564 S.W.3d at 600. Perkins must show "by a preponderance of the evidence that (1) trial counsel failed to exercise the level of skill and diligence that reasonably competent counsel would exercise in a similar situation and (2) the movant was prejudiced by that failure." *Dorsey*, 448 S.W.3d at 286-87 (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). Failure to satisfy either prong eliminates the need to consider the other, and the ineffective-assistance claim fails. *Beck v. State*, 637 S.W.3d 545, 552 (Mo. App. W.D. 2021).

³ *Strickland v. Washington*, 466 U.S. 668 (1984).

The performance prong requires Perkins to “overcome the strong presumption that [trial] counsel’s conduct was reasonable and effective.” *Johnson v. State*, 406 S.W.3d 892, 899 (Mo. banc 2013). Perkins must show “specific acts or omissions of counsel that, in light of all the circumstances, fell outside the wide range of professional competent assistance.” *Zink v. State*, 278 S.W.3d 170, 176 (Mo. banc 2009) (internal quotation omitted). Trial counsel’s decisions can only be ineffective if they were unreasonable. *Id.* “Strategic choices made after a thorough investigation of the law and the facts relevant to plausible opinions are virtually unchallengeable.” *Dorsey*, 448 S.W.3d at 287 (internal quotation omitted).

The prejudice prong requires a showing that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Strickland*, 466 U.S. at 694. “The extent and manner of impeachment, as well as the extent of cross-examination, are all matters of trial strategy.” *Harding v. State*, 613 S.W.3d 522, 530 (Mo. App. E.D. 2020). “The mere failure to impeach a witness does not entitle a movant to postconviction relief.” *Id.* (internal quotation omitted). “Nor is counsel required to present evidence of questionable or dubious impeachment value” *Id.* “In fact, counsel may fairly determine that the use of certain impeachment evidence may cause his or her client more harm than benefit.” *Id.*

“To prevail, a movant must show that counsel’s failure to present the impeachment evidence was unreasonable and outside the realm of trial strategy.” *Proudie v. State*, 644 S.W.3d 41, 56 (Mo. App. E.D. 2022) (internal quotation omitted). Missouri courts “do not hold [t]rial [c]ounsel ineffective for reasonable choices of trial strategy, including decisions regarding the presentation of impeachment evidence.” *Id.*

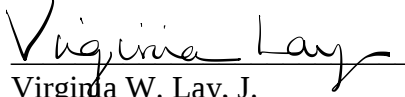
Trial counsel's decision not to impeach Victim on cross-examination was reasonable trial strategy. Trial counsel's choice not to ask Victim "the ultimate question" (whether the allegations against Perkins were true) is a widely accepted criminal defense tactic. And trial counsel did, in fact, attempt to raise Victim's behavioral issues and the abuse by his mother—from which a jury could infer motive to lie—but the trial court excluded that testimony. Trial counsel then questioned Victim about his alleged history of lying and stealing, *inter alia*, in an offer of proof outside the hearing of the jury. In light of the trial court's ruling, trial counsel's logical conclusion Victim's prior bad acts would be inadmissible is reasonable. *See, e.g., State v. J.L.S.*, 259 S.W.3d 39, 45 (Mo. App. W.D. 2008) ("Like other witnesses, the complaining witness in a sex offense case may be impeached by evidence that [his] general reputation for truth and veracity is bad but not ordinarily by proof of specific acts of misconduct.").

Trial counsel's decision to pursue Perkins's chosen defense—the allegations against him were fabricated—by inference was also reasonable trial strategy. Trial counsel indicated he was "left with the fact that child recanted one of the allegations" as a means of challenging credibility, and he highlighted Victim's inconsistent statements at trial. In addition, Perkins testified Victim's mother and her boyfriend robbed Perkins and falsely accused him of sexually abusing Victim. Thus, trial counsel *did* introduce evidence from which a jury could infer the allegations were fabricated, albeit through different means than Perkins would now prefer. "Reasonable choices of trial strategy, no matter how ill-fated they appear in hindsight, cannot serve as a basis for a claim of ineffective assistance. It is not ineffective assistance of counsel to pursue one reasonable trial strategy to the exclusion of another reasonable trial strategy." *Russell v. State*, 699 S.W.3d 495, 502 (Mo. App. E.D. 2024) (internal quotation omitted).

While we need not address the second prong of the *Strickland* test, we further find Perkins was not prejudiced by trial counsel's inability to question Victim about his alleged habit of lying and stealing. Perkins must show there is a reasonable probability that, but for trial counsel's deficient performance, the outcome of the trial would have been different. *Zink*, 278 S.W.3d at 176. But Perkins has not even shown a reasonable probability the line of inquiry in question would have been admissible, let alone it would have convinced a jury to discredit Victim's testimony. The jury was presented with Victim's inconsistent statements, and heard Perkins testify Victim's mother and her boyfriend had robbed him and concocted the allegations against him. The jury could have found Victim's testimony not credible on that basis. Perkins's point is denied.

Conclusion

Finding no error in the motion court's judgment, we affirm.


Virginia W. Lay, J.

Michael S. Wright, P.J., concurs.
Philip M. Hess, J., concurs.