Missouri Court of Appeals

Southern District

In Division

CURTIS JEROME WEBB, JR., Appellant, v. STATE OF MISSOURI, Respondent.	No. SD39101 Filed: July 27, 2026

APPEAL FROM THE CIRCUIT COURT OF STONE COUNTY

Honorable David A. Cole, Judge

AFFIRMED

Curtis Jerome Webb, Jr. ("Webb") appeals the motion court's denial of his motion for post-conviction relief pursuant to Rule 29.15.[1] Webb relies on four points alleging the motion court clearly erred in denying post-conviction relief based on ineffective

1 Unless otherwise indicated, rule references are to Missouri Court Rules (2022). Unless otherwise indicated, all statutory references are to RSMo (2016).

assistance of counsel. We affirm.

Factual and Procedural Background

Because the sufficiency of the evidence is not at issue, we summarize only the facts relevant to the points relied on. As required, we view the evidence in the light most favorable to the verdicts. ***State v. Vandergrift***, 669 S.W.3d 282, 291 (Mo. banc 2023).

On January 12, 2022, Webb was convicted in the Circuit Court of Stone County on charges of rape in the first degree (§ 566.030), and sodomy in the first degree (§ 566.060). The charges arose from Webb's 2017 sexual assaults of a 17-year-old victim ("Victim"). Victim babysat Webb's children two or three days a week. Webb had lost his job and was generally at the house while Victim was there. The first assault occurred one afternoon in early March 2017, while Webb's wife was at work and the two young children were napping. Webb followed Victim into the laundry room where he forcibly raped her. Webb threatened that if Victim told anyone of the assault, he "would have to deal with it." He showed her multiple guns he owned and told her that people would believe him rather than her. Victim continued to babysit for the family and Webb continued to assault her on several occasions from March until May 2017.

Around October or November 2017, Victim reported the sexual assaults to her boyfriend. Sometime around June 2018, Victim's mother showed Victim texts from

Webb's wife, detailing physical abuse. This information caused Victim to report the sexual assaults to her mother. Victim's mother reported this information to Webb's wife. Webb then showed up at Victim's house angry and threatening. The police were called. Victim then reported the sexual assaults to police and charges against Webb were subsequently filed. Following a jury trial, Webb was convicted of all counts and sentenced to a 20-year term of imprisonment. Webb appealed his convictions and this Court issued an opinion affirming. *See* ***State v. Webb***, 674 S.W.3d 189 (Mo. App. S.D. 2023).

On December 20, 2023, Webb filed a Motion to Vacate, Set Aside or Correct the Judgment or Sentence ("PCR Motion"). Counsel was appointed on December 27, 2023, and a Statement in Lieu of Amended Motion was timely filed on April 25, 2024.[2] An evidentiary hearing was held on March 31, 2025. On June 12, 2025, the motion court released its Findings and Conclusions, denying all points. Webb timely filed his notice of appeal on July 17, 2025.

Principles of Review

"Appellate review of the circuit court's ruling is limited to determining whether the circuit court's findings and conclusions are clearly erroneous[.]" ***McLemore v. State***,

[2] We have independently verified the timeliness of these motions. *See* ***Moore v. State***, 458 S.W.3d 822, 825-26 (Mo. banc 2015).

635 S.W.3d 554, 559 (Mo. banc 2021) (citing Rule 29.15(k)). "Appellate courts presume the motion court's findings are correct and 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." ***Flaherty v. State***, 694 S.W.3d 413, 416 (Mo. banc 2024) (internal quotations and citation omitted). In applying this standard, appellate courts should defer to the motion court's superior opportunity to judge credibility and should recognize the circuit court is entitled to believe all, part, or none of the evidence presented at the PCR hearing. ***Id.*** at 419.

To succeed on a claim of ineffective assistance of counsel, a movant must show by a preponderance of the evidence and facts, not mere conclusions, that: (1) counsel failed to conform to the degree of skill, care, and diligence of a reasonably competent attorney under similar circumstances, and (2) counsel's deficient performance prejudiced the movant. ***McLaughlin v. State***, 378 S.W.3d 328, 337 (Mo. banc 2012) (citing ***Strickland v. Washington***, 466 U.S. 668, 687 (1984)). This two-pronged analysis is known as the ***Strickland*** test. In proving each prong, a movant bears the heavy burden of overcoming a court's presumption that trial counsel's conduct was reasonable and effective. ***Placke v. State***, 341 S.W.3d 812, 814 (Mo. App. S.D. 2011). If a movant fails to prove the first performance prong, then the reviewing court's inquiry ends before it analyzes whether the movant has proven the second prejudice prong of the test. *See* ***Dent v. State***, 662 S.W.3d 792, 797 (Mo. App. E.D. 2023).

Analysis

Point 1

Webb's first point alleges that the motion court clearly erred in denying the PCR Motion in that trial counsel was ineffective for failing to move to exclude evidence of Webb's prior conviction "which had been expunged." We disagree.

Section 491.050 provides:

> Any person who has been convicted of a crime is, notwithstanding, a competent witness; however, any prior criminal convictions may be proved to affect his credibility in a civil or criminal case and, further, any prior pleas of guilty, pleas of nolo contendere, and findings of guilty may be proved to affect his credibility in a criminal case. Such proof may be either by the record or by his own cross-examination, upon which he must answer any question relevant to that inquiry, and the party cross-examining shall not be concluded by his answer.

Webb testified in his own defense and denied that he had any physical contact with Victim. "When an accused elects to testify in his or her own behalf, the state has an absolute right to show prior convictions for purposes of impeachment." ***State v. Moore***, 84 S.W.3d 564, 567 (Mo. App. S.D. 2002). "Thus, if a defendant is asked on cross-examination about his or her prior convictions and answers truthfully, the defendant has been successfully impeached by those answers given at trial and the State is precluded from admitting the physical record of the conviction(s)." ***State v. Talley***, 258 S.W.3d 899, 912 (Mo. App. S.D. 2008).

On cross-examination at trial, the State brought up Webb's criminal conviction of

misdemeanor battery in the state of California. Webb first denied the conviction then insisted repeatedly that charge was "expunged." During the discussion, trial counsel interjected "If it's expunged it's not a conviction anymore." The trial court advised the question was asked and answered and directed the State to "move on[.]" There was no admission of the conviction record. Other than Webb's contention of "expungement," no evidence that the conviction was actually expunged was presented to the trial court.

At the evidentiary hearing, Webb contended that he produced the "expungement paper" to trial counsel the day after the conviction was mentioned, however, no documentation of expungement was admitted. Trial counsel testified he was aware of Webb's criminal history and warned him that it "could be brought up by the State[.]" The motion court found that Webb "presented no evidence to support these claims" and denied post-conviction relief.

Despite Webb's insistence that his past criminal charges were expunged and that he possessed records confirming it, the records of both the trial court and motion court are devoid of any evidence of expungement.[3] Because Missouri law allows for the use of prior convictions for impeachment purposes on cross-examination of a defendant, and Webb has failed to show any evidence that the prior conviction was actually expunged, the motion court did not clearly err in finding that trial counsel was not ineffective.

[3] Given that Webb failed to meet his burden, this Court does not need to reach the issue of whether a legitimately expunged conviction can be used as impeachment.

Webb further failed to show that trial counsel knew or reasonably should have known that this prior offense had been expunged. Again, the motion court is entitled to "believe all, part, or none of the evidence presented at the post-conviction hearing." ***Flaherty***, 694 S.W.3d at 416. Point 1 is denied.

Point 2

Webb's second point alleges trial counsel was ineffective as he failed to move to exclude the testimony of a witness ("M.Z.") on the grounds of relevance and that the evidence amounted to impermissible bad character evidence. We disagree.

At trial, a detective ("Detective") who investigated Victim's allegations testified. During his investigation, Detective became aware of M.Z., a prior babysitter for Webb and his wife. Detective testified that when asked about M.Z., Webb identified her but denied having had any physical contact with her. Detective subsequently contacted M.Z. who confirmed she had been a babysitter for Webb and his wife. M.Z. also indicated that she previously had a physical relationship with Webb and there were occasions they were intimate in the laundry room at the house while the children were napping.

At trial, the State called M.Z. as a witness. M.Z. testified that she met Webb in 2015, when she was working at Walmart. They became friends and eventually had a sexual relationship. During their one-year relationship, M.Z. would babysit for Webb and his wife once a week. They would occasionally have sexual relations in the laundry room while the children were sleeping. On cross-examination, M.Z. stated that Webb had led

her to believe he was getting divorced or was separated from his wife. When it became apparent that was not the case, M.Z. ended the relationship.

In the PCR Motion, Webb alleged M.Z.'s testimony was not relevant and was prejudicial against Webb in that it showed "extramarital interactions" and "evok[ed] emotional responses and moral judgments from the jury[.]" At the evidentiary hearing, trial counsel agreed that he did not file a motion to suppress M.Z.'s testimony. When asked, "Is there a reason you did not?" trial counsel answered, "I didn't think it was relevant at the time." When asked, "Did you consider whether her testimony was more prejudicial than probative?" trial counsel answered, "I don't recall." The motion court found that Webb presented no evidence to support his claim that the testimony of M.Z. was more prejudicial than probative.

Ineffective assistance of counsel "is rarely found in cases of a failure to object." ***Davis v. State***, 653 S.W.3d 169, 174 (Mo. App. S.D. 2022) (quoting ***Worthington v. State***, 166 S.W.3d 566, 581 (Mo. banc 2005)). "It will only be deemed ineffective when the defendant has suffered a substantial deprivation of his right to a fair trial." ***Id.*** (quoting ***Worthington***, 166 S.W.3d at 581).

We will first analyze whether the evidence was relevant and properly admissible. "Evidence must be both logically *and* legally relevant to be admissible." ***Id.*** "Logical relevance is a low hurdle to clear; to be logically relevant, evidence must tend to make a

fact of consequence more or less probable, or tend to corroborate evidence which itself is relevant and bears on the principal issue of the case." ***State v. Pulse***, 725 S.W.3d 686, 693-94 (Mo. App. W.D. 2025) (internal quotations and citation omitted). Evidence is legally relevant if its probative value outweighs the dangers of unfair prejudice, confusion of the issues, misleading the jury, undue delay, waste of time, or cumulativeness. ***Davis***, 653 S.W.3d at 174. We also note that trial courts have broad discretion in choosing to admit evidence. *See* ***State v. Tucker***, 676 S.W.3d 352, 353 (Mo. App. S.D. 2023).

The Western District Court of Appeals recently decided ***State v. Phelps***, 718 S.W.3d 484 (Mo. App. W.D. 2005) which addressed a similar issue. In ***Phelps***, the defendant was convicted of felony statutory rape, statutory sodomy, and incest. ***Id.*** at 486. On appeal, the defendant alleged the trial court erred in allowing evidence that he engaged in certain sexual acts with his spouse. Specifically, this evidence was that the defendant and his spouse used a sex toy. The victim testified that the defendant had told her that he no longer found his spouse sexually attractive because of the use of the sex toy. The spouse confirmed their use of the sex toy. ***Id.*** at 488. The defendant alleged this was inappropriate propensity evidence. The State alleged the evidence was offered to show motive and intent. This Court held that admitting the evidence was not an abuse of discretion as it showed the defendant had transferred his sexual desires to the victim. ***Id.*** at 491. Further, the spouse's corroborating testimony was also logically

relevant. ***Id.*** at 492. The Court noted the State minimized any prejudice by limiting the questioning and ultimately held that the challenged evidence was not outweighed by a risk of unfair prejudice. ***Id.***

Here, M.Z.'s testimony was logically relevant as it tended to corroborate Victim's testimony regarding the laundry room and what occurred when Webb's children were asleep. M.Z.'s testimony was also relevant because it impeached Webb's previous statements that he did not have any physical contact with M.Z. Moreover, the probative value of the evidence was not outweighed by any prejudice. Any prejudicial effect was mitigated as both parties made it clear that Webb's actions with M.Z. were consensual and she was 31 years old at the time. Thus, even if trial counsel had objected, the trial court was well within its discretion to admit this limited evidence.

There is no definite impression that the motion court made a mistake where, "as here, trial counsel cannot be deemed ineffective for failing to raise a non-meritorious legal relevance objection." ***Davis***,653 S.W.3d at 175; *see* ***Shelton v. State***, 440 S.W.3d 464, 470 (Mo. App. E.D. 2014) ("Counsel has no duty to assert non-meritorious objections, and a failure to do so will not provide the basis for a claim of ineffective assistance."). As such, there was no clear error, and point 2 is denied.

Point 3

Webb's third point alleges trial counsel was ineffective for failing to object to the testimony of a psychologist "who testified that [Victim's] mental issues resulted from

sexual assault." We again disagree.

Webb first presented the issue of the testimony of psychologist Dr. Copeland ("Copeland") in his direct appeal. Webb contended on direct appeal that Copeland's "testimony went beyond general testimony that [Victim]'s symptoms were consistent with those resulting from a traumatic sexual experience, constituted improper vouching for [Victim]'s credibility, and invaded the province of the jury[.]" ***Webb***, 674 S.W.3d at 191. In the direct appeal, Webb alleged, as here, that:

> Specifically, [] Copeland testified it was her "professional opinion" that the triggering event for Victim's PTSD was the "sexual assault that she experienced." [Webb], however, elicited much of the other testimony from [] Copeland that he also cites as being objectionable. For example, during [Webb]'s cross-examination, [] Copeland testified: "Based on the symptoms that she's reported to me, they've been directly related to her sexual assault. The content of her flashbacks are related to the assault. The nightmares." Also, [] Copeland testified during cross-examination "the PTSD symptoms that [Victim] reports to me are very clear and tangible in terms of experiencing a flashback, for example, of hands on her body[.]"

Because his claim was not properly preserved, this Court only had discretion to engage in plain error review. *See* ***id.*** at 192-93; ***State v. Brandolese***, 601 S.W.3d 519, 526 (Mo. banc 2020). "To determine whether a claim of ineffective assistance for failing to preserve an error for appeal is cognizable, we must examine how the Court decided the movant's plain error claim on direct appeal." ***King v. State***, 682 S.W.3d 853, 860 (Mo. App. S.D. 2024). When an appellate court declines to exercise its discretionary authority to review a claim for plain error, "the issues relevant to an ineffective-

assistance analysis under *Strickland* are not necessarily decided." ***Id*** at 861. But when "a plain error point was reviewed on direct appeal and the appellate court concluded that no error occurred, the issue cannot be relitigated in a post-conviction proceeding." ***Shifkowski v. State***, 136 S.W.3d 588, 591 (Mo. App. S.D. 2004).

Here, upon a review of the claim in his direct appeal, this Court decided that Webb "failed to make the requisite facial showing necessary for this Court to engage in plain error review." ***Webb***, 674 S.W.3d at 193. Thus, just as in ***King***, this Court declined to exercise its discretionary authority to engage in a plain error review of Webb's claim on direct appeal. It follows that the issue of ineffective assistance of counsel has not been decided and is available for analysis under ***Strickland*** in this post-conviction relief proceeding.

We begin with the presumption that any "[f]ailure to object to evidence is not sufficient, in and of itself, to constitute ineffective assistance of counsel." ***Tucker v. State***, 633 S.W.3d 539, 542 (Mo. App. S.D. 2021) (quoting ***Hood v. State***, 611 S.W.3d 865, 868 (Mo. App. S.D. 2020). "Decisions about whether or when to make objections at trial are left to the judgment of counsel." ***Helmig v. State***, 42 S.W.3d 658, 678 (Mo. App. E.D. 2001). "In arguing ineffectiveness based upon failure to object, movant must overcome a strong presumption that counsel's failure to object was sound trial strategy." ***Hays v. State***, 484 S.W.3d 121, 128 (Mo. App. W.D. 2015).

When a defense attorney withholds objections to expert testimony and instead attacks the expert's opinion on cross examination, the decision to not object does not constitute ineffective assistance. *See* ***id.*** at 131-32. ***Hays*** involved the sexual assault of a minor by the defendant. The prosecution put on an expert to testify that it was her opinion that the victim had been sexually assaulted. ***Id.*** at 131. The expert's testimony was largely based on the disclosures of the victim along with "characteristics commonly observed in abused children[.]" ***Id.*** Hays' defense counsel withheld any objection to the expert testimony but followed up with cross-examination questioning which emphasized that the expert's opinion was based "almost entirely on what [the victim] reported to her instead of independent corroborating evidence." ***Id.*** On appeal of the PCR motion, this Court held that defense counsel's withholding of objections did not rise to the level of ineffective assistance of counsel. ***Id.*** at 131-32. We reasoned that, because defense counsel followed up the expert testimony with pointed cross-examination questioning, it was sound trial strategy to attack the expert's opinion rather than objecting to it altogether. ***Id.***

Here, Webb claims in his PCR motion that trial counsel was ineffective for failing to object to Copeland's testimony. The case at hand is similar to the case in ***Hays***. Both cases involved the sexual assault of a minor where the State put on an expert witness who testified it was their opinion that the victim had been sexually assaulted. In both cases, the experts' opinions were largely based on the disclosures and behaviors of the

victim in comparison with common characteristics observed in other victims. In both cases, defense counsel withheld objections to the testimony. Instead, counsel in both cases followed up with cross examination emphasizing the basis upon which the experts' testimonies were derived, rather than through independent corroborating evidence. As in ***Hayes***, trial counsel's withholding of objections does not rise to the level of ineffective assistance of counsel. Furthermore, at the evidentiary hearing, Webb failed to elicit any testimony from trial counsel regarding the potential trial strategy of withholding objections to Copeland's testimony. Thus, he failed to establish that trial counsel did not have a strategic purpose in deciding not to object. Without evidence to substantiate the claim of ineffective assistance of counsel, we presume that a trial-strategy reason existed for the decision of withholding objections. *See* ***Helmig***, 42 S.W.3d at 676 ("By failing to ask counsel for an explanation why he did not elicit this testimony, movant failed to provide the motion court with any basis for concluding that counsel did not have a strategic purpose in deciding not to call [the potential witness] as a witness.").

Because Webb has failed to prove that trial counsel's performance was deficient, an analysis into prejudice is not warranted. *See* ***Dent***, 662 S.W.3d at 797 (providing that failure to meet the first ***Strickland*** prong ends the reviewing court's inquiry before analyzing prejudice). Point 3 is denied.

Point 4

Webb's final point alleges trial counsel was ineffective "in that counsel failed to object to the State's closing argument when the State shifted the burden of proof by arguing that [Webb] did not 'try to defend himself."' Webb's brief states, without citation, that in the PCR Motion "Webb alleged that he received ineffective assistance of counsel in that counsel failed to object to prosecutorial misconduct." Then, Webb's brief takes issue with statements by the State in closing argument that:

> At any time he could have looked up [in his National Guard paperwork] to find out where he was. … It would be hard to believe that it's not possible that a man who sits with these types of charges for over three years, and doesn't try to defend himself, doesn't try to look to find out where he was, see where he might have been in those two months.

This allegation of clear error was not raised in the PCR Motion. While the PCR Motion does make allegations of "prosecutorial misconduct," none of those arguments relate to the statements now complained of in Webb's brief. "Claims not properly raised in a Rule 29.15 motion are waived on appeal." ***Day v. State***, 495 S.W.3d 773, 776 (Mo. App. S.D. 2016). "Claims are waived where they are not directly presented in the motion for postconviction relief—the presentation of evidence otherwise relevant to a claim does not preserve other possible claims relevant to that evidence but not directly presented in the post-conviction motion." ***Barajas v. State***, 565 S.W.3d 760, 765 (Mo. App. S.D. 2019) (quoting ***Day***, 495 S.W.3d at 776). "Furthermore, there is no plain error review in appeals from post-conviction judgments for claims that were not presented in

the post-conviction relief motion." ***Id.***

Webb cannot inadequately plead a claim of failure to object to prosecutorial misconduct and then seek to refine that argument on a later appeal. *See* ***McLaughlin***, 378 S.W.3d at 340 (citation omitted) ("Pleading defects cannot be remedied by the presentation of evidence and refinement of a claim on appeal."). Because it was not properly preserved, we deny review of point 4.

Conclusion

The motion court did not clearly err in overruling Webb's Rule 29.15 motion for post-conviction relief. The motion court's order denying post-conviction relief is affirmed.

BRYAN E. NICKELL, J. – OPINION AUTHOR

BECKY J. WEST, C.J. – CONCURS

JEFFREY W. BATES, J. – CONCURS