Missouri Court of Appeals
Southern District

In Division

SETH ANDREW GOMEZ,

Movant-Appellant,

v.

STATE OF MISSOURI,

Respondent-Respondent.

Case Number SD39082

Filed: July 28, 2026

APPEAL FROM THE CIRCUIT COURT OF GREENE COUNTY
Honorable Nathan R. Taylor

AFFIRMED

Seth Andrew Gomez ("Movant") appeals the motion court's denial of his Rule 29.15 motion for postconviction relief following an evidentiary hearing. In the underlying case, Movant was convicted of murder in the first degree (§ 565.020) and armed criminal action (§ 571.015).[1] On November 19, 2021, Movant was sentenced to a term of life imprisonment without the possibility of parole for murder in the first degree

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

and 30 years' imprisonment for armed criminal action, to run concurrently with the term of life imprisonment. Movant appealed those convictions, which this Court affirmed by its mandate on July 18, 2023. *See* ***State v. Gomez***, 672 S.W.3d 113 (Mo. App. S.D. 2023).

In his two points on appeal, Movant alleges trial counsel provided ineffective assistance because before his plea offer expired, his trial counsel failed to investigate Movant's mental health[2] and failed to advise Movant that the death penalty was a potential sentencing option. Finding the motion court's denial of post-conviction relief was not clearly erroneous, we affirm.

Factual Background and Procedural History

In recounting the background, we borrow from this Court's prior opinion on direct appeal in ***Gomez***, where the following facts were established at trial:

> On March 1, 2019, [A.S.], a friend of both [Movant] and Victim, booked a motel room, room 230, at the Ozark Inn on North Glenstone in Springfield, Missouri. [A.S.], [Movant]'s girlfriend [R.S. ("Girlfriend")], Victim, and [Movant] met that afternoon at room 230 to talk, listen to music, and use illicit drugs. Several other individuals also came to and from the motel room to use drugs throughout the day.
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> When [Movant] arrived at the motel room, he and Victim had a conversation to "clear up some issues" they had been having about "somebody having more money than the other person and they weren't happy about that" stemming from a "lick" they were involved in. Tensions

[2] Movant presents no argument on appeal that the mental health investigation would have changed the outcome of his trial with respect to his convictions. To the contrary, as discussed *infra*, the report negated any potential claims of mental defect.

were “pretty high” in the room during that time. After several people left the room, it was calm and quiet.

[A.S.] left the motel room sometime around 8:00 p.m., leaving [Movant], [Girlfriend], Victim, and [B.S.], who had joined the group sometime that afternoon, in the room. The individuals were “doing [their] own thing” listening to music, doing drugs, and being on their phones. [Movant] texted [A.S.] between 11:06 p.m. and 11:07 p.m., told her he needed a ride “asap” and it was an emergency, and directed her to wait in the car with it on. [Movant] texted further, “It’s an emergency, hotel, don’t tell [D] or [R] you’re picking me up and let [B.S.] know low key in the bathroom.” [Movant] told [A.S.], “Not in the bathroom you wait in the car have the car still on.” He also instructed [A.S.] to delete their text conversation and told her Victim was “fine.”

After several hours of relaxation, continued drug use, and “quiet” in the room, Victim was in and out of sleep around midnight. [Movant] was putting on Victim’s clothes, trading shoes, and asking to wear Victim’s stuff. Specifically, green boots, a black shirt with gold bees around the neck, and a green backpack. Around midnight, [Movant] told [Girlfriend] and [B.S.] to go into the bathroom.

[Girlfriend] heard “what sounded like a fight or like a scuffle” on the other side of the bathroom door. She tried to get out of the door, but [B.S.] would not move her arm. When [Girlfriend] finally left the bathroom, she saw [Movant] standing over Victim next to the bed while stabbing Victim in the back of the head and then the throat with a knife. [Girlfriend] asked him to stop, but [Movant] “wouldn’t look up from what he was doing.” Victim raised his arms to defend himself from [Movant].

[Girlfriend] saw [B.S.] leave the room, so [Girlfriend] turned and departed too. [B.S.] and [Girlfriend] heard gunshots as they left the Ozark Inn. [Girlfriend] then saw [Movant] “five or ten minutes later” after the incident when they met up at the “Glenwood Manor” and caught a ride together to a house on Florida Street.

Springfield Police Officer [J.P. (“Officer”)] received a call for service during the early morning hours of March 2, 2019, and he arrived at the Ozark Inn about 16 minutes after midnight. When [Officer] arrived, he could see “what looked like” a person laying on the second-floor balcony. He went to the second floor and saw a male covered in blood with his shirt

pulled up and his pants slightly below his waist. Victim had 14 incised injuries near his left pinky, right thumb, and right finger, and wounds to the upper right portion of his shoulder, one near his right ear and right neck, one on his right inner thigh, and to his back. Victim also had nine gunshot wounds in his arm, elbow, genitals, leg, and back. [K.N.], a forensic pathologist for the State, testified at trial he determined, "to a reasonable degree of medical certainty," the gunshot to the left side of Victim's back was the cause of death.

Officers eventually entered room 230 and discovered two beds covered in blood, blood splattered about on the south and east walls, blood on the wall above one of the beds, blood on the air-conditioning unit, a grouping of three spent shell casings in the center walkway, one "unspent bullet" approximately one foot away, blood on the doorway inside and leading to it, a flashlight attachment for a handgun, a pink sock that matched the sock on Victim's foot with a bloody shell casing in it, a hospital bracelet with [Girlfriend's full name] on it, an empty prescription bottle prescribed to [Movant], and one "spent bullet" near the door on the inside.

[Movant] ended up at a home he frequented on Hoffman Street around 8:30 a.m., on March 2, 2019. [Movant] informed [A.P.], a resident of the Hoffman Street house and friend, "I just killed [Victim] cuz." [Movant] informed her he had stabbed Victim in the room and shot him on the balcony. When [Girlfriend] came to the Hoffman Street house around noon, she noted [Movant] had changed his clothes. The clothes [Movant] had been wearing the day before were in the bathtub and hanging up around the house after already having been washed.

Springfield police officers executed a search warrant for the Hoffman Street house later that evening. [Movant] and [Girlfriend] were at the Hoffman Street house at the time, and officers located a knife and firearm on [Movant]'s person. They also located a pair of green Timberline boots and a green backpack with red staining. [A member of] the Missouri State Highway Patrol Crime Lab testified that the blood found on the knife taken from [Movant]'s person and green backpack matched Victim's DNA profile. [Girlfriend] was taken to the Springfield Police Department's headquarters where Detective [K.P. ("Detective")] interviewed her. She told [Detective] she had no clue what had happened and had seen an article about Victim being found deceased.

> [Girlfriend] was later arrested for violating the terms of her probation on an unrelated matter. [Movant], after his arrest, used a tablet from the Greene County Jail to ask [B.S.] and his mother to "video visit" [Girlfriend] to tell her he loved her and that she needed to "keep her head up." [Movant] warned his mother, "[Girlfriend] got locked up and they are trying to get her to testify against me[.] [Y]ou need to make sure she stays on my good side." On May 29, 2019, while still in custody, [Girlfriend] agreed to speak to [Detective] about Victim's murder. She decided to speak to [Detective] because, in her own words, "it was just weighing on [her] shoulders," she "couldn't sleep at night," and she "struggled with what to do with that decision for a while, and thought it was just the right thing to do."
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> The State charged [Movant] with armed criminal action and first-degree murder. *See* sections 571.015, RSMo 2016, and 565.020.[Girlfriend] recounted the events leading up to Victim's murder at trial. She admitted to initially lying to [Detective] and that she was in custody when she later told him what had happened on May 29, 2019. [Girlfriend] testified she understood her prior release from custody to be independent from her providing a statement to [Detective], and she further confirmed she did not make a "deal" to testify in order to get out of jail.
>
> Following the bench trial, the trial court found [Movant] guilty of both charges.

Id. at 116-18 (internal footnote omitted).

At the November 6, 2024 hearing on Movant's Amended Motion for postconviction relief, trial counsel testified that in October of 2020, he approached the prosecutor with a plea offer contemplating 30-year concurrent sentences on second degree murder and armed criminal action. On October 19, 2020, the State countered with an offer of a life sentence on murder in the second degree and 30 years on armed criminal action, to be served concurrently.

Movant's attorney relayed this offer to him on October 23, 2020, explaining that this offer meant that the earliest Movant would be eligible for parole would be in 27 and a half years. Trial counsel further informed Movant it was Movant's decision whether to accept the plea offer or go to trial, but that if he went to trial, he would be facing murder in the first degree. Trial counsel explained they could argue for lesser included offenses, and their strongest argument was that the murder was not premeditated. Movant proposed a counteroffer where he would accept a plea offer of 18 years' imprisonment, but Movant's attorney did not relay that offer to the prosecutor considering he knew the prosecutor would only agree to life imprisonment for murder in the second degree. Later, trial counsel did approach the prosecutor with an offer of 30 years, but the prosecutor was "pretty firm" based on the facts of the case that life with the possibility of parole for second-degree murder, concurrent with the armed criminal action, was the best offer Movant would get.

On January 29, 2021, the State made a record at a ***Frye***[3] hearing that if not accepted, it intended to withdraw its offer of life with the possibility of parole for second degree murder to run concurrent with a 30-year sentence for armed criminal action, and that it would not extend any further offers. After speaking with his trial counsel and family, Movant rejected that offer. Movant was aware that the State was not going to make any additional offers.

[3] ***Missouri v. Frye***, 566 U.S. 134 (2012).

Movant filed a timely Rule 29.15 amended motion for postconviction relief raising three claims of ineffective assistance of counsel, two of which are at issue in this appeal:

> A. By failing to investigate [Movant's] mental health before the plea offer expired[.]
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> ….
>
> B. By failing to advise [Movant] that the death penalty was an option at the time the plea offer expired.

Movant argues he would have accepted the plea offer from the State had his trial counsel corrected those deficiencies.

Regarding the first claim, trial counsel testified he intended to follow up with a local psychologist doing mental health evaluations ("Dr. K.F."). Trial counsel did not do so prior to the trial, but after the trial was over and prior to Movant's sentencing hearing, trial counsel asked Dr. K.F. for a forensic examination. Dr. K.F.'s summary stated Movant did not have any underlying mental health diagnosis, which trial counsel believed did "a pretty good job at killing any idea of a mental health defense in this case[.]" Trial counsel intimated that while the report did not help Movant's case, it would have helped him understand Movant better and caused him to be "more forceful" in advising that Movant take the State's plea offer. Trial counsel did not testify specifically what advice he would have changed.

Regarding Movant's second claim that he was unaware of the possibility of a death sentence penalty, trial counsel testified that the prosecutor informed him prior to

trial that the State intended to waive the death penalty. He said that he advised Movant to waive his right to a jury trial and he would not have done so if he believed the State was going to pursue the death penalty. Trial counsel testified that there was never any indication from the State that the death penalty was a consideration for Movant's case. Trial counsel worked on death penalty cases before and was aware of the steps the State would need to take prior to trial to pursue the death penalty, such as filing statutory aggravators, which the State did not do leading up to Movant's trial. Trial counsel felt "pretty comfortable" when he advised Movant to waive his right to a jury trial that this was not going to be a capital case.

At the time he rejected the State's final plea offer, Movant knew that he was proceeding to trial on a charge of first-degree murder, and he knew the only possible sentence was life without the possibility of parole. On October 31, 2020, Movant made a call from the Greene County Jail to an acquaintance where he said, "my lawyer told me that … my prosecuting attorney finally made a plea deal or offered a plea deal or whatever and it was really, really shitty ass deal." He said the "plea deal was basically a life with the slight possibility of parole." Movant admitted that he "[p]ossibly" said he did not want the deal and possibly said: "I told [the State] that was a shitty ass deal. I told [the State] basically if it is 20, 25, or 30 years, I'm not taking it. I'd rather take it to trial."

Following the November 6, 2024 evidentiary hearing on the Amended Motion for postconviction relief, and after reviewing the merits, the motion court determined Movant did not receive ineffective assistance of counsel and was not entitled to postconviction relief. This appeal followed.

Standard of Review

Under Rule 29.15(k), "[a]ppellate review of the [motion] court's action on the motion filed under this Rule 29.15 shall be limited to a determination of whether the findings and conclusions of the [motion] court are clearly erroneous." This Court presumes the motion court's findings are correct and a judgment is clearly erroneous only "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) (quoting ***Davis v. State***, 486 S.W.3d 898, 905 (Mo. banc 2016)). We conduct a *de novo* review for:

> errors of law, rejection of factual findings for which there is no substantial evidence, and – in the rarest of cases – rejection of factual findings for which there may be substantial evidence but regarding which the reviewing court, nevertheless, on the entire record, is left with a definite and firm conviction (or impression) that a mistake has been made.

Id. at 419. "In applying this standard, appellate courts should defer to the motion court's superior opportunity to judge the credibility of witnesses and recognize the [motion] court is entitled to believe all, part, or none of the evidence presented at the post conviction hearing." ***Id.*** (internal citation and quotations omitted).

Analysis

To prevail on a claim of post-conviction relief on the basis of ineffective assistance of counsel, a movant must establish "(1) his or her counsel failed to exercise the level of skill and diligence that a reasonably competent attorney would in a similar situation (performance prong), and (2) the movant was prejudiced by that failure (prejudice prong)." ***Blade v. State***, 685 S.W.3d 633, 637-38 (Mo. App. S.D. 2024) (citing ***Strickland v. Washington***, 466 U.S. 668, 687 (1984)). If the movant fails to satisfy either prong of the ***Strickland*** test, we need not consider the other. ***Id.*** at 638 (citing ***Anderson v. State***, 66 S.W.3d 770, 775 (Mo. App. W.D. 2002)). The movant must also "overcome the strong presumption that trial counsel's conduct was reasonable and effective." ***Hosier v. State***, 593 S.W.3d 75, 81 (Mo. banc 2019) (quoting ***Davis***, 486 S.W.3d at 906). Reasonable decisions of trial strategy are not considered a basis for an ineffective assistance of counsel claim. ***Id.*** (citing ***Anderson v. State***, 196 S.W.3d 28, 33 (Mo. banc 2006)).

"If a plea bargain has been offered, a defendant has the right to effective assistance of counsel in considering whether to accept it." ***Lafler v. Cooper***, 566 U.S. 156, 168 (2012); ***Frye***, 566 U.S. at 144. "As with other claims of ineffective assistance of counsel, the test for determining whether counsel was ineffective during plea negotiations is the two-prong test in [*Strickland*]." ***Brooke v. State***, 584 S.W.3d 368, 373 (Mo. App. S.D. 2019). In order to establish prejudice where a plea offer was rejected,

"Movant must demonstrate 'a reasonable probability [he] would have accepted the earlier plea offer had [he] been afforded effective assistance of counsel,' and a 'reasonable probability that neither the prosecution nor the trial court would have prevented the offer from being accepted or implemented.'" ***Id.*** (quoting ***Smith v. State***, 443 S.W.3d 730, 735 (Mo. App. S.D. 2014)).

While Movant has the burden of proving both prongs of the ***Strickland*** analysis, he fails to satisfy either in both complaints about his trial counsel. Regarding the first prong, Movant argues that if he had a medical report showing he did not have a mental health defense prior to his plea offer expiring, he would have been in a better position to consider the State's offer. His testimony contradicts his argument. Movant testified that he acted in self-defense, and that he believed Dr. K.F.'s letter helped him and supported his case, but admitted he did not know how having Dr. K.F.'s letter prior to the expiration of the State's plea offer would have increased the likelihood that he would have accepted the State's offer. When asked, "In fact, during those two jail visits that [trial counsel] testified about earlier, if [trial counsel] would have told you [Dr. K.F.] says it's not going to help, would that have affected your decision about whether to plead guilty?" Movant responded: "I don't know."

Movant's second argument, that trial counsel failed to inform him that the death penalty was a possibility in his case if he was convicted, fails to satisfy the first prong of the ***Strickland*** test because the State never sought the death penalty. The prosecutor

communicated to trial counsel during plea negotiations that the State would not seek the death penalty and took no affirmative steps thereafter to prepare the case for a possible death penalty sentence. Further, there was no mention of the death penalty at the ***Frye*** hearing. Paradoxically, as pointed out by the motion court, had trial counsel informed Movant that the death penalty *was* an option, and had Movant pleaded guilty in reliance upon that representation, instead of a Rule 29.15 motion, this Court would likely be considering a Rule 24.035 motion alleging trial counsel was ineffective for suggesting Movant could be sentenced to death when the record does not support that possibility.

Though we need not reach the second prong of the ***Strickland*** analysis, we note that Movant also failed to establish prejudice insofar as he was clear and emphatic that he refused to accept the prosecutor's plea offer. The motion court found:

> The evidence is clear that Movant was not going to accept the State's offer under any conditions, was not relying on the availability of a mental health defense in rejecting the State's offer, and would not have accepted the State's offer if he had been aware of [Dr. K.F.]'s conclusions before the plea deadline. The Court finds Movant's testimony to the contrary wholly not credible, and against the weight of the evidence.

The evidence from the hearing supports the motion court's ruling. While the plea offer was pending, Movant made phone calls from the jail wherein he expressed he would not accept the State's plea offer. One week after receiving the offer, Movant said:

> This is how I see it basically, right? If they're offering me thirty years with the slight possibility of parole, and you're offering me thirty years and I don't know if it is a for sure go if I get parole, then I would rather take it to trial, waste the tax-payer's money, waste three or four million dollars,

> because that's how much my trial costs is three or four million dollars, for a murder trial … three to four million dollars of tax-payer's money and get life anyways … I'd rather, you know what I'm saying, go with a fight, ya know what I mean?

Movant stated at the ***Frye*** hearing and to the author of the Sentencing Assessment Report that he was "not good" for the crimes. Movant believed there was insufficient evidence of his guilt and sufficient evidence that he acted in self-defense. Movant believed he could win his case and stated several times he would rather go to trial than accept even a 20-year offer, nor did he condition his rejection of the plea offer on a mental health defense, or indeed any specific evidence or investigation he anticipated his trial counsel performing. Finally, Movant could not have been prejudiced by his ignorance of the possibility of a death sentence when the death penalty was neither mentioned nor pursued by the State.

Conclusion

The motion court's judgment is affirmed.

JOSEPH L. HENSLEY, J. – OPINION AUTHOR

BECKY J. WEST, C.J. – CONCURS

MATTHEW P. HAMNER, J. – CONCURS