Missouri Court of Appeals

Southern District

In Division

KAYLN TREASELL JOHNSON,

Appellant,

v.

STATE OF MISSOURI,

Respondent.

No. SD39050

Filed: November 6, 2026

APPEAL FROM THE CIRCUIT COURT OF BUTLER COUNTY

Honorable Devin Kirby, Judge

AFFIRMED

Kayln Treasell Johnson ("Johnson") appeals the motion court's denial of his motion for post-conviction relief pursuant to Rule 29.15.[1] Johnson's first five points all allege the motion court clearly erred in denying post-conviction relief based on ineffective assistance of counsel. Johnson's sixth point alleges a due process violation.

[1] Unless otherwise indicated, all rule references are to Missouri Court Rules (2021). All statutory references are to RSMo (2016).

We affirm.

Factual and Procedural Background

Johnson was charged, as a prior and persistent offender, with first degree assault; armed criminal action; and unlawful possession of a firearm. *See* §§ 565.050; 571.015; and 571.070. The amended information alleged that Johnson "attempted to kill E.T. [("Victim")] by shooting him" and "inflicted serious physical injury" on him.[2]

Two days before trial, Johnson's trial counsel ("trial counsel") requested a continuance alleging that the State had not turned over certain recorded interviews and videos. In response, the State contended that previous defense counsel was provided with the entirety of the discovery file. The State also noted they re-produced all discovery prior to the pre-trial hearing. The trial court denied the motion for continuance. During later pre-trial proceedings, trial counsel added an addendum to the motion for continuance, indicating there were an additional six photographs depicting Victim's injuries that were not produced. The State noted that trial counsel received the photos the previous day and that the State did not intend to use those photos at trial. The trial court added the addendum to the motion for continuance and again denied the motion.

[2] We borrow the facts extensively from the Statement in the underlying case, ***State v Johnson***, SD37315, (Mo. App. S.D. June 15, 2022).

On August 25, 2021, a jury trial was conducted. The following evidence was adduced at trial.[3] Victim was the boyfriend of Johnson's mother ("Mother"). Victim, Mother, and Johnson all lived in the same home. On January 14, 2020, Victim was sitting at home with Mother when Johnson walked in and started pacing back and forth and cursing. He looked at Mother, and she "bolted" out of the chair as Johnson "reached in his waist and pulled out the gun and started shooting." Victim was shot six times. The State admitted one video, which was footage from a responding officer's body cam. The body cam footage showed Victim on the ground with a bullet wound to the back of his head behind his left ear. Johnson claimed self-defense and testified in his own defense.

A jury convicted Johnson as charged. Johnson timely appealed his convictions. His one point on direct appeal contended the trial court abused its discretion in denying his motion for continuance two days before trial. This Court issued a per curiam order affirming Johnson's convictions and sentences and found that Johnson failed in his burden to show how he was prejudiced by the denial of a continuance. This Court further found that the trial court was entitled to believe the State's assertion that it had already provided all of the discovery to the defense weeks, if not months, prior to trial. Thus, no abuse of discretion occurred, and the trial court's judgment was affirmed.

[3] An appellate court considers all evidence in the light most favorable to the verdict and grants the State all reasonable inferences. ***State v. Lammers***, 479 S.W.3d 624, 632 (Mo. banc 2016). Contrary evidence and inferences are disregarded. ***Id.***; ***State v. Hilleman***, 634 S.W.3d 709, 712 (Mo. App. S.D. 2021).

Johnson filed a timely[4] *pro se* motion for post-conviction relief on September 19, 2022. Appointed counsel filed a timely amended motion ("Amended Motion") on January 17, 2023. As relevant to this appeal, the Amended Motion claimed that trial counsel was ineffective for: (1) failing to discover that he was missing videos and pictures that should have been provided under Rule 25.03; (2) failing to argue during the hearing on the motion for continuance that the late disclosure of pictures of Victim's injuries prejudiced the defense theory of the case; (3) failing to present witness testimony to support the self-defense theory; (4) failing to impeach a witness with his previously recorded statement; and (5) failing to advise Johnson on whether or not to accept the State's plea offer before having complete discovery in the case. The Amended Motion further alleged that Johnson's due process rights were violated when the State violated Rule 25.03 by failing to disclose evidence to which Johnson was entitled until the day before trial. The motion court held an evidentiary hearing on August 13, 2024. The motion court entered its order denying post-conviction relief on May 7, 2025. Johnson timely filed his notice of appeal on June 16, 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***,

[4] 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 the movant fails to prove either prong, relief cannot be granted. ***Hecker v. State***, 677 S.W.3d 507, 512 (Mo. banc 2023). Thus, if a movant fails to satisfy one prong, we need not address the other. ***Rouner v. State***, 735 S.W.3d 640, 646 (Mo. App. W.D. 2026).

Point 1

Johnson's first point alleges that the motion court clearly erred in failing to find trial counsel was ineffective by failing to determine that he was missing discovery showing a gunshot wound to the back of Victim's head until shortly before trial. Johnson further alleges this caused him prejudice. We deny point 1.

As indicated above, there was a dispute between trial counsel and the State regarding whether certain evidence was produced prior to the pre-trial conference. In his Amended Motion, Johnson alleged that trial counsel was ineffective for failing to discover that he was missing videos and pictures that should have been provided by the State. Particularly relevant to this point, Johnson alleged that one of the pictures showed a gunshot wound to the back area of Victim's head, and this hurt Johnson's claim of self-defense.

At the evidentiary hearing, two attorneys assisting trial counsel testified that they discovered shortly before trial that they were missing statements and videos. They notified trial counsel who they said was unaware. The assisting attorneys testified that one of the photographs showed a gunshot wound to the back of Victim's head. One assisting attorney said it showed "the injury to the head was sort of like on the side towards the back[.]" However, for reasons unknown, this photograph was not introduced at the evidentiary hearing. The assisting attorneys testified that they first realized there was a gunshot wound to the back of Victim's head only after receiving the

photo. They believed that this was prejudicial to Johnson's defense as wounds to the back of the body are generally inconsistent with self-defense.

Trial counsel also testified at the evidentiary hearing. Trial counsel confirmed that the assisting attorneys made him aware shortly prior to trial that they believed certain discovery had not been turned over. Trial counsel testified he previously knew there was a gunshot wound to Victim's head, but he did not recall if he knew about the location of that particular gunshot wound prior to a few days before trial. He believed placement of the wound would hurt the defense but did not and could not change it. Trial counsel testified that while a wound to the back of Victim's head would hurt a case for self-defense, that was the only defense available to Johnson.

The motion court denied post-conviction relief, deciding that the photo did not change trial counsel's strategy and there was no prejudice.

To succeed in his claim, Johnson must prove by a preponderance of evidence that trial counsel discovering the photograph earlier would aid his position. *See* ***Woodson v. State***, 215 S.W.3d 349, 353 (Mo. App. S.D. 2007). "Prejudice transpires when there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." ***Burns v. State***, 627 S.W.3d 613, 616 (Mo. App. S.D. 2021) (internal quotations and citations omitted). The record is completely devoid of evidence of prejudice. The State did not use the picture in question at trial. Since the picture was not admitted at the evidentiary hearing, we cannot assess exactly what trial

counsel could have learned from the picture.

Crucially, the State did admit a body cam video of a responding officer. Johnson makes no claim that the State failed to timely disclose that video prior to trial and likewise makes no claim that trial counsel failed to review it before trial. The video was admitted at trial without objection. That body cam footage clearly shows a bullet wound on the back of Victim's head, behind his left ear. Assuming, without deciding, that the photograph in question was produced late and showed the information testified to by assisting counsel, the body cam video shows the same information. Johnson had no other potential defenses at trial, other than self-defense. "The object of an ineffectiveness claim is not to grade counsel's performance. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed." ***Id.*** (quoting ***Strickland***, 466 U.S. at 697). Point 1 is denied.

Point 2

Johnson's second point alleges as follows:

> The motion court clearly erred in denying [Johnson's] Rule 29.15 amended post-conviction relief motion after an evidentiary hearing, because he proved by a preponderance of the evidence he was deprived of his rights to effective assistance of counsel, a fair trial, and due process of law as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and article I, sections 10 and 18(a) of the Missouri Constitution, in that [trial counsel] was ineffective for failing to argue to the court during the hearing on the motion for continuance that the late disclosure of the pictures of [Victim's] injuries prejudiced the defense theory of the case. Absent this error, there is a reasonable probability the

> motion for continuance would have been granted and [Johnson's] trial result would have been different.

On direct appeal, Johnson's single point alleged that the trial court "abused its discretion in overruling [trial] counsel's motion for a continuance" thereby violating Johnson's "rights to due process, a fair trial, effective assistance of counsel, and to present a defense," because: (1) trial counsel "had not received all of the discovery in the case until the week of trial[;]" and (2) "the trial court appeared to be taking out its frustration on trial counsel's poor e-mail skills rather than basing its ruling on the facts before it."

"A Rule 29.15 motion for postconviction relief is not a substitute for direct appeal, so claims adjudicated on direct appeal generally cannot be the basis for postconviction relief." ***Wood v. State***, 728 S.W.3d 416, 429 (Mo. banc 2026). Johnson's claim concerning the denial of his request for a continuance was reviewed on direct appeal under the abuse of discretion standard. Abuse of discretion is a lower standard of review than the ***Strickland*** prejudice standard. ***Lawrence v. State***, 628 S.W.3d 777, 785 (Mo. App. S.D. 2021). "Thus, finding no prejudice under abuse of discretion review *a fortiori* precludes finding prejudice under a higher standard." ***Id.*** As this Court already found no prejudice or abuse of discretion on this issue, point 2 is denied.

Point 3

Johnson's third point alleges that trial counsel was ineffective for failing to present witness testimony to support his theory of self-defense. We again disagree.

The Amended Motion alleged that trial counsel was ineffective for failing to call three witnesses to support the theory of self-defense. Those witnesses were Mother, Johnson's great-aunt ("Great Aunt"), and Victim's former landlord ("Landlord"). The Amended Motion alleged that they would have testified as to either specific acts of violence committed by Victim or to Victim's reputation for violence.

At the evidentiary hearing, Great Aunt testified that she called trial counsel, and left two or three voicemails, but did not state why she was calling in the voicemails. She never got a response. Great Aunt said that she wanted to tell trial counsel that Mother called her several times because she was being abused by Victim and wanted Great Aunt to pick her up. The record does not establish when the calls from Mother occurred other than it was at some point prior to the shooting. Great Aunt said that during one of the calls, she heard Victim in the background saying that he would hurt Mother. Great Aunt said that Johnson told her that he wanted Mother to leave because he could not protect her when Victim was there. Based on those conversations, Great Aunt thought that Johnson was aware that Victim was abusing Mother.

Mother testified that Victim was abusive and choked her "a couple times." Mother said that Johnson did not know about the abuse. Mother testified that Victim choked her on the night of the shooting during a fight. She had calmed down by the time Johnson arrived at the house, but she believed Johnson thought that something was wrong. Mother acknowledged that she did not tell Johnson about any of the abuse

and that she left the house before the shooting occurred.

Landlord testified that Victim and Mother rented an apartment from her. She had previously asked Victim to leave the apartment because he was abusive to Mother. Landlord became aware of the abuse after Mother called her and she "rescued" Mother from Victim. Landlord testified that the shooting happened several years after she had rented to Victim and Mother.

Trial counsel testified that he deposed Mother. He said that Mother was very difficult to understand and that he never intended to call her. Trial counsel said that he did not believe Mother as a witness and did not think a jury would believe her. Trial counsel said Mother's speech patterns were muddled to the point that he thought she might have been under the influence of drugs. Mother often agreed with the prosecutor participating in the deposition, and also with trial counsel to the point where he did not think she would be valuable to the defense and might actually have been detrimental. Trial counsel testified that he did not recognize Great Aunt's name and did not recall getting any voicemails. Trial counsel did not know Landlord's name.

Johnson testified at the evidentiary hearing but was not asked any questions concerning the claim regarding the uncalled witnesses. In particular, he was not asked about his knowledge of any acts of violence committed by Victim against Mother. At trial, he testified he knew about Victim and Mother "fighting" from Great Aunt. However, Great Aunt did not elaborate on any details to Johnson about any abuse.

The motion court found that Great Aunt's testimony would not have provided a viable defense for Johnson because Johnson did not know of any of the specific acts of violence that were known by Great Aunt. The motion court found that trial counsel made a strategic decision not to call Mother and that her testimony would not have unqualifiedly supported the defense. Finally, the motion court found that Johnson failed to establish that trial counsel knew or should have known of Landlord's existence and that her purported testimony concerned events that took place at least two years prior to the shooting and would not have provided Johnson with a viable defense.

Decisions of trial strategy cannot serve as a basis for ineffective assistance of counsel claims unless that decision was unreasonable. ***Gilcrease v. State***, 693 S.W.3d 130, 137 (Mo. App. E.D. 2024). Ordinarily, failure to call a witness is considered trial strategy. ***Id.*** To prevail on a claim of ineffective assistance of counsel for failure to call a witness, Johnson must show: (1) trial counsel knew or should have known of the existence of the witness; (2) the witness could be located through reasonable investigation; (3) the witness would testify; and (4) the witness's testimony would have produced a viable defense. ***Worthington v. State***, 166 S.W.3d 566, 577 (Mo. banc 2005). Witnesses' testimonies must unqualifiedly support an appellant, or counsel's failure to call those witnesses does not constitute ineffective assistance of counsel. ***Phillips v. State***, 214 S.W.3d 361, 366 (Mo. App. S.D. 2007). When self-defense is at issue in a criminal case, "the trial court may permit a defendant to introduce evidence of the

victim's prior specific acts of violence of which the defendant had knowledge, provided that the acts sought to be established are reasonably related to the crime with which the defendant is charged." ***State v. Waller***, 816 S.W.2d 212, 216 (Mo. banc 1991); *see also* ***State v. Black***, 666 S.W.3d 205, 208 (Mo. App. E.D. 2023).

We agree with the motion court. There is no evidence Johnson knew of the acts of violence that Mother or Landlord outlined at the evidentiary hearing. Johnson only knew from Great Aunt that Mother and Victim were "fighting." There was no evidence as to the timing or extent of the "fighting" referred to by Great Aunt. Trial counsel's decision not to call Mother was a reasonable strategic decision and her testimony would not have unqualifiedly supported the defense. The motion court reasonably found trial counsel had no knowledge of Landlord. Johnson failed to meet the burden that any of this evidence would provide him with a viable defense. Point 3 is denied.

Point 4

Johnson's fourth point alleges that trial counsel was ineffective for failing to impeach a witness ("Witness") with his previously recorded statement. We disagree.

Witness testified at trial as a State's witness. He testified that he was driving near Victim's house when he heard three or four gunshots and saw a man running from the house about ten seconds later. He also saw a woman who was screaming hysterically and acting erratic. Witness turned around and went back to the house, where he saw Victim crawling on the ground. Shortly thereafter he identified Johnson from a photo

lineup as the person he saw running from the house. Witness testified that, based on his military training, the gunshots sounded like they came from a handgun, perhaps a .22-caliber.

At the time of his testimony, Witness was incarcerated at the Butler County Jail after being brought over from Missouri Eastern Correctional Center, where he was serving time on charges of first-degree burglary and first-degree attempted arson. Witness also had a black eye while testifying. He contended this was the result of a recent incident in the jail. Witness testified without objection that his status as a witness in Johnson's case was known in the jail and communications were made through sign language that he should be attacked. Witness said that he saw Johnson shaking his head up and down and making a hand gesture to the inmate who attacked him.

In the Amended Motion, Johnson alleged trial counsel was ineffective for failing to impeach Witness with a statement that was made at the scene and recorded on a body cam. The body cam footage shows Witness speaking with a police officer. Witness described Johnson as fleeing the scene. He then told police he did not hear shots, which contradicts his trial testimony.

At the evidentiary hearing, trial counsel testified that he would have reviewed the body cam footage containing the statement but did not remember any specifics of what was said. An assisting attorney testified that Witness's testimony about what he saw after the shooting did not affect Johnson's case as Witness was testifying to facts

that Johnson admitted at trial. The motion court found that Witness's testimony was not crucial to the State's case and "[n]o amount of impeachment of [Witness] would have changed the outcome of the trial."

We agree with the motion court. Trial counsel's failure to impeach a witness does not alone establish ineffective assistance of counsel. ***Potter v. State***, 679 S.W.3d 50, 57 (Mo. App. E.D. 2023). If a prior inconsistent statement by a State's witness does not give rise to a reasonable doubt as to a movant's guilt, such impeachment evidence is not the basis for a claim of ineffective assistance of counsel. ***Id.*** "Failure to impeach a witness will not warrant post-conviction relief unless the testimony offers a defense to the charged crimes." ***Nelson v. State***, 719 S.W.3d 729, 736 (Mo. banc 2025) (quoting ***Johnson v. State***, 406 S.W.3d 892, 904 (Mo. banc 2013)). Johnson admitted he shot Victim with a .22 and fled the scene. This evidence is uncontradicted. The alleged incident at the jail was irrelevant to the issue of whether Johnson acted in self-defense. The impeachment Johnson desires would not provide a defense or change the verdict. Point 4 is denied.

Point 5

In his fifth point, Johnson alleges trial counsel was ineffective when he advised Johnson regarding a plea offer before having complete discovery in the case. Johnson refused a plea offer of 15 years on each charge to be run concurrently. The offer was

announced at a ***Frye***[5] hearing on June 30, 2020, and was formally withdrawn after it was rejected. Johnson was represented by other counsel at the Frye hearing. Trial counsel did not enter his appearance until January 19, 2021.

At the evidentiary hearing, there was testimony that the plea offer was discussed shortly prior to trial, but no evidence that it was formally reoffered by the State. However, we do not need to determine in this case when possible offers were discussed. To establish prejudice in the context of a rejected plea offer, a movant must demonstrate a reasonable probability that he would have accepted the 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. ***Brooke v. State***, 584 S.W.3d 368, 373 (Mo. App. S.D. 2019). The failure to meet that requirement is sufficient by itself to deny post-conviction relief. ***Id.***

At the evidentiary hearing, Johnson did not testify that he would have accepted the State's offer but for trial counsel's advice. In contrast, when asked why he rejected the offer, he responded "I honestly didn't think my trial was going to turn out like that. I didn't think I was going to lose." Johnson further testified that he "did want to go to trial to try to prove my innocence." Thus, assuming any set of facts that Johnson may want

[5] ***Missouri v. Frye***, 566 U.S. 134 (2012). A "Frye hearing" is conducted to confirm that the State's plea offer was communicated to the defendant by counsel, and that the defendant understood and rejected the offer prior to trial, protecting the case against future claims of uncommunicated plea arguments.

us to accept regarding the nature of plea offers, he cannot show by a preponderance of the evidence that he was prejudiced. *See* ***id.***; *see also* ***Noland v. State***, 413 S.W.3d 684, 686 (Mo. App. S.D. 2013). Point 5 is denied.

Point 6

In his final point, Johnson alleges:

> The motion court clearly erred in denying [Johnson's] Rule 29.15 amended post-conviction relief motion after an evidentiary hearing, because he proved by a preponderance of the evidence he was deprived of his right to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and article I, section 10 of the Missouri Constitution, in that the state violated Rule 25.03 by failing to disclose evidence to which he was entitled until the day before trial. [Johnson] was prejudiced by the state's violation of Rule 25.03 because he did not have adequate time to prepare his defense.

As we discussed above in point 2, Johnson filed a direct appeal alleging the trial court abused its discretion in denying his request for a continuance due to the alleged late discovery production. That direct appeal was denied. "A Rule 29.15 motion for postconviction relief is not a substitute for direct appeal, so claims adjudicated on direct appeal generally cannot be the basis for postconviction relief." ***Wood***, 728 S.W.3d at 430. Johnson's claim here is premised on the same argument brought forth in his direct appeal. As this Court already rejected that claim, the motion court did not clearly err in denying post-conviction relief. Point 6 is denied.

Conclusion

The motion court's denial of post-conviction relief is affirmed.

BRYAN E. NICKELL, J. – OPINION AUTHOR

JEFFREY W. BATES, J. – CONCURS

MATTHEW P. HAMNER, J. – CONCURS