

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

[Filed: June 9, 2016]

CARLTON BLEAU

V.

STATE OF RHODE ISLAND

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C.A. NO. PM-2014-4732

DECISION

LANPHEAR, J. This case is before the Court on Petitioner Carlton Bleau’s (Mr. Bleau) motion for postconviction relief. Jurisdiction is pursuant to G.L. 1956 § 10-9.1-2. For the reasons stated below, Mr. Bleau’s application for postconviction relief is denied.

I

Facts and Travel

The substantive facts of the instant case are set out fully in State v. Bleau, 668 A.2d 642 (R.I. 1995). Mr. Bleau is currently serving multiple sentences in connection with a 1993 conviction for first and second degree sexual assault and malicious destruction of property. Before the Court is Mr. Bleau’s petition for postconviction relief alleging ineffective assistance of counsel. This is Mr. Bleau’s third application for postconviction relief.

At the hearing on his current petition for postconviction relief, Mr. Bleau called only one witness, Attorney Robert Craven (Attorney Craven). At the outset, this Court finds that Attorney Craven’s testimony was both credible and consistent. Attorney Craven attempted to be accurate, precise and cooperative with Mr. Bleau and the State. However, he clarified that his recall of the case was limited because his representation of Mr. Bleau took place approximately sixteen years

ago. Moreover, due to the length of time that has passed since he represented Mr. Bleau, Attorney Craven testified that he no longer retains Mr. Bleau's file. Based on testimony provided at the hearing, the Court makes the following findings of facts.

Approximately two years after his conviction in 1993, Mr. Bleau learned that an FBI agent—Michael Malone (Agent Malone)—who testified for the prosecution at Mr. Bleau's trial, may have provided misleading and overstated testimony regarding whether hair and fabric samples taken from the crime scene were a match for samples taken from Mr. Bleau's head and the victim's jeans. See Bleau v. Wall, 808 A.2d 637, 640-41 (R.I. 2002). Thereafter, Mr. Bleau filed his first application for postconviction relief based on newly-discovered evidence. Id.

Mr. Bleau was successfully represented by Attorney Craven at a hearing before a trial justice of the Rhode Island Superior Court in the case entitled Bleau v. Wall, PM No. 97-4545, which took place approximately sixteen years ago. Before representing Mr. Bleau, Attorney Craven had previously been employed as a prosecuting attorney in the Office of the Rhode Island Attorney General (Attorney General's Office), which is the same office that prosecuted Mr. Bleau. At the Attorney General's Office, Attorney Craven rose to the position of Assistant Chief of the Criminal Division (Assistant Chief). Pursuant to office protocol, a paralegal in the office routinely placed Attorney Craven's name on responses to discovery requests in cases which had not been arraigned and were awaiting permanent assignment at the Attorney General's Office. See Exs. 1 and 2. Thus, although Attorney Craven was not actively involved in Mr. Bleau's case, the office used his name as the responding attorney in documents which corresponded to Mr. Bleau's case.

Eventually, Attorney Craven left the Attorney General's Office and entered private practice. Attorney Craven testified that it was his practice to inform new clients that he was a

former prosecutor. Further, Attorney Craven testified that he informed Mr. Bleau that he was a former prosecutor at the start of his representation. He does not recall Mr. Bleau having objected to his representation. See Ex. 5. At the hearing before the Superior Court on Mr. Bleau's first application for postconviction relief, Attorney Craven represented Mr. Bleau and was successful in having Mr. Bleau's convictions set aside. Subsequently, the State appealed the trial justice's ruling to the Rhode Island Supreme Court. This Court notes that Attorney Craven did not represent Mr. Bleau on appeal. On appeal, the Rhode Island Supreme Court reversed the hearing justice's ruling. Bleau, 808 A.2d at 640-41. The Court determined that the hearing justice had committed an abuse of discretion when he failed to hold an evidentiary hearing before granting Mr. Bleau's application for postconviction relief. Id. Further, the Court concluded that the Department of Justice's reports lacked materiality and were merely cumulative and impeaching. Id. at 644. Thus, the Court held that Mr. Bleau was not entitled to postconviction relief. Id. at 644-45.

In 2004, Mr. Bleau filed a second application for postconviction relief in which he alleged that 1) he was denied the right to a speedy and fair trial; 2) the trial justice erroneously refused to appoint a new attorney to represent him; and 3) he was denied effective assistance of counsel. Bleau v. State, 968 A.2d 276, 277 (R.I. 2009). At a hearing before the Superior Court, the trial justice denied the application in open court. Id. at 278. Thereafter, Mr. Bleau appealed to the Supreme Court. Id. The Supreme Court found that Mr. Bleau was barred from bringing the first two claims under the doctrine of res judicata and that he had no evidence to support his third claim. Id. at 278-79. Therefore, the Court denied Mr. Bleau's second application for postconviction relief. Id. at 279.

Now, the matter before the Court is Mr. Bleau’s third application for postconviction relief. Mr. Bleau’s current application focuses not on the propriety of his original trial, but on the representation provided to Mr. Bleau by his publicly-financed, court-appointed counsel—Attorney Craven—during his first application for postconviction relief. In his current petition, Mr. Bleau alleges ineffective assistance of counsel by Attorney Craven. Specifically, Mr. Bleau contends that Attorney Craven had a conflict of interest due to his prior employment at the Attorney General’s Office.

II

Standard of Review

Sections 10-9.1-1 to 10-9.1-9 govern the statutory remedy of post-conviction relief, which is “available to any person who has been convicted of a crime in this state and who thereafter alleges either that the conviction violated his or her constitutional rights or that the existence of newly discovered material facts requires the vacation of the conviction in the interest of justice.” Larngar v. Wall, 918 A.2d 850, 855 (R.I. 2007). “[A]n application for postconviction relief is civil in nature,” and the applicant has the burden of proving that “relief is warranted” by a preponderance of the evidence. Quimette v. Moran, 541 A.2d 855, 856 (R.I. 1988); Mattatall v. State, 947 A.2d 896, 901 n.7 (R.I. 2008).

III

Analysis

A

Ineffective Assistance of Counsel

In the context of ineffective assistance of counsel claims, the Rhode Island Supreme Court has adopted the two-prong test, which the United States Supreme Court announced in

Strickland v. Washington, 466 U.S. 668 (1984). To succeed on an ineffective assistance of counsel claim, “a defendant must show: (1) that the counsel’s performance was so deficient and the errors so serious that they violate a defendant’s Sixth Amendment guaranty of counsel; and, (2) that this deficient performance prejudiced his or her defense and deprived the defendant of his or her right to a fair trial.” Ouimette v. State, 785 A.2d 1132, 1139 (R.I. 2001) (citing Powers v. State, 734 A.2d 508, 522 (R.I. 1999)). Moreover, the Court has acknowledged “that a strong presumption exists that an attorney’s performance falls within the range of reasonable professional assistance and sound strategy, creating a heavy burden for a party to establish constitutionally ineffective representation.” Ouimette, 785 A.2d at 1138-39.

Further, the Rhode Island Supreme Court has held that “[a] defendant cannot prevail on an allegation of ineffective assistance of counsel merely by showing that his attorney had a potential conflict of interest during the representation.” Rivera v. State, 58 A.3d 171, 180 (R.I. 2013). In order to establish an actual conflict of interest existed, a defendant must show that an attorney’s “actions [or inactions] were motivated by divided loyalties and lacked a sound strategic basis.” Id. (internal citations omitted). Additionally, the attorney’s conflict of interest must have harmed or impaired the defense. Id.

Here, Mr. Bleau contends that in his former role as Assistant Chief of the Criminal Division in the Attorney General’s Office, Attorney Craven was involved in prosecuting Mr. Bleau. Thus, Mr. Bleau claims Attorney Craven had a conflict of interest when he represented Mr. Bleau in his first petition for postconviction relief. In response, Attorney Craven testified that he was not actively involved in prosecuting Mr. Bleau. Attorney Craven acknowledged that his name might appear on certain documents generated by the Attorney General’s Office related to discovery requests. However, Attorney Craven testified that the office regularly used his

name as the responding attorney on documents for cases that were awaiting assignment. Thus, Attorney Craven contends that there was no actual conflict of interest when he represented Mr. Bleau. See id. (holding that in order to demonstrate a conflict of interest, a defendant must show that an attorney “struggle[d] to serve two masters” (internal citations omitted)). Further, it is undisputed that Attorney Craven successfully represented Mr. Bleau at the hearing before the Superior Court and that he was not involved in the appeal before the Rhode Island Supreme Court.

Given that Attorney Craven was not actively involved in Mr. Bleau’s prosecution and that he was successful in representing Mr. Bleau during his first petition, Mr. Bleau has not shown that Attorney Craven’s representation was deficient or that it resulted in actual prejudice as required under Strickland. See Ouimette, 785 A.2d at 1139. At most, all Mr. Bleau has shown is that Attorney Craven had a potential conflict of interest due to his former role as Assistant Chief of the Attorney General’s Office, which is not enough to establish ineffective assistance of counsel. See Rivera, 58 A.3d at 180. Given that Attorney Craven successfully represented Mr. Bleau during his first application for postconviction relief, it is absurd to contend that this potential conflict harmed Mr. Bleau’s defense. See id. This Court also notes that Attorney Craven did not represent Mr. Bleau when the State successfully appealed the trial court’s decision to grant Mr. Bleau’s first application. Therefore, Mr. Bleau has provided no evidence establishing that Attorney’s Craven’s performance was so deficient that it violated Mr. Bleau’s Sixth Amendment rights under the first prong of Strickland. See Powers, 734 A.2d at 522 (holding that to meet the first prong of Strickland, a defendant must show that counsel made such egregious errors that he violated the defendant’s Sixth Amendment right to counsel).

As such, this Court does not reach the second Strickland prong. See Page v. State, 995 A.2d 934, 945 (R.I. 2010) (holding that because a defendant had failed to establish the first prong of Strickland, the Court did not need to consider the second prong)¹. Accordingly, Mr. Bleau has failed to carry his burden of proof to establish ineffective assistance of counsel.

B

Laches

In addition, this Court finds that Mr. Bleau’s current petition is barred under the equitable doctrine of laches.² “[L]aches requires a showing of negligence to assert a known right, seasonably coupled with prejudice to an adverse party.” Raso v. Wall, 884 A.2d 391, 395 (R.I. 2005) (internal citation omitted). In the context of postconviction relief, to establish that a claim is barred by laches, it must be shown that an applicant unreasonably delayed seeking relief, which prejudiced the state. See id. Whether there has been an unreasonable delay which resulted in prejudice to an adverse party is a factual determination that courts determine on a case-by-case basis. See id. at 396.

Here, Mr. Bleau unreasonably delayed seeking relief. Mr. Bleau waited approximately sixteen years before filing the current application alleging ineffective assistance of counsel. Further, Mr. Bleau does not allege that Attorney Craven failed to disclose that he was a former prosecutor. Rather, Attorney Craven testified that he informed Mr. Bleau that he was a former

¹ Nevertheless, it would be challenging for Mr. Bleau to establish prejudice when Attorney Craven was successful at hearing.

² Here, the Court raises the doctrine of laches sua sponte. In so doing, the Court notes that although laches is an affirmative defense, the Rhode Island Supreme Court has held that courts may raise the issue of laches sua sponte if it best serves the public interest. See Northern Trust Co. v. Zoning Bd. of Review of Town of Westerly, 899 A.2d 517, 520 n.6 (R.I. 2006) (“In addition, we are not troubled by the fact that we are raising the issue of laches sua sponte. Other courts have acted similarly when convinced that the public interest would be best served by doing so.”).

prosecutor at the start of his representation, and Mr. Bleau voiced no objection. Therefore, Mr. Bleau knew or should have known long before the passage of sixteen years had gone by that Attorney Craven had worked as a prosecutor at the Attorney General's Office before he agreed to represent Mr. Bleau in his first petition for postconviction relief. See Santos v. State, 91 A.3d 341, 346-47 (R.I. 2014) (holding that a trial court acted within its discretion in finding that a defendant's fourteen-year delay in filing a petition for postconviction relief was unreasonable because the defendant knew or should have known the grounds which formed the basis of his petition for postconviction relief at the time he entered his plea.). Moreover, Mr. Bleau has offered no justification explaining the reason for his delay. See Hazard v. East Hills, Inc., 45 A.3d 1262, 1271 (R.I. 2012) (“[I]t was incumbent upon plaintiff to come forth with a fair explanation of the reason for the delay.”). Thus, Mr. Bleau's delay was unreasonable.

Further, Mr. Bleau's unreasonable delay in filing his third petition resulted in prejudice to the State. Memories fade with time. Additionally, Attorney Craven testified that he purges his older case files periodically. Sixteen years have passed since Attorney Craven represented Mr. Bleau. Therefore, Attorney Craven testified that he no longer retains Mr. Bleau's file. Thus, Mr. Bleau's sixteen-year delay in alleging ineffective assistance of counsel has prejudiced the State's ability to respond to the merits of Mr. Bleau's arguments, as well as this Court's ability to ascertain the truth of Mr. Bleau's allegations due to the destruction of the records. See id. (“Laches bars a stale cause of action when an unexplained or unjustified delay in asserting the claim is of such great length as to render it difficult or impossible for the court to ascertain the truth of the matters in controversy and do justice between the parties . . .” (internal citations omitted)). Accordingly, the requisite elements of laches have been met, and Mr. Bleau's claim is barred.

C

Res Judicata

Further, this Court finds that Mr. Bleau is barred from bringing his ineffective assistance of counsel claim under the doctrine of res judicata. Section 10-9.1-8, which codifies the doctrine of res judicata in the context of postconviction relief applications, provides that:

“All grounds for relief available to an applicant at the time he or she commences a proceeding under this chapter must be raised in his or her original, or a supplemental or amended, application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds that in the interest of justice the applicant should be permitted to assert such a ground for relief.”

Moreover, the Court has held that § 10-9.1-8 acts as a procedural bar not only for issues that were raised and decided in previous postconviction relief petitions, “but also precludes reconsideration of all other issues that might have been raised in the prior proceeding.” Ramirez v. State, 933 A.2d 1110, 1112 (R.I. 2007). Thus, absent a showing that the claim falls within the “interest of justice” exception contained in § 10-9.1-8, a defendant may not bring forward new claims in an application which could have been raised, but were not, in a defendant’s prior postconviction relief application. See id. For res judicata to apply, this Court must find that four elements have been met: “(1) identity of the parties; (2) identity of the issues; (3) identity of the claims for relief; and (4) finality of the judgment.” Ferrell v. Wall, 971 A.2d 615, 620 (R.I. 2009).

Here, the elements necessary to establish res judicata have been met. The first element is met because the parties in Mr. Bleau’s second petition for postconviction relief and his current petition are identical. In both applications, Mr. Bleau’s appeal was against the State. See id.

Moreover, both the second and third elements necessary to establish res judicata have been met because Mr. Bleau's current application alleges ineffective assistance of counsel, which he also alleged in his second application. Mr. Bleau's first application did not contain a claim that Attorney Craven had a conflict of interest. However, as discussed above, it is clear to this Court that Mr. Bleau knew or should have known of the existence of this potential conflict well before he filed his second application for postconviction relief as Attorney Craven was his attorney in his first application. Moreover, Mr. Bleau has provided the Court with no reason as to why he did not raise this argument in his second application. See id. at 621 (holding that a defendant's third application for postconviction relief based on a new claim was barred under the doctrine of res judicata because the issue could have been raised prior to his third petition, and he provided no reason as to why he failed to raise the claim in his previous applications.). Therefore, this Court finds that Mr. Bleau could have—and should have—raised this issue in his second application for postconviction relief. As such, Mr. Bleau is barred from raising the claim in his current application.

Last, the fourth element of res judicata is met because the Court did previously enter a final judgment denying Mr. Bleau's second application for postconviction relief, which alleged ineffective assistance of counsel in the case Bleau v. State, 968 A.2d at 276. Accordingly, all four elements of res judicata have been met and Mr. Bleau is barred from bringing the current petition alleging ineffective assistance of counsel.

IV

Conclusion

For the reasons stated above, and after a hearing on the merits, this Court finds that Mr. Bleau's claims are without merit. Further, the claims are precluded under the equitable doctrine of laches and under the doctrine of res judicata. As such, Mr. Bleau has not met his burden of demonstrating that postconviction relief is warranted in his case. Accordingly, this Court denies Mr. Bleau's application for postconviction relief.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Carlton Bleau v. State of Rhode Island

CASE NO: PM 2014-4732

COURT: Providence County Superior Court

DATE DECISION FILED: June 9, 2016

JUSTICE/MAGISTRATE: Lanphear, J.

ATTORNEYS:

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