STATE OF RHODE ISLAND

KENT, SC. **SUPERIOR COURT**

(FILED: April 30, 2025)

RALPH THIBEDAU	**:**	
	:	
VS.	**:**	**KM-2023-0080**
	:	**(K1-2013-0051A)**
STATE OF RHODE ISLAND	**:**	

DECISION

F. DARIGAN, J. (Ret.) This matter came before the Court on the Petitioner's claim for postconviction relief on December 2, 2024 in Kent County Superior Court.

The Petitioner had been convicted after trial on one count of child molestation in the first degree, one count of second-degree child molestation, and one count of third-degree sexual assault.

He was sentenced by the Court on December 17, 2014 to twenty-five years at the ACI on the first-degree charge, with three years suspended, with probation, on Counts Two and Three to run consecutively to Count One.

The case was appealed to the Rhode Island Supreme Court which affirmed the judgment of the Superior Court. *See State v. Thibedau*, 157 A.3d 1063 (R.I. 2017).

In his petition for postconviction relief filed on January 30, 2023, the Petitioner cited several grounds regarding ineffective assistance of counsel.

1. Trial counsel failed to obtain medical records of the complaining witness. (This claim was waived during the hearing after it was determined that the records had been provided by the State during the discovery process.)

2. Defense counsel failed to bring out the fact that the complaining witness had contracted a sexually transmitted disease (STD) at the time of the allegations against the Petitioner, while the Petitioner did not have an STD.
3. The fact that the Petitioner had not contracted an STD would have been inconsistent with the allegations of "extensive sexual penetration" testified to by the complaining witness.
4. Trial counsel also did not allow disclosure that the Petitioner at the time of these allegations had Peyronies disease and whether or not it should have been raised as a defense.
5. Trial counsel failed to advise the Petitioner of pretrial offers made by the State and failed to explain to the Petitioner the consequences of a conviction for first degree child molestation.
6. Trial counsel failed to explain the possible consequences of a trial based on the Petitioner's limited familiarity with the criminal justice system.
7. Appellate counsel failed to raise as an issue the trial judge's interruption of the defense counsel during final argument to the jury.

Standard of Review

The postconviction-relief statute is found at G.L. 1956 § 10-9.1-1 and provides that one who has been convicted of a crime may seek collateral review of that conviction based on alleged violations of his or her constitutional rights. The statute reads as follows:

> "(a) Any person who has been convicted of, or sentenced for, a crime, a violation of law, or a violation of probationary or deferred sentence status and who claims:

> "(1) That the conviction or the sentence was in violation of the constitution of the United States or the constitution or laws of this state;
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> "(2) That the court was without jurisdiction to impose sentence;
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> "(3) That the sentence exceeds the maximum authorized by law, or is otherwise not in accordance with the sentence authorized by law;
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> "(4) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
>
> "(5) That his or her sentence has expired, his or her probation, parole, or conditional release unlawfully revoked, or he or she is otherwise unlawfully held in custody or other restraint; or
>
> "(6) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding, or remedy;
>
> "may institute without paying a filing fee, a proceeding under this chapter to secure relief.
>
> "(b) This remedy is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction. Except as otherwise provided in this chapter, it comprehends and takes the place of all other common law, statutory, or other remedies heretofore available for challenging the validity of the conviction or sentence. It shall be used exclusively in place of them." Section 10-9.1-1.

At the hearing, the Petitioner testified that he met with his trial counsel, whom he was referred to by family, at least ten times in counsel's office in Newport. He recalled discussing with counsel the nature of the charges, possible defenses, possible witnesses, and possible outcomes of a trial. He does not recall if a plea offer was made to him by the State. He did testify that he was told by counsel a sentence could be severe after trial. Petitioner testified that he was not interested in a plea, that he maintained his innocence, and did not consider a plea.

He testified that he thought his counsel was competent and knew what he was doing. He also testified that he was not that familiar with the criminal justice system.

He recalled discussing the complaining witness's STD problem and his own Peyronies disease situation, but does not recall discussing a plea offer of thirty years, ten to serve with his trial counsel. He did testify on direct examination that he thought his defense counsel "did a good job."

On cross-examination, the Petitioner was asked that if his counsel did a good job, why are we here? He had no recollections about discussing his own testimony with trial counsel but acknowledged he "probably did." However, he reiterated he was not interested in a plea throughout the period prior to trial.

Trial counsel testified about his extensive experience of twenty-four years before the bar, conducting between thirty to thirty-five jury trials and 125 bench trials, 95 percent of which were involving criminal law.

He testified that he discussed and reviewed all discovery with the Petitioner, the issue of the Petitioner's Peyronies disease, the complaining witness' STD, and whether or not the Petitioner would testify at trial.

Counsel explained to Petitioner that the issue of his Peyronies disease and the complaining witness' STD would not be helpful at trial and as a trial strategy would not be brought up by the defense.

The Petitioner indicated he did not want to testify on his own behalf as well.

Counsel explained the plea offer of thirty years, ten to serve with the Petitioner who rejected any notion of pleading to a charge.

On cross-examination, defense counsel testified that he had a good relationship with the Petitioner and his wife. He testified that he had gone over discovery, defenses, witnesses, and all aspects of trial with the Petitioner. He testified that throughout their relationship, the Petitioner never wanted to plea to any terms, protesting his innocence.

He testified that the decision not to mention Peyronies disease or the STD was a tactical trial decision fearing rebuttal by a DCYF representative who did not testify at trial.

Defense counsel objected to the allowing of a witness who was not on the witness list, but he was overruled by the trial justice.

Counsel called the detective on the case who was not called by the State in its case to highlight inconsistencies and failures in the police investigation.

The Petitioner called appellate counsel to the stand. She certified she had been in practice for twenty-four years exclusively in the criminal law area and had done extensive appellate work during her career.

She testified that she reviewed the entire record, instructions, objections, and read the entire transcript.

Appellate counsel focused on issues she felt were most important in the case, the allowing of 404B evidence to come in over defense counsel's objection, the allowing of witnesses not on the witness list to testify over objection of defense counsel, the denial by the court of the defense counsel's motion for judgment of acquittal.

When asked by Petitioner's counsel why she did not make the trial judge's interruption of defendant counsel's final argument an issue on appeal, she testified that while such interruptions are unusual, she did not think it was a persuasive argument on appeal and did not affect the trial.

On cross-examination by the State, she testified that defense counsel had made between thirty to forty objections on trial and contested the admittance of testimony and witnesses unsuccessfully.

Discussion

In *Mattatall v. State*, 947 A.2d 896, 901 n.7 (R.I. 2008), the Rhode Island Supreme Court determined that "[a]n applicant who files an application for postconviction relief bears the burden of proving, by a preponderance of the evidence, that such relief is warranted."

In the case of *Strickland v. Washington*, 466 U.S. 668, 687 (1984), the United States Supreme Court developed a two-prong test to analyze whether or not counsel was ineffective at trial. The Court determined that in order to succeed on such a claim, a petitioner must prove that defense counsel's representation (1) fell below an objective standard of reasonableness and (2) that this substandard representation resulted in actual prejudice to the petitioner.

There is a strong presumption that counsel's conduct was within a wide range of reasonable conduct.

The Petitioner must show that but for counsel's ineffective representation and demonstrated errors the result of the trial would have been different.

The Petitioner has the burden of proving that counsel's legal assistance was ineffective. *State v. Cochrane*, 443 A.2d 1249, 1251 (R.I. 1982).

Because of the vagaries of trial practice and changing circumstances confronting counsel at trial, there is a strong presumption that counsel's performance falls within a wide range of professional assistance. *Strickland*, 466 U.S. at 689.

The Rhode Island Supreme Court in *Rice v. State*, 38 A.3d 9 (R.I. 2012) adopted strict guidelines for evaluating a counsel's representation in these cases. The Court recognizes that

Strickland's test is one of reasonable competence of assistance, and the Court recognized that effective assistance is not equivalent to errorless representation.

A Petitioner must prove that the errors claimed in a petition for relief "resulted from neglect or ignorance rather than from informed, professional development." *State v. D'Alo*, 477 A.2d 89, 92 (R.I. 1984) (internal quotation omitted).

In *State v. Brennan*, 627 A.2d 842, 851 (R.I. 1993), the Court declared, "We are not in the business of second guessing the strategic choices of trial counsel when their choices are clearly reasonable and within the bounds of competent representation."

In this case, the Petitioner has also claimed that his appellate counsel was similarly ineffective in his case and the same *Strickland* case standard will be applied as well.

In this case, the Petitioner testified at age sixty-six. He appeared to attempt to answer questions on both direct and cross-examination as forthrightly and correctly as he could recall. It was apparent to this Court that his ability to recollect and recall events from some time ago appeared to be beyond his grasp. His demeanor was courteous and affable. His answers to direct questions regarding trial preparation, review of discovery material, and discussions of trial strategy and other details were sketchy in his responses. He agreed in direct and cross-examination that he thought his defense counsel "did a good job" and that he was reasonably unfamiliar with the workings of the criminal justice system. He was vague about whether or not he had discussed plea negotiations with his lawyer but felt he probably did so.

Petitioner's defense counsel, a person of extensive trial practice in criminal law, testified that he met with the Petitioner ten or more times, often with the Petitioner's wife present. He testified that he discussed all aspects of trial preparation, the seriousness of the charges, and possible severe outcomes if convicted at trial. He discussed trial strategy with the Petitioner and

discussed the prospect of introducing the STD of the complaining witness, his own Peyronies disease, and the reasons why counsel felt introduction of these matters would not aid the Petitioner but might harm his case if pursued.

He indicated that the Petitioner throughout their relationship steadfastly denied responsibility for the charges and would not entertain any negotiated plea. The Petitioner made clear to counsel he did not want to testify on his own behalf.

Counsel testified as to his filing of motions for discovery, a bill of particulars, motions opposing 404B evidence, and to prohibit testimony of a witness not listed in discovery.

At the actual trial, defense counsel engaged in objections, cross-examined witnesses, and called the lead detective in the investigation who was not called by the State to attempt to expose shortcomings in the police investigation of the allegations against the Petitioner.

The Petitioner as mentioned *supra* also claimed ineffective assistance of counsel on the part of appellate counsel who represented Petitioner on appeal.

Appellate counsel testified at the hearing that she had twenty-four years of experience in trial and appellate practice, mostly in the criminal law field.

Counsel testified that she reviewed the entire record, discovery, motions, instructions, objections, and read the entire transcript. She testified that in her appellate practice she usually argues no more than seven issues in her brief which are chosen on seriousness of the issue and contemplated measure of success in the appeal.

She was asked why she didn't argue the admission of 404B evidence which was granted over objection and why she did not include the admittance of a witness who was not included in discovery and why she did not raise the issue of the trial justice interrupting defense counsel in the

course of her final argument. To all of these, counsel testified that it was felt these issues were not sufficiently important to be determinative of a successful appeal in her opinion.

Decision

This Court, after conducting extensive prehearing conferences and a hearing of all witnesses, Petitioner, trial and appellate counsel, while applying the standard of the *Strickland* case to the allegations raised by the Petitioner, finds as a fact and as a matter of law that the representation afforded the Petitioner in his trial and in his appeal after the conviction was afforded to him in a proficient and effective manner of representation in both the trial and appellate cases before this Court, that said representation by trial and appellate counsel was effective and within the proper realm of appropriate and effective representation and that no evidence has been placed upon the record to indicate to this Court that the Petitioner was in any way prejudiced by the representation of all counsel. This Court respectfully denies the Petitioner as to both trial and appellate counsel. An order may be entered consistent with this Decision.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Ralph Thibedeau v. State of Rhode Island**
CASE NO:	**KM-2023-0080 (K1-2013-0051A)**
COURT:	**Kent County Superior Court**
DATE DECISION FILED:	**April 30, 2025**
JUSTICE/MAGISTRATE:	**Associate Justice Francis J. Darigan, Jr.**

ATTORNEYS:

For Plaintiff:	**John E. Sullivan, III, Esq.**
For Defendant:	**Judy Davis, Esq.**