

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: December 18, 2013)

JUSTIN PROUT

v.

STATE OF RHODE ISLAND

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C. A. No. PM 12-5474

**DECISION**

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

**I**

**Facts and Travel**

The substantive facts of the instant case are set out fully in State v. Prout, 996 A.2d 641 (R.I. 2010). Prout was convicted in 2006 of unlawful breaking and entering of a dwelling house, assault with a dangerous weapon, and simple assault. After the jury’s verdict was entered, Prout moved for a new trial on the grounds that the verdict was against the weight of the evidence. The trial justice denied that motion and sentenced Prout to serve a sentence of ten years to serve in prison with probation and a suspended sentence upon his release.

Prout then appealed his convictions to the Rhode Island Supreme Court, again alleging that the trial justice should have granted him a new trial because the State’s evidence was insufficient to support a jury verdict against him. Also on direct appeal, Prout argued that he could not have formed the requisite mens rea for the crimes for which he was convicted because he was intoxicated and suffering from mental illness at the time and, therefore, was acting with

diminished capacity. Id. at 646-47. The Supreme Court rejected Prout's arguments and affirmed the judgment of the trial court. Id. at 647. Thereafter, Prout made a motion pursuant to Super. R. Crim. P. 35(a) (Rule 35) to reduce his sentence, which the Superior Court denied in 2011.

Now, Prout applies for post-conviction relief. After careful review of his claims, Prout's court-appointed counsel determined that the claims lacked merit and requested leave to withdraw, which this Court granted.<sup>1</sup> Prout proceeded by representing himself (without counsel) with his application and raises the following grounds for relief: 1) the verdict on the assault charges was against the weight of the evidence because the State failed to meet its burden of proof; 2) he was not able to form the mens rea required for the crimes for which he was convicted, and the trial judge failed to properly instruct the jury on this issue; 3) his sentence should be reduced because it is excessive and because the trial justice committed errors during his trial; 4) both his trial counsel and the trial justice failed to properly instruct the jury on the duty to retreat doctrine; 5) he received ineffective assistance of counsel at trial; and 6) the trial justice prejudiced the jury against Prout by giving jury instructions that implied he was violent and unremorseful. On July 31, 2013, Prout spoke on his own behalf before this Court in support of the instant application.

## II

### Standard of Review

#### A

### Post-conviction Relief

Rhode Island General Laws §§ 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

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<sup>1</sup> See the extensive Memorandum of Law Pursuant to Shatney v. State Finding No-Merit to the Defendant's Application for Post-Conviction Relief of May 2013.

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).

## **B**

### **Ineffective Assistance of Counsel**

The post-conviction relief applicant “bears the burden of proving a claim of ineffective assistance of counsel, and to succeed, he must satisfy the standard announced by the United States Supreme Court in Strickland v. Washington, 466 U.S. 668 (1984).” Anderson v. State, 878 A.2d 1049, 1050 n.1 (R.I. 2005). Under the first prong of the Strickland test, “an applicant must demonstrate ‘that counsel’s performance was deficient, to the point that the errors were so serious that trial counsel did not function at the level guaranteed by the Sixth Amendment.’” Page v. State, 995 A.2d 934, 942 (R.I. 2010) (quoting Brennan v. Vose, 764 A.2d 168, 171 (R.I. 2001)). If the first prong of the Strickland test is satisfied, the court then proceeds to the second step wherein “the applicant must demonstrate that the ‘deficient performance was so prejudicial to the defense and the errors were so serious as to amount to a deprivation of the applicant’s right to a fair trial.’” Id. (quoting Brennan, 764 A.2d at 171). “Under [this] prong, the defendant must demonstrate that counsel’s objectively unreasonable performance caused a ‘reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.’” Washington v. State, 989 A.2d 94, 99 (R.I. 2010) (quoting Strickland, 466 U.S. at 694). Moreover, the applicant faces “a strong (albeit rebuttable) presumption . . . that

counsel's performance was competent.” Gonder v. State, 935 A.2d 82, 86 (R.I. 2007).

### III

#### Analysis

The post-conviction relief statute generally prohibits the relitigation of issues that have been finally decided in a prior proceeding. Sec. 10-9.1-8. Likewise, the statute precludes an applicant from raising for the first time in the application for post-conviction relief “any issue that could have been [but was not] litigated in a prior proceeding.” Taylor v. Wall, 821 A.2d 685, 688 (R.I. 2003); see also Price v. Wall, 31 A.3d 995, 1000 (R.I. 2011) (holding that because the defendant could have raised a particular argument “on direct appeal but did not do so, res judicata bars him from doing so [on a post-conviction relief application]”); Sec. 10-9.1-8. The statute does, however, provide a “limited and narrow exception” to the prohibition on relitigation of claims when “the court finds it to be ‘in the interest of justice’ to permit the applicant to assert such a ground for relief.” Brown v. State, 32 A.3d 901, 910 (R.I. 2011) (quoting § 10-9.1-8). Our Supreme Court has found that “the interest of justice” may be implicated when the applicant has been deprived “of basic constitutional rights [that] would not constitute harmless error” and when the applicant has discovered new evidence that was unavailable during the prior proceedings. State v. Duggan, 414 A.2d 788, 790-91 (R.I. 1980); Brown, 32 A.3d at 910.

#### A

##### Claims Already Raised in Prior Proceedings

Prout asks this Court to grant him relief on three bases that have been finally decided in prior proceedings. See Prout, 996 A.2d at 646-47. First, Prout essentially argues that the jury verdict must have been against the weight of the evidence because the State failed to meet its burden of proof. In support of this argument, Prout alleges the following: 1) the State failed to

enter several items from the crime scene into evidence;<sup>2</sup> 2) there “was no believable evidence” supporting the conviction for assault with a dangerous weapon because the State’s witnesses’ testimony lacked credibility and because Prout’s fingerprints were not found on the knife that he used in the assault; and 3) the State did not submit any evidence of injury to the assault victims. The Supreme Court, however, already decided this issue against Prout in his direct appeal. See id. at 646 (finding that the trial justice did not err in finding that the jury verdict was supported by the State’s evidence). Second, Prout repeats the claim he made on appeal that he could not have been guilty of his crimes because he was operating with a diminished capacity that prevented him from forming the requisite mens rea, namely, specific intent. This issue, however, was also clearly decided on direct appeal. See id. (ruling that the defense of diminished capacity would not have applied to the crimes for which Prout was convicted because they were not specific intent crimes). Lastly, Prout argues that he is entitled to post-conviction relief because the trial justice imposed an excessive punishment after committing prejudicial errors at his trial. The propriety and legality of Prout’s sentence, however, was likewise finally decided when the Superior Court denied his Rule 35 motion to reduce his sentence in 2011.

Our Supreme Court “has repeatedly held that an applicant may not raise issues in a postconviction relief application that were raised and decided in a direct appeal from a conviction,” or in another prior proceeding, unless the interest of justice so requires. Bleau v. State, 968 A.2d 276, 278 (R.I. 2009); see also Lynch v. State, 13 A.3d 603, 604 (R.I. 2011); Ballard v. State, 983 A.2d 264, 269 (R.I. 2009). In the case at bar, the interest of justice would not be served by allowing Prout to relitigate the above claims via his application for post-conviction relief. The Supreme Court has reviewed Prout’s claims of prejudicial trial errors and

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<sup>2</sup> Specifically, the evidence Prout has referred to is a knife used in the assault, the dumbbell that one of his victims used to defend himself against Prout, and broken glass from the crime scene.

found them lacking in merit, and the Superior Court has already considered and denied Prout's motion to reduce his sentence. In asking for post-conviction relief on these grounds, Prout has produced no new evidence, or any other compelling reason, to suggest that this Court should reconsider these prior final decisions. Consequently, this Court cannot grant Prout's request for post-conviction relief on any of the claims that he has already raised on direct appeal or on his motion to reduce his sentence.

## **B**

### **Claims That Could Have Been Raised in Prior Proceedings**

Prout's additional claims regarding ineffective assistance of counsel, the duty to retreat doctrine, and the trial justice's alleged prejudicial remarks to the jury are likewise barred by the doctrine of res judicata. Prout could have raised these issues at trial, on direct appeal, or on his motion to reduce his sentence, but he did not. He is therefore precluded from raising these issues for the first time in his post-conviction relief application. Sec. 10-9.1-8; see also Taylor, 821 A.2d at 688 (refusing to consider a ground for post-conviction relief where the applicant "could have, but failed to present this issue in his direct appeal"); Price, 31 A.3d at 1000. Such disposition is in keeping with our legislature's "intent that criminal defendants present on appeal all issues that can be disposed of by direct review." Duggan, 414 A.2d at 790-91. To rule otherwise would be to allow "unrestricted access . . . to piecemeal review of convictions in this Court." Id.

Even if Prout had not lost his right to bring the claims that he could have raised but did not raise in prior proceedings, this Court would nonetheless deny his application for post-conviction relief because all the new claims Prout now asserts are without merit. With respect to his claims that have not been finally adjudicated either on direct appeal or on the Rule 35 motion,

Prout has failed to demonstrate that relief is warranted. See Mattatall, 947 A.2d at 901 n.7. In particular, for the claims he raises for the first time on the instant post-conviction relief application—ineffective assistance of counsel, failure to address the duty to retreat doctrine, and the trial justice’s alleged prejudicial remarks—Prout has not satisfied his burden of establishing that either his constitutional rights were violated or that his conviction should be overturned in light of newly discovered evidence. Larngar, 918 A.2d at 855.

**1**

**Ineffective Assistance of Counsel**

Insisting that the State had an obligation to enter into evidence the dumbbell and knife alluded to by witnesses in their testimony at trial, Prout now claims that his constitutional right to effective assistance of counsel was violated because his lawyer did not move to have one or more of the charges against him dismissed on the grounds that the State failed to produce such evidence.<sup>3</sup> On the contrary, however, the fact that Prout’s trial counsel did not move to dismiss his charges based on the State’s failure to enter the knife and dumbbell into evidence was not constitutionally deficient because this lack of evidence would not have been a basis for dismissing any of the charges against Prout. See DeCiantis v. State, 599 A.2d 734, 735 (R.I. 1991) (finding that the defendant was not denied effective assistance of counsel simply because his defense attorney failed to object when there were no legal grounds for objecting). Indeed, the State had produced sufficient other evidence to prove Prout’s guilt without also producing the knife and dumbbell. See Prout, 996 A.2d at 646 (approving of the trial justice’s finding that the State had produced sufficient evidence to sustain all three of Prout’s convictions). Although she

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<sup>3</sup> The dumbbell Prout refers to is that used in self-defense against Prout by one of the occupants of the house he broke into. Prout also complains that some of the State’s witnesses’ testimony indicated that there were two knives at the crime scene, yet the State only produced one knife in evidence.

did not move to dismiss the charges, Prout’s trial counsel nonetheless “function[ed] at the level guaranteed by the Sixth Amendment” by adeptly addressing the State’s failure to produce the knife in her cross-examination of the State’s witnesses. Brennan, 764 A.2d at 171. In particular, Prout’s trial counsel aggressively attacked the fact that the State had not produced the knife and used that fact to put the witnesses’ credibility in issue.

Furthermore, the victim’s use of the dumbbell to defend himself has no bearing in this particular case on Prout’s guilt, namely, whether he broke and entered or committed assault. Therefore, his trial counsel cannot be faulted for failing to object to the absence of the dumbbell from evidence, as it was not germane to the State’s burden of proof. See Brown v. State, 964 A.2d 516, 542 (R.I. 2009) (rejecting the defendant’s claim that he received ineffective assistance of counsel when his attorney failed to make a particular objection because there was no indication that, had the objection been made, “the trial would have produced a different result”).

Because the performance of Prout’s trial counsel was not deficient, this Court need not reach the second prong of the Strickland analysis. Page, 995 A.2d at 942. Accordingly, this Court must reject Prout’s ineffective assistance of counsel claim as a basis for post-conviction relief. See Pelletier v. State, 966 A.2d 1237, 1241 (R.I. 2009) (stating that a claim of ineffective assistance of counsel must be rejected “unless the attorney’s representation was so lacking that the trial has become a farce and a mockery of justice”) (internal quotations omitted).

## 2

### **Duty to Retreat Doctrine**

Next, Prout essentially argues that his constitutional rights to due process and effective assistance of counsel were violated when his trial counsel and the trial justice failed to explain the duty to retreat doctrine to the jury. The duty to retreat doctrine provides that “[b]efore

resorting to the use of deadly force to defend oneself, a person ‘must attempt retreat if he or she is consciously aware of an open, safe, and available avenue of escape.’” State v. Urena, 899 A.2d 1281, 1288 (R.I. 2006) (quoting State v. Quarles, 504 A.2d 473, 475 (R.I. 1986)).

There is, however, no duty to retreat in one’s own home when defending against a person engaged in the commission of an unlawful breaking and entering. G.L. 1956 § 11-8-8. Thus, the occupants of the home that Prout broke into and entered had no duty to retreat before using force to repel him. More importantly, however, the occupants’ failure to retreat has no bearing on whether Prout broke and entered or committed assault once inside. Therefore, the duty to retreat doctrine was both inapplicable to the facts of Prout’s case and wholly immaterial to a determination of Prout’s guilt or innocence. Accordingly, the trial justice made no error in not addressing the duty to retreat doctrine in his jury instructions because it was not a relevant defense to the charges against Prout. See Lieberman v. Bliss-Doris Realty Assocs., 819 A.2d 666, 673 (R.I. 2003) (denying an appeal based on allegedly erroneous jury instructions when the instructions accurately reflected the law pertaining to the defendant’s charges); contra Infantolino v. State, 414 A.2d 793, 795-96 (R.I. 1980) (holding that an improper jury instruction on a pertinent self-defense claim could violate a defendant’s due process rights). As a result, Prout’s claim that the trial justice erroneously failed to call the jury’s attention to the duty to retreat doctrine is not a valid basis on which to grant him post-conviction relief.

Similarly, the assistance rendered by Prout’s trial counsel did not fall below “the level guaranteed by the Sixth Amendment” because the result of Prout’s trial would not have been different had his attorney raised the duty to retreat, a doctrine having nothing to do with the charges against Prout. Brennan, 764 A.2d at 171; see also Hazard v. State, 64 A.3d 749, 758 (R.I. 2013) (rejecting a claim of ineffective assistance of counsel because the defendant did not

meet “his burden of showing with reasonable probability that, but for [his trial counsel’s] alleged errors, the result of his trial would have been different”); but see Heath v. Vose, 747 A.2d 475, 479 (R.I. 2000) (finding ineffective assistance of counsel when the attorney made “several glaring omissions” in her defense strategy). As a result, Prout’s motion for post-conviction relief fails on the ground that his counsel did not raise the duty to retreat doctrine before the jury.

### 3

#### **The Trial Justice’s Alleged Prejudicial Remarks**

Finally, Prout seemingly argues that the trial justice unfairly prejudiced the jury against him by implying that he was violent and felt no remorse for his crimes. The post-conviction relief applicant has the burden of proving that “relief is warranted” by a preponderance of the evidence. Mattatall, 947 A.2d at 901 n.7. Here, Prout has failed to meet that burden because he has neither described the trial justice’s alleged remarks nor directed this Court to any portion of the trial transcript in which these alleged remarks are recorded. Finding no evidence of any kind in the record to support Prout’s claim of prejudice, Prout’s request for post-conviction relief is denied on this ground. See Tondreault v. Tondreault, 966 A.2d 654, 664-65 (R.I. 2009) (quoting Deangelis v. Deangelis, 923 A.2d 1274, 1282 n.11 (R.I. 2007)) (explaining that, in the appellate context, when a litigant makes “a mere passing reference” to a claim, then fails “to articulate any developed arguments” in support thereof, the court may disregard the claim).

### IV

#### **Conclusion**

For the foregoing reasons, Prout’s claims on his post-conviction relief application are either precluded by res judicata or are without merit. As Prout has not met his burden of demonstrating that post-conviction relief is warranted in his case, his application is denied.



**RHODE ISLAND SUPERIOR COURT**  
*Decision Addendum Sheet*

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**TITLE OF CASE:** Justin Prout v. State of Rhode Island

**CASE NO:** PM 12-5474

**COURT:** Providence County Superior Court

**DATE DECISION FILED:** December 18, 2013

**JUSTICE/MAGISTRATE:** Lanphear, J.

**ATTORNEYS:**

**For Plaintiff:** Justin Prout, pro se

**For Defendant:** Jeanine McConaghy, Esq.