

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(City of St. Louis)

RODNEY DONELSON,)
)
 Movant,)
) PCR No. 1122-CC09536
 vs.)
) Division No. 11
STATE OF MISSOURI,)
)
 Respondent.)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Movant seeks relief pursuant to Rule 29.15. Counsel was appointed to represent movant, counsel filed an amended motion and an evidentiary hearing was held at which movant appeared and testified. Having examined the records and files in this case, the Court now finds as follows:

FINDINGS OF FACT

1. Movant was charged in Cause No. 0922-CR03577 with two counts of murder first degree and two counts of armed criminal action.

2. Movant was found guilty of all four counts and was sentenced to concurrent terms of life imprisonment, two of them without the possibility of parole.

3. The murder convictions were affirmed on appeal but the armed criminal action convictions were reversed because the statute of limitations had expired. State v. Donelson, 343 S.W.3d 729 (Mo.App.E.D. 2011).

4. Geralyn Ruess, movant's trial counsel, testified at the evidentiary hearing that the defense strategy was to point out holes and inconsistencies in the State's case.

5. The record reflects that Ms. Ruess filed a motion to sever and the motion was heard on April 20, 2010. At the hearing the prosecuting attorney argued that the offenses were properly joined because they were both homicides of women movant knew and he said he had a particularized showing of several similarities between the two murders. Heather Sabin, a police officer assigned to the homicide section, testified that she had reviewed the evidence in the 2000 murder of Cassandra Scott and she was involved in the investigation of the 2005 murder of Barbara Hampton. Following the testimony of the detective in which she outlined multiple similarities between the two murders, defense

counsel argued that none of the factors testified to met the common scheme or plan, or motive or similar in character requirements for joinder. She further argued the prejudice from trying the crimes together "would be incredibly overwhelming." The prosecutor responded that if the crimes were not properly joined, severance would be automatic but that they were properly joined and the defense had not made a particularized showing of prejudice. After hearing arguments from both attorneys and considering the evidence presented by the prosecutor, the Court denied the motion stating "I think that it is enough for the state to have joined these together."

6. Ms. Ruess testified she checked out movant's alibi prior to the trial but neither alibi witness "panned out," and the State endorsed movant's alibi witnesses.

7. The trial commenced on May 3, 2010. At that time defense counsel filed a memorandum withdrawing the motion to sever offenses. Ms. Ruess testified at the evidentiary hearing that she withdrew the motion because she was concerned that the Court would reconsider and the motion would be granted. She said she wanted to compare and contrast the DNA evidence from the two

murders.¹ The name on the lab report for one case did not have movant's name spelled properly and she wanted to be able to argue it was not the correct person. The DNA from the other case, from the pillow case, was more likely to be a white person than a black person. She said that because movant's alibi did not work out, her best defense was to attack the DNA evidence and she believed this strategy would be more effective if the cases were tried together.

8. Movant was questioned under oath at trial by the Court about his decision not to testify. During the questioning the Court gave him additional time to consult with his attorney about his decision. He then stated that he had discussed the issue sufficiently, that she had advised him of his right to testify or not testify, and that he did not wish to testify.²

9. Ms. Ruess testified at the evidentiary hearing that she spoke with movant at least three or four times prior to trial about his right to testify. She said she told movant it was his decision whether to testify, but she advised against his doing

¹ She said the similarities were that movant was acquainted with both victims and fluid was poured on destroy evidence.

² During the course of this discussion movant said, "I didn't know she [defense counsel] was this good... Best thing I've ever seen... I was amazed.... She's the best."

so. She said her main concern was if he testified as to an alibi, the State would have witnesses to rebut the testimony. They discussed what he would say if he did testify, but she found his explanation for the presence of his DNA at both crime scenes would not be credible and she thought it would be better if they could argue that the State had not proved the DNA was movant's. During the trial movant thought about testifying but then decided not to do so. She told him it was his decision but she thought it would be better for the defense if he did not testify. She said the problem with his testifying was that if he said the DNA was his, it would undercut the defense strategy; if he said he was not there, the State had the persons he provided to her as alibi witnesses for rebuttal.

10. Ms. Ruess testified that she consulted with a DNA expert and she sent to the expert all of the information she had, including lab report. The expert said the Saint Louis Police lab is a "clean lab" and he has never seen any problems with their work. The State Highway Patrol also confirmed the lab results. Ms. Ruess said she was concerned about getting a third confirmation of the DNA result identifying movant.

11. Movant claims he wanted to testify at his trial but his counsel did not prepare him and when he was questioned by the Court he responded as he did because he was scared and she said his testimony would mess up the defense. He said she told him he would testify and he wanted to testify.

12. Movant claims he would have testified that his DNA was found on shorts found in Ms. Scott's apartment because he left laundry there. He said he went to her residence after he got off work to fix a toilet. He changed his clothes and left a bag of clothes by the door when he left. The shorts, which had both blood and seminal fluid, were found on the floor by the victim's body. The blood was that of the victim and the seminal fluid was that of movant. Movant said the victim was probably killed by her boyfriend because he thought she was cheating on him, and the boyfriend put the shorts by the body.

13. With regard to the murder of Ms. Hampton, he claims he would have testified that DNA found at the scene was not his. The evidence at trial was that movant's DNA was found on a pillowcase on the victim's bed and on a bottle of isopropyl alcohol, and DNA on the victim's slip was consistent with

movant's. He said he had moved her bed in order to fix some wires.

CONCLUSIONS OF LAW

1. The first claim in movant's amended motion is that his attorney was ineffective for waiving his challenge to the joinder of the offenses charged in Counts I and II with the offenses charged in Counts III and IV. The first two counts arose out of a murder which occurred in 2000 and the other two counts arose out of a murder that occurred in 2005.

To prevail on a claim of ineffective assistance of counsel, a criminal defendant must show that his counsel's performance failed to conform to the degree of skill, care and diligence of a reasonably competent attorney and that he was thereby prejudiced. Williams v. State, 168 S.W.3d 433, 439 (Mo.banc 2005); Wilkes v. State, 82 S.W.3d 925, 927 (Mo.banc 2002). There is a presumption that counsel made all significant decisions in the exercise of his reasonable professional judgment and that any challenged action was part of counsel's sound trial strategy. Williams, supra; State v. Tokar, 918 S.W.2d 753, 761 (Mo.banc 1996). Whether to file a motion to sever is generally part of a

counsel's strategy which will not be second guessed on appeal, and there is a presumption that the strategy was sound. State v. Townes, 941 S.W.2d 756, 759 (Mo.App.E.D. 1997).

The Court finds movant's first claim is without merit as it is apparent from the record that defense counsel had a plausible strategic reason for withdrawing the motion.

2. Movant next claims counsel was ineffective for advising him not to testify at the trial. He states that she told him not to testify because "I was going to mess up her defense."

The advice of an attorney whether to testify is a matter of trial strategy and is not ineffective assistance of counsel. See Hurst v. State, 301 S.W.3d 112, 118 (Mo.App.E.D. 2010). An attorney's refusal to let movant testify would warrant relief in a post-conviction proceeding. Brown v. State, 882 S.W.2d 154, 156 (Mo.App.E.D. 1994). However, the movant must demonstrate prejudice from counsel's failure to call him. Bode v. State, 316 S.W.3d 406, 409 (Mo.App.W.D. 2010). In order to be entitled to an evidentiary hearing on this point the movant must allege prejudice. In order to be entitled to relief the movant must establish that if he were put on the stand there would be a reasonable doubt concerning his guilt. Van v. State, 764 S.W.2d

690, 691 (Mo.App. 1988). Movant must allege what his testimony would have been and how it would have aided him. The mere assertion that movant told his attorney that he wanted to testify is insufficient. State v. Starks, 856 S.W.2d 334 (Mo.banc 1993); Goforth v. State, 775 S.W.2d 231 (Mo.App. 1989).

The Court finds this claim is without merit because movant stated under oath that he had decided not to testify at the trial. In addition, the Court finds Ms. Ruess was credible in her testimony that the decision not to testify was movant's decision and that she merely advised against his doing so. The Court also finds that, in light of the evidence against movant for both murders, his proposed testimony would have not have been likely to have persuaded reasonable jurors.

3. Movant's final claim is that his attorney was ineffective for failing to obtain a lab to test and an expert to review the DNA evidence in the case. He claims counsel was unprepared to confront the DNA evidence and "present possible exculpatory evidence at trial." Movant lists Dr. Dean Stetler "or a similar expert witness" as a witness to testify in support of this claim.

The Court finds this claim is without merit because Ms. Ruess did consult with an expert and her decision not to pursue

further testing was not unreasonable under the circumstances. It is also apparent that had the defense arranged for testing and the results identified movant, such results would have undercut the only defense strategy Ms. Ruess found to be available.

ORDER

The Court has considered each claim in movant's Rule 29.15 Motion, has reviewed the record and has considered the testimony at the evidentiary hearing and the Court finds that movant has failed to establish that he is entitled to relief.

THEREFORE, the Court orders, adjudges and decrees that the Motion made pursuant to Supreme Court Rule 29.15 is DENIED.

SO ORDERED:



Michael K. Mullen, Judge

Dated: Sept. 17, 2013

cc: Jessica Hathaway, Attorney for Movant
Ryann Carmody, Assistant Circuit Attorney