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IN THE
COURT OF APPEALS OF INDIANA

ALVIN L. REDFIELD,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 48A02-0812-PC-1106
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Thomas Newman, Jr., Judge
Cause No. 48D03-0101-CF-26

June 24, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Alvin L. Redfield ("Redfield") appeals the denial of his petition for post-conviction relief. Redfield raises the following restated issues for our review:

I. Whether Redfield's trial counsel was ineffective by: 1) opening the door to the admission of Redfield's criminal history; 2) failing to tender an elements instruction and a lesser-included offense instruction; and 3) failing to object to an uncorroborated testimony instruction; and

II. Whether Redfield's appellate counsel was ineffective by failing to raise the previously stated ineffective assistance of trial counsel issues in Redfield's direct appeal.

We affirm.

FACTS AND PROCEDURAL HISTORY

The facts most favorable to Redfield's conviction appear in this court's memorandum decision opinion from his direct appeal:

> In January 2001, J.R. decided to end her month-and-a-half long relationship with Redfield. While Redfield was at work, J.R. went to the hotel room where the pair had been staying, cleared out all her belongings, and left Redfield a note telling him that she was ending their relationship. When Redfield returned from work and found the note, he called J.R. at her parents' house and asked her to come to the hotel to discuss their relationship. J.R. initially agreed to meet Redfield, but she changed her mind as she was leaving and called him back to cancel their meeting. On the phone, Redfield became angry and was verbally abusive toward J.R., so she hung up. But after repeated phone calls and badgering, J.R. agreed to meet Redfield at his hotel room.
>
> J.R. arrived at the hotel and parked, but she left her car engine running as she walked toward Redfield's room with a box of his belongings. She set the box down inside his door and then turned to leave. However, Redfield, watching from a nearby location, had gone to J.R.'s car, turned off the ignition and removed the keys. Redfield approached J.R. and told her to go into his room. Once inside, Redfield hit J.R. repeatedly with a belt and then pulled out a box cutter knife. He ordered J.R. first to remove her clothing and then his. J.R. refused but then relented after Redfield threatened to "slice [her] throat" and cut her shirt off. Redfield then forced J.R. to have sexual intercourse with him before allowing her to gather her things and leave.

> The State charged Redfield with battery by means of a deadly weapon; rape; criminal confinement; intimidation; and being an habitual offender. At trial, over Redfield's objection, the court allowed J.R. to answer questions from the State regarding Redfield's physical abuse during the couple's relationship, finding that such testimony was relevant to show J.R.'s state of mind at the time of the rape. In addition, the trial court allowed the State to question Redfield about his entire criminal history, after concluding that Redfield had "opened the door" to such questions during direct examination when he admitted that he had been previously convicted of burglary. On cross-examination the State elicited from Redfield the fact that he also had two prior battery convictions, as well as convictions of Public Intoxication, Disorderly Conduct, and Resisting Law Enforcement.
>
> The jury later convicted Redfield of the first four charges and Redfield pleaded guilty to being a habitual offender. The trial court sentenced Redfield to a total of 78 years executed with 140 days'[sic] credit for time served prior to sentencing.

Redfield v. State, No. 48A02-0107-CR-487, slip op. at 2-3 (Ind. Ct. App. Feb. 21, 2002) (internal citations omitted).

Redfield filed an amended petition for post-conviction relief on February 20, 2008 in which he alleged ineffective assistance of trial and appellate counsel. After holding an evidentiary hearing, the post-conviction court denied Redfield's petition for post-conviction relief. Redfield now appeals.

DISCUSSION AND DECISION

Redfield argues that he received ineffective assistance of trial counsel when counsel: 1) opened the door to the admission of Redfield's criminal history; 2) failed to tender an elements instruction and a lesser-included offense instruction; and 3) failed to object to an uncorroborated testimony instruction. Redfield also claims that he received ineffective

assistance of appellate counsel for failing to make the previously stated arguments regarding ineffective assistance of trial counsel in Redfield's direct appeal.

A petitioner has the burden of establishing the grounds for relief alleged in his petition for post-conviction relief by a preponderance of the evidence. Ind. Post-Conviction Rule 1(5). Because Redfield is appealing the denial of his petition for post-conviction relief, he stands in the position of one appealing from a negative judgment. *See Willoughby v. State*, 792 N.E.2d 560, 562 (Ind. Ct. App. 2003). On appeal, we will not reweigh the evidence or reassess the credibility of the witnesses. *Id*. We will not reverse the post-conviction court's decision unless the petitioner shows that the evidence is without conflict and leads unerringly and unmistakably to a conclusion opposite that reached by the post-conviction court. *Id*. We accept the post-conviction court's findings of fact unless they are clearly erroneous, but we do not defer to the post-conviction court's legal conclusions. *Fisher v. State*, 810 N.E.2d 674, 679 (Ind. 2004).

There is a strong presumption that counsel rendered effective assistance and made all significant decisions in the exercise of reasonable professional judgment. *Walker v. State*, 779 N.E.2d 1158, 1161 (Ind. Ct. App. 2002). As for counsel's performance, we give considerable deference to counsel's discretion in choosing strategy and tactics. *Id*. Accordingly, a defendant must show more than isolated poor strategy, bad tactics, a mistake, carelessness, or inexperience; the defense as a whole must be inadequate. *Law v. State*, 797 N.E.2d 1157, 1162 (Ind. Ct. App. 2003). To prevail on a claim of ineffective assistance of counsel, Redfield must show (1) that counsel's performance fell below an objective standard

of reasonableness as determined by prevailing professional norms, and (2) that the lack of reasonable representation prejudiced him. *See Shane v. State*, 769 N.E.2d 1195, 1200 (Ind. Ct. App. 2000). Essentially, Redfield must show that but for counsel's deficient performance, the result of the proceedings would have been different. *See Law*, 797 N.E.2d at 1161. We will find prejudice when the conviction or sentence has resulted from a breakdown of the adversarial process that rendered the result unjust or unreliable. *Id*. at 1161-62. If we can easily dismiss an ineffectiveness claim based upon the prejudice analysis, we may do so without addressing whether counsel's performance was deficient. *Id*. at 1162. We apply the same standard of review to claims of ineffective assistance of appellate counsel as we apply to claims of ineffective assistance of trial counsel. *Williams v. State*, 724 N.E.2d 1070, 1078 (Ind. 2000), *cert. denied*, 531 U.S. 1128 (2001).

I. Ineffective Assistance of Trial Counsel

First, Redfield challenges his trial counsel's decision to open the door to Redfield's criminal history. During Redfield's testimony at trial, Redfield's counsel sought to pre-empt the State's ability to impeach Redfield with his prior burglary conviction by eliciting testimony about the conviction. However, the trial court found that Redfield's counsel opened the door to the admission of Redfield's prior criminal history in so doing. The State then was allowed to cross-examine Redfield about the balance of his criminal record.

As previously mentioned, we give considerable deference to counsel's discretion in choosing strategy and tactics. The post-conviction court found that the testimony about Redfield's other convictions was brief and not unduly prejudicial in light of the limiting

instruction provided by Redfield concerning the evidence. Redfield has failed to establish more than isolated poor strategy, bad tactics, a mistake, carelessness, or inexperience. Redfield's trial counsel's strategy cannot be the basis for this ineffective assistance of counsel claim. Redfield has also failed to establish that the outcome of the proceedings would have been different, especially given the victim's unequivocal and compelling testimony.

Next, Redfield contends that his trial counsel was ineffective by failing to tender an elements instruction or a lesser-included offense instruction for the battery charge. Assuming without deciding that Redfield's trial counsel should have offered an elements instruction, Redfield has failed to establish that he was prejudiced by his counsel's performance. The record reveals that the jury was instructed about the elements of the offenses through the reading of the charges and relevant criminal statutes. *See Davis v. State*, 835 N.E.2d 1102, 1107-11 (Ind. Ct. App. 2005) (failure to separately read separately elements of offense did not mislead jury as to correct understanding of law where trial court read charging information during preliminary and final instructions)**.**

Moreover, the decision not to request or offer a lesser-included offense instruction on the battery charge was a matter of trial strategy. The battery charged was based upon the allegation that Redfield struck the victim with a beer bottle, a deadly weapon. At trial, Redfield and another witness testified that the victim of the crimes became upset when she found Redfield with that other witness at a hotel room. Redfield argued that the victim was making a false accusation that Redfield hit her on the head with a beer bottle because she was

upset with Redfield. Accordingly, trial counsel used an "all or nothing" defense which is a matter of trial strategy. *See Autrey v. State*, 700 N.E.2d 1140, 1141 (Ind. 1998) ("all or nothing" strategy by trial counsel was reasonable and appropriate and did not constitute ineffective assistance of counsel). The trial court asked about a battery misdemeanor instruction to which Redfield's trial counsel responded that he made a mistake in tendering the instruction. Trial counsel's decision was a matter of trial strategy that cannot support a claim of ineffectiveness. Moreover, Redfield has failed to show any prejudice from the tactical decision not to offer a lesser-included offense instruction for misdemeanor battery for the battery charge. Redfield's counsel made the tactical decision to win Redfield's acquittal on that charge. The jury either believed that the victim was struck with a beer bottle, a deadly weapon, or not. Offering a lesser-included offense instruction for misdemeanor battery would have been inconsistent with that tactical decision.

Lastly, Redfield argues that his trial counsel was ineffective by failing to object to an instruction that the uncorroborated testimony of a single witness can be sufficient to support guilt. After Redfield's trial in 2001, the Indiana Supreme Court found such an instruction to be erroneous. *See Ludy v. State*, 784 N.E.2d 459, 460 (Ind. 2003). The post-conviction court found that Redfield's counsel could not have been ineffective for failing to predict the change in the law. There was a "substantial history of appellate approval" of such an instruction. *Id.* at 462 n.2. Had Redfield's counsel objected to the instruction, there is little likelihood that the trial court would have sustained the objection. Furthermore, our Supreme

Court stated that the new rule would be applied only prospectively. *Id*. at 462. Redfield has failed to establish the ineffective assistance of trial counsel in this regard.

Redfield briefly argues that the cumulative errors by his trial counsel amounted to ineffective assistance of counsel. Errors by counsel that are not individually sufficient to prove ineffective representation may add up to ineffective assistance when viewed cumulatively. *See French v. State*, 778 N.E.2d 816, 826 (Ind. 2002). A conviction based upon an accumulation of defense attorney errors, when counsel's mistakes do substantial damage to the defense, must be reversed. *Williams v. State*, 508 N.E.2d 1264, 1268 (Ind. 1987). Here, however, the mistakes, if any, did not do substantial damage to the defense. The victim's testimony was unequivocal and compelling. Consequently, Redfield also has failed to establish that his trial counsel's errors cumulatively amount to ineffective assistance of trial counsel.

II. Ineffective Assistance of Appellate Counsel

Redfield argues that his appellate counsel was ineffective by failing to raise these arguments in Redfield's direct appeal. As previously stated, we apply the same standard of review to claims of ineffective assistance of appellate counsel as we apply to claims of ineffective assistance of trial counsel. *Williams*, 724 N.E.2d at 1078.

Ineffectiveness is rarely found when the issue is failure to raise a claim on direct appeal. *Taylor v. State*, 717 N.E.2d 90, 94 (Ind. 1999). The decision regarding what issues to raise is one of the most important strategic decision to be made by appellate counsel. *Id*. We give considerable deference to appellate counsel's strategic decision and will not find

deficient performance in counsel's choice of some appellate issues over others when the choice was reasonable in light of the facts of the case and the precedent available to counsel at the time the decision was made. *Id.* In light of our conclusion that trial counsel's performance was not ineffective, we find that appellate counsel is not ineffective for failing to raise these issues on direct appeal.

Affirmed.

RILEY, J., and MATHIAS, J., concur.