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ATTORNEYS FOR APPELLANT:

SUSAN K. CARPENTER
Public Defender of Indiana

LINDA G. NICHOLSON
Deputy Public Defender
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

MONIKA PREKOPA TALBOT
Deputy Attorney General of Indiana
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

LESLIE BRIDGEMAN,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 49A02-0906-PC-546
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Mark A. Jones, Judge Pro-Tempore
Cause No. 49G05-9903-PC-49977

December 22, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-petitioner Leslie Bridgeman appeals from the denial of his petition for post-conviction relief, arguing that the post-conviction court erroneously concluded that his trial counsel was not ineffective. Specifically, Bridgeman maintains that his trial counsel failed to cross-examine the victim, J.M., on numerous inconsistencies. In addition, Bridgeman contends that his trial counsel was ineffective for failing to produce certain exculpatory evidence. Finding no error, we affirm the judgment of the post-conviction court.

FACTS

Sometime in October or November 1998, K.H. (Mother) and her twelve-year-old daughter, J.M., met Bridgeman at a gas station where he worked. Bridgeman lived in the same Indianapolis apartment complex as Mother and J.M. and occasionally called their apartment.

In December 1998, Bridgeman called the apartment and spoke with J.M. Bridgeman asked J.M. to come to his apartment. Once J.M. was in Bridgeman's apartment, he asked her to perform oral sex on him. Bridgeman then lifted J.M.'s shirt, removed her bra, and touched and "sucked" J.M.'s breasts. Tr. p. 29. Bridgeman got a knife, pulled down his pants, and told J.M. that she had to perform oral sex on him "right now," and J.M. complied with his demand. Id. at 29-30.

When Mother arrived home from work, she discovered that J.M. was not in their apartment. Mother found J.M. walking near Bridgeman's apartment, and J.M. later explained that she had been at his apartment. Mother called Bridgeman and yelled at him

for allowing J.M. to be in his apartment. Bridgeman admitted that J.M. had been in his apartment, but said that they "only talked about going to college and her dad." Id. at 56.

In February 1999, J.M., who attended special education classes at her school, was caught stealing money from her teacher. J.M. told her teacher that Bridgeman had molested her "[b]ecause they knew something was wrong with me." Id. at 34. On February 23, 1999, J.M. gave a statement to police, stating that Bridgeman had called her and that while she was at his apartment, he made her perform oral sex and fondled her breasts.

Bridgeman was charged with two counts of child molesting, one as a class A felony and the other as a class C felony. Following Bridgeman's January 19, 2001, bench trial, the trial court found Bridgeman guilty on both counts. On February 16, 2001, Bridgeman was sentenced to thirty years with ten years suspended for the class A felony and to a concurrent term of four years for the class C felony.

Bridgeman filed a direct appeal on August 9, 2001, arguing that the trial court had improperly excluded evidence of J.M.'s prior sexually-oriented telephone conversations and that there was insufficient evidence to convict him. On December 28, 2001, this court affirmed the trial court in an unpublished memorandum opinion. Bridgeman v. State, 49A05-0102-CR-79 (Ind. Ct. App. December 28, 2001).

On September 20, 2005, Bridgeman filed a pro se petition for post-conviction relief, in which he did not raise any claims. On May 8, 2008, with the assistance of counsel, Bridgeman filed a motion to amend his petition for post-conviction relief, arguing that his trial counsel had been ineffective.

The post-conviction court held a hearing on the petition on August 27, 2008, and on April 26, 2009, the post-conviction court issued its findings of fact and conclusions of law, denying Bridgeman relief. Bridgeman now appeals.

DISCUSSION AND DECISION

I. Standard of Review

Bridgeman argues that the post-conviction court erred when it concluded that his trial counsel had not been ineffective and denied his motion for post-conviction relief. The petitioner in a post-conviction proceeding bears the burden of establishing grounds for relief by a preponderance of the evidence. Ind. Post-Conviction Rule 1(5); McCarty v. State, 802 N.E.2d 959, 962 (Ind. Ct. App. 2004). When appealing from the denial of post-conviction relief, the petitioner stands in the position of one appealing from a negative judgment. McCarty, 802 N.E.2d at 962. On review, we will not reverse the judgment unless the evidence as a whole unerringly and unmistakably leads to a conclusion opposite that reached by the post-conviction court. Id. Post-conviction procedures do not afford petitioners with a "super appeal." Richardson v. State, 800 N.E.2d 639, 643 (Ind. Ct. App. 2003). Rather, they create a narrow remedy for subsequent collateral challenges to convictions that must be based upon grounds enumerated in the post-conviction rules. Id.; see also P-C.R. 1(1).

When evaluating a claim of ineffective assistance of counsel, we apply the two-part test articulated in Strickland v. Washington, 466 U.S. 668 (1984). Pinkins v. State, 799 N.E.2d 1079, 1093 (Ind. Ct. App. 2003). First, the defendant must show that counsel's performance was deficient. Strickland, 466 U.S. at 687. This requires a

showing that counsel's representation fell below an objective standard of reasonableness and that the errors were so serious that they resulted in a denial of the right to counsel guaranteed to the defendant by the Sixth and Fourteenth Amendments. Id. Second, the defendant must show that the deficient performance resulted in prejudice. Id. To establish prejudice, a defendant must show that there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. at 694. A reasonable probability is a probability sufficient to undermine confidence in the outcome. Id. If a claim of ineffective assistance can be disposed of by analyzing the prejudice prong alone, we will do so. Wentz v. State, 766 N.E.2d 351, 360 (Ind. 2002).

II. Cross-Examination

Bridgeman asserts that his counsel was ineffective for failing to cross-examine J.M. more thoroughly on numerous inconsistent statements. This court has stated that "[i]t is well settled that the nature and extent of cross-examination is a matter of strategy delegated to trial counsel." Waldon v. State, 684 N.E.2d 206, 208 (Ind. Ct. App. 1997). In addition, "[c]ounsel is afforded considerable discretion in choosing strategy and tactics, and we will accord those decisions deference. A strong presumption arises that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Timberlake v. State, 753 N.E.2d 591, 603 (Ind. 2001).

Here, there were numerous inconsistencies between J.M.'s in-court testimony and her statement to police and her pre-trial deposition. Specifically, in its findings of fact, the post-conviction court observed that:

> A. In her statement to police, she said that she went to Petitioner's apartment because he wanted to talk to her because he had stolen a car and wanted to get out of it. Later in that statement, she stated that it was after the molestations that he told her about having stolen a car and doing something else. At trial, she stated that he wanted to talk to her about her father.
>
> B. In her police statement, she said that Petitioner had threatened to kill her if she didn't come to the Shell station where he worked and that he "is" a mean guy. In her trial testimony, she said that she went to his apartment because she trusted him.
>
> C. In her police statement, she said that when she entered Petitioner's apartment, she first sat on an old chair in the living room and he came and sat on the floor next to her. He then got a chair from the kitchen, like patio furniture, and then engaged in the acts of molestation. At trial, she said that all of the acts occurred in the bedroom.
>
> D. Regarding the furniture in the apartment: in her police statement, she said that he had a chair, TV, patio table and chairs, a mattress on the floor and no lamps or pictures. In her deposition, she said that he had an old chair, TV, mattress on the floor with no frame or sheets and the patio table with glass and 2 seats. At trial, she talked about the patio table and chairs and said that the chair in State's Exhibit 2 was in the apartment.
>
> E. J.M. consistently claimed that Petitioner's actions caused her nipples to bleed, after her bra had been removed. Regarding her bra: in her police statement she said that her bra had a lot of blood on it, though at trial and in her deposition she said that she never put the bra back on, and said further at trial that there wasn't much blood, just a little on her nipples.
>
> F. Regarding disposal of the bra, in her police statement she said that Petitioner made her throw it in the trash; in her deposition, she said that he made her throw it away in his trash, but he later got it out and

> took it out to the garbage before she left; at trial, she said Petitioner took it out and threw it in the garbage as she was leaving.
>
> G. In her police statement, she said that she stayed for a while after she'd been molested, but at trial she said that he'd made her leave immediately because he expected his roommate to return soon.

Appellant's App. p. 108-110 (internal citations omitted).

As the post-conviction court observed, had trial counsel asked J.M. additional questions regarding her inconsistent statements, the prosecution could have introduced J.M.'s numerous statements in her deposition and police report that were consistent with her trial testimony, including the details of the actual molestation. For instance, J.M. consistently stated that Bridgeman took off her bra, touched and "sucked" her breasts, she performed oral sex on Bridgeman, and Bridgeman ejaculated. Tr. p. 29-31, PC Ex. E p. 25-33. This would have highlighted facts that were damaging to Bridgeman.

In addition, J.M. was only twelve years old and a special education student at the time of the molestation, which occurred approximately two years before Bridgeman's trial. Moreover, trial counsel's cross-examination of Mother was particularly effective, eliciting an admission from Mother that she had stated to a police detective that, "we're hoping she's telling the truth. We don't know, sir, I mean, there's been so many lies about so many other things." Tr. p. 83. Under these circumstances, we cannot say that trial counsel was ineffective for not further quizzing J.M. about minor details surrounding the molestation and this claim fails.

III. Exculpatory Evidence

In a related argument, Bridgeman argues that his trial counsel was ineffective for failing to present exculpatory evidence, namely, a receipt for a chair that J.M. stated was in the room at the time of the molestation, but had not been purchased until after the molestation. This court has stated that exculpatory evidence is "that which clears or tends to clear a defendant from alleged guilt." Shanabarger v. State, 798 N.E.2d 210, 218 (Ind. Ct. App. 2003). In addition, this court has held that a failure to present exculpatory evidence constitutes ineffective assistance of counsel. Montgomery v. State, 804 N.E.2d 1217, 1221 (Ind. Ct. App. 2004).

Here, the absence of the chair does not clear Bridgeman of the molestation. Rather, it only shows that J.M. may have been mistaken in her description of Bridgeman's furniture. In addition, trial counsel elicited testimony from Bridgeman that he had acquired the chair two to three months after the alleged molestation. Similarly, after the trial court questioned Bridgeman about the purchase of the chair, Bridgeman testified that he had the receipt at home and trial counsel offered to obtain the receipt, but the trial court declined this offer. Thus, trial counsel offered essentially the same evidence through Bridgeman's testimony as he would have through the receipt. Consequently, this claim of ineffective assistance of counsel also fails and we affirm the judgment of the post-conviction court.

The judgment of the post-conviction court is affirmed.

DARDEN, J., and MAY, J., concur.