

Case Summary

Appellant-Defendant Jeremiah Kelley (“Kelley”) appeals his conviction for Failure to Return to Lawful Detention, a Class D felony.¹ We affirm.

Issue

Kelley raises one issue for appeal, which we restate as whether Kelley received ineffective assistance of trial counsel when counsel did not present any evidence in his defense.

Facts and Procedural History

Having been convicted in cause number 48D03-0210-FB-343, Kelley’s sentence included in-home detention. On March 23, 2006, Kelley was found to be in violation of the terms of in-home detention and was ordered to reside at the Madison County Work Release Center (“Center”) for the remainder of his sentence. He began residing at the Center on April 19, 2006. That day, he signed a statement indicating he had been informed verbally and in writing that his absence from the Center without prior permission was a crime.

On May 23, 2006, Kelley received a pass to leave the Center and go to work, conditioned upon his immediate return to the Center after work. Instead of returning to the Center after work, Kelley went to Florida and remained there until police arrested him on a warrant.

The State charged Kelley with Failure to Return to Lawful Detention, a class D felony. On September 20, 2006, Kelley was tried before a jury. In her opening statement, defense counsel stated Kelley did not believe he had to return to the Center, and that is what

“the evidence is going to show.” Tr. at 25-26.

During its case-in-chief, the State introduced State’s Exhibit 1, the transcript of Kelley’s probation revocation hearing in cause number 48D03-0210-FB-343. Kelley had testified during that hearing that he did not return to the Center on May 23, 2006, because “everything was getting to him” and all he knew how to do was “run.” Appendix at 54, 55. Subsequently, defense counsel elected not to present any evidence. The jury found Kelley guilty as charged, and the trial court sentenced him to thirty-six months at the Department of Correction, to be fully executed at the Center.

Kelley now appeals.

Discussion and Decision

Kelley asserts his trial counsel was ineffective, because she failed to present evidence in his defense. We review claims of ineffective assistance of counsel based upon the two-prong test enunciated in Strickland v. Washington, 466 U.S. 668 (1984). Specht v. State, 838 N.E.2d 1081, 1086-87 (Ind. Ct. App. 2005), trans. denied. “First, the petitioner must demonstrate that counsel’s performance was deficient because it fell below an objective standard of reasonableness and denied the petitioner the right to counsel guaranteed by the Sixth Amendment to the United States Constitution.” Id. In deciding this, “[i]solated mistakes, poor strategy, inexperience, and instances of bad judgment do not necessarily render representation ineffective.” Smith v. State, 765 N.E.2d 578, 585 (Ind. 2002).

Second, the petitioner must demonstrate that he was prejudiced by his counsel’s deficient performance. Wentz v. State, 766 N.E.2d 351, 360 (Ind. 2002). Prejudice is

¹ Ind. Code § 35-44-3-5(c).

demonstrated by showing a reasonable probability that the results would have been different had counsel not made errors. Id. If we can easily dismiss an ineffective assistance claim based upon the prejudice prong, we may do so without addressing whether counsel's performance was deficient. Id.

Here, Kelley asserts that his counsel was ineffective because she did not present evidence to support opening argument that he did not know he was supposed to return to the Center. His counsel suggested in the opening statement that evidence would be forthcoming to support this defense. Although alluding to an anticipated defense lacking evidentiary support may have been an error, isolated mistakes are not enough to render the representation ineffective. See Wentz, 766 N.E.2d at 360.

More importantly, Kelley still must prove prejudice. The trial court admitted into evidence Kelley's sworn testimony from his probation violation hearing where he stated on direct examination that he did not return to the Center on May 23, 2006 because "everything was getting to him" and all he knew how to do was "run." App. at 54, 55. On cross-examination, the State asked Kelley, "You knew you were supposed to be in the work release center obviously. Why'd you leave?" App. at 57. Kelley responded, "Like I said, I just -- everything was getting to me." Id. Considering Kelley's sworn testimony, counsel could not have presented evidence in good faith supporting the contention that Kelley failed to return to the Center because he thought he was not obligated to do so. Kelley has failed to demonstrate he was denied effective assistance of counsel.

Affirmed.

BAKER, C.J., and VAIDIK, J., concur.