

FILED

09/28/2026

Clerk of the
Appellate Courts

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

August 18, 2026 Session

QUANTAVIOUS WILLIAMS v. STATE OF TENNESSEE

Appeal from the Criminal Court for Knox County

No. 120758

Hector I. Sanchez, Judge

No. E2025-00757-CCA-R3-PC

A Knox County jury convicted the Petitioner, Quantavious Williams, of first degree murder, attempted especially aggravated robbery, carjacking, employing a firearm during the commission of a dangerous felony, aggravated robbery, and aggravated kidnapping. The trial court imposed an effective sentence of life imprisonment, and this court affirmed the judgments on direct appeal. The Petitioner subsequently sought post-conviction relief, and the post-conviction court denied his petition following an evidentiary hearing. On appeal, the Petitioner raises the following issues: (1) whether trial counsel's conduct amounted to a constructive denial of counsel warranting a presumption of prejudice under *United States v. Cronin*; (2) whether trial counsel rendered ineffective assistance under the conventional *Strickland v. Washington* framework by failing to object to, or otherwise challenge, the State's gang-related evidence; (3) whether trial counsel's personal and professional conduct amounted to ineffective assistance of counsel under *Strickland*; and (4) whether the post-conviction court erred by failing to make an explicit finding on his claim of cumulative error. Upon our review, we respectfully affirm the judgment of the post-conviction court.

**Tenn. R. App. P. 3 Appeal as of Right;
Judgment of the Criminal Court Affirmed**

TOM GREENHOLTZ, J., delivered the opinion of the court, in which CAMILLE R. McMULLEN and ROBERT L. HOLLOWAY, JR., JJ., joined.

Autumn M. Bowling, Knoxville, Tennessee, for the appellant, Quantavious Williams.

Jonathan Skrmetti, Attorney General and Reporter; Caroline Weldon, Assistant Attorney General; Charme P. Allen, District Attorney General; and Ta Kisha M. Fitzgerald, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTUAL BACKGROUND

A. THE PETITIONER’S UNDERLYING CONVICTIONS

After the Petitioner’s original trial ended in a mistrial, a Knox County jury convicted the Petitioner in November 2017 of first degree murder, attempted especially aggravated robbery, carjacking, employing a firearm during the commission of a dangerous felony, aggravated robbery, and aggravated kidnapping. *See State v. Williams*, No. E2019-02266-CCA-R3-CD, 2021 WL 1263987 (Tenn. Crim. App. Apr. 6, 2021), *perm. app. denied* (Tenn. Feb. 13, 2024). The trial court imposed an effective sentence of life imprisonment, and this court affirmed the Petitioner’s convictions on appeal. *Id.*

B. POST-CONVICTION PETITION

In February 2022, the Petitioner filed a timely pro se petition for post-conviction relief. After the court appointed counsel, the Petitioner filed an amended petition, alleging that he was denied his Sixth Amendment right to the effective assistance of counsel at his trial. More specifically, and as relevant to this appeal, the Petitioner alleged that his trial counsel was ineffective in failing to object to or otherwise limit the State’s reference to gangs, gang affiliation, and gang-related testimony, including testimony from a gang expert, despite the absence of any gang enhancement presented at trial. The Petitioner also asserted that trial counsel’s personal and professional conduct undermined the entirety of his representation and constituted a constructive denial of his right to effective counsel. The Petitioner further argued that the cumulative effect of trial counsel’s alleged deficiencies entitled him to post-conviction relief.

C. POST-CONVICTION HEARING TESTIMONY

The post-conviction court held an evidentiary hearing in January 2025. Because the transcript of the hearing was lost due to an equipment malfunction, the parties filed a Statement of the Evidence in its place. The relevant testimony, organized by topic, is summarized below.

1. Gang-Related Evidence

Trial counsel testified that he did not object to or otherwise challenge the State's references to the Petitioner's gang membership. He explained that, during the first trial, the trial court had already ruled that such evidence was relevant and admissible. Trial counsel stated that he treated this earlier ruling as the "law of the case" and, based on that belief, did not research the issue before the second trial. He testified that he believed a challenge to the gang-related evidence, including testimony from the State's gang expert, was unlikely to succeed because the evidence was both relevant and admissible. Trial counsel denied the Petitioner's allegation that he suggested using a portion of his fee to pay Mr. Marlin, a cooperating co-defendant, not to testify against the Petitioner.

2. Trial Counsel's Personal and Professional Conduct

Trial counsel testified that he had been suspended from the practice of law in 2020 based on criminal charges stemming from personal substance use. He further testified that he had recently been indicted in Campbell County for theft from a former client. He stated that he entered a best-interest plea to that charge in exchange for probation and a permanent bar from practicing law. Trial counsel acknowledged pending charges in Anderson County, including simple possession, assault, and a first-offense charge of driving under the influence.

Trial counsel testified that he took strong prescription pain medication for a recent surgery throughout his representation of the Petitioner, including during trial. He testified that he did not disclose this use to the Petitioner, the trial court, or anyone else. He stated that the medication gave him energy rather than making him lethargic, and he denied taking more than the amount legally prescribed to him during his representation of the Petitioner. Trial counsel's testimony also reflected that, at another point in his substance use, he had purposefully taken more than his prescribed dosage of pain medication.

The Petitioner testified that he was satisfied with trial counsel's performance overall but expressed some dissatisfaction with trial counsel's pretrial preparation. He testified that trial counsel met with him only four times before trial and that he did not believe trial counsel reviewed the discovery with him. The Petitioner acknowledged that trial counsel appeared energized at trial. The Petitioner testified that he did not know trial counsel had undergone surgery or was using pain medication close in time to the trial.

D. POST-CONVICTION COURT'S ORDER

Following the hearing, the post-conviction court entered a written order denying relief. The court found that trial counsel performed deficiently by failing to research or challenge the admissibility of the gang-related evidence at the second trial. It reasoned that counsel's belief that the prior ruling constituted the "law of the case" was mistaken. The court nevertheless found that the Petitioner had not established prejudice. It reasoned that the gang-related evidence had already been heard under Tennessee Rule of Evidence 404(b) and that the same trial judge presided over both trials. It further reasoned that no material evidence had changed between the trials apart from the addition of the cooperating co-defendant as a witness. The court concluded it likely would have ruled the same way had the issue been properly raised and litigated at the second trial.

As to trial counsel's personal and professional conduct, the post-conviction court expressly credited trial counsel's testimony and found that the Petitioner was not denied the effective assistance of counsel. The court rejected the Petitioner's argument that trial counsel's undisclosed use of prescription pain medication during trial constituted structural error. It found no specific proof that the medication affected trial counsel's performance.

Because the post-conviction court found no merit in the Petitioner's individual claims, it concluded that it did not need to separately address the Petitioner's argument that the cumulative effect of trial counsel's alleged errors warranted relief.

The post-conviction court's order was filed on May 19, 2025. The Petitioner filed a timely notice of appeal the next day. *See* Tenn. R. App. P. 4(a).

ANALYSIS

The Tennessee Post-Conviction Procedure Act provides an avenue for relief "when the conviction or sentence is void or voidable because of the abridgment of any right

guaranteed by the Constitution of Tennessee or the Constitution of the United States.” Tenn. Code Ann. § 40-30-103 (2025). A post-conviction petitioner has the burden of proving his or her allegations of fact with clear and convincing evidence. Tenn. Code Ann. § 40-30-110(f) (2025). For evidence to be clear and convincing, “it must eliminate any ‘serious or substantial doubt about the correctness of the conclusions drawn from the evidence.’” *Arroyo v. State*, 434 S.W.3d 555, 559 (Tenn. 2014) (quoting *State v. Sexton*, 368 S.W.3d 371, 404 (Tenn. 2012)).

As noted above, the Petitioner alleges in this appeal that he was denied the effective assistance of counsel during his trial. Article I, section 9 of the Tennessee Constitution establishes that every criminal defendant has “the right to be heard by himself and his counsel.” Similarly, the Sixth Amendment to the United States Constitution, made applicable to the states by the Fourteenth Amendment, guarantees that “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence.” Indeed, “[t]hese constitutional provisions guarantee not simply the assistance of counsel, but rather the reasonably effective assistance of counsel.” *Nesbit v. State*, 452 S.W.3d 779, 786 (Tenn. 2014). Accordingly, a petitioner’s claim that he or she has been deprived “of effective assistance of counsel is a constitutional claim cognizable under the Post-Conviction Procedure Act.” *Moore v. State*, 485 S.W.3d 411, 418 (Tenn. 2016); see also *Howard v. State*, 604 S.W.3d 53, 57 (Tenn. 2020).

In this appeal, the Petitioner raises the following issues: (1) whether trial counsel’s conduct amounted to a constructive denial of counsel warranting a presumption of prejudice under *United States v. Cronin*, 466 U.S. 648 (1984); (2) whether, in the alternative, trial counsel rendered ineffective assistance under *Strickland v. Washington*, 466 U.S. 668 (1984), by failing to object to the State’s gang-related evidence; (3) whether, in the alternative, trial counsel’s personal and professional conduct amounted to ineffective assistance under *Strickland*; and (4) whether the post-conviction court erred by failing to make an explicit finding on his claim of cumulative error.

The State responds that the Petitioner’s claims do not fall within the narrow category of cases warranting a presumption of prejudice under *Cronin*. The State further contends that trial counsel’s decision not to challenge the gang-related evidence caused no prejudice and that his personal and professional conduct did not deprive the Petitioner of the effective assistance of counsel. Finally, the State asserts that trial counsel’s alleged deficiencies did not have a cumulative effect.

Because resolution of the Petitioner's *Cronic* claim is a threshold question that bears on our analysis of the Petitioner's remaining claims, we address it first.

A. *CRONIC*: COMPLETE DENIAL OF COUNSEL

The Petitioner first argues that trial counsel's conduct during trial, considered as a whole, was so deficient that it amounted to a constructive denial of counsel, warranting a presumption of prejudice under *United States v. Cronic*. The Petitioner points to trial counsel's undisclosed use of prescription pain medication throughout the trial and his subsequent suspension from the practice of law. He also points to trial counsel's later indictment and best-interest plea to a theft charge involving a former client, as well as trial counsel's failure to research the admissibility of the State's gang-related evidence.

The State responds that trial counsel actively represented the Petitioner throughout the trial and that the Petitioner's claims accordingly fall outside the narrow category of cases to which *Cronic* applies. We agree with the State.

1. Governing Law

A post-conviction petitioner alleging ineffective assistance of counsel must ordinarily establish, by clear and convincing evidence, both that counsel's performance was deficient and that the deficiency prejudiced the defense. *Strickland*, 466 U.S. at 687. In a narrow set of circumstances, however, prejudice may be presumed without any inquiry into whether counsel's errors affected the outcome of the trial. *Cronic*, 466 U.S. at 658. This presumption is reserved for situations in which counsel has entirely failed to function as the client's advocate, not for claims of discrete attorney error that remain subject to the traditional *Strickland* analysis. See *Florida v. Nixon*, 543 U.S. 175, 189 (2004). The *Cronic* Court identified three circumstances that may warrant this presumption: (1) where "the accused is denied counsel at a critical stage of his trial"; (2) where "counsel entirely fails to subject the prosecution's case to meaningful adversarial testing"; and (3) where, although counsel is present, "the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate" without any inquiry into the actual conduct of the trial. *Cronic*, 466 U.S. at 659-60.

The second and third *Cronic* circumstances are narrowly construed. As to the second circumstance, the failure to test the State's case must be complete. *Bell v. Cone*,

535 U.S. 685, 697 (2002). It must occur “throughout the . . . proceeding as a whole” rather than “at specific points.” *Id.* The distinction between isolated failures and a complete breakdown of adversarial testing “is not of degree but of kind.” *Id.* at 696-97.

As to the third circumstance, the presumption applies only where a petitioner’s allegations are “so complete and so egregious” that he was rendered functionally without counsel during trial. *See Gentry v. State*, No. W2020-00637-CCA-R3-PC, 2021 WL 3076870, at *9 (Tenn. Crim. App. July 21, 2021), *perm. app. denied* (Tenn. Dec. 8, 2021). Where counsel instead negotiated with the State, cross-examined witnesses, made objections, called witnesses, and presented a closing argument, courts have declined to find a *Cronic* violation, even where counsel also failed to challenge certain evidence or fully cross-examine a particular witness. *See State v. Frye*, No. E2019-00686-CCA-R3-CD, 2021 WL 1971982, at *26 (Tenn. Crim. App. May 17, 2021), *perm. app. denied* (Tenn. Sept. 22, 2021).

2. Application

None of the three *Cronic* circumstances is present here. The Petitioner does not argue, and the record does not suggest, that trial counsel was absent from any critical stage of the proceedings. Thus, the first *Cronic* circumstance is not implicated.

The second circumstance—a complete failure to subject the State’s case to meaningful adversarial testing throughout the proceeding as a whole—is likewise absent. Trial counsel testified that his strategy was to attack the State’s theory of criminal responsibility by emphasizing the absence of proof that the Petitioner ever left the vehicle during the offenses. This was an affirmative, coherent defense theory, not the absence of one.

Trial counsel also cross-examined the Petitioner’s co-defendant, the State’s key witness, although he elected to focus his cross-examination on the criminal-responsibility theory rather than on directly attacking the co-defendant’s credibility. The Petitioner testified that trial counsel appeared energized throughout trial, conferred with him between witness examinations, and shared notes regarding further questions. The Petitioner further testified that he was satisfied with trial counsel’s performance overall.

As we observed above, the United States Supreme Court has made clear that a claim built on discrete, specific-point failures—however serious—will not establish the

complete, trial-wide abandonment of advocacy required by the second *Cronic* circumstance. *Bell*, 535 U.S. at 696-97. Trial counsel's failure to challenge the gang-related evidence and his failure to more fully cross-examine Mr. Marlin were the kind of specific, identifiable shortcomings that *Bell* distinguishes from a complete failure to test the prosecution's case.

Nor is the third *Cronic* circumstance present, *i.e.*, circumstances in which the likelihood that any attorney could have provided effective assistance was so small that a presumption of prejudice is warranted. The post-conviction court found that trial counsel performed deficiently in one respect: his failure to challenge the introduction of gang-related evidence, which the court attributed to a misunderstanding of the law rather than to any incapacity to function as an advocate. The post-conviction court did find that trial counsel's theft charge and use of prescription pain medication during trial "add[ed] a dim shadow" on his decision not to challenge the gang-related evidence.

But the post-conviction court limited this observation to trial counsel's decision not to challenge the gang-related evidence. It did not find that his personal circumstances rendered him incapable of functioning as counsel more broadly. Indeed, the post-conviction court separately credited trial counsel's testimony that he "came into open court and testified truthfully about the events" that led to his disbarment, notwithstanding the Petitioner's allegation that trial counsel had proposed paying a witness not to testify. These findings do not establish the kind of case-wide incapacity that the third *Cronic* circumstance demands.

We have considered these circumstances together, as well as individually. Even viewed cumulatively, trial counsel's undisclosed medication use, his personal and professional conduct, and his mistaken legal position do not establish the kind of complete breakdown in adversarial testing that *Cronic* requires, particularly where the record affirmatively shows counsel pursuing a coherent defense theory and remaining actively engaged with the Petitioner throughout trial.

Because none of the three circumstances identified in *Cronic* is present, we conclude that the presumption of prejudice does not apply. Accordingly, we conclude that the Petitioner's claims regarding trial counsel's personal and professional conduct, as well as his handling of the gang-related evidence, must be evaluated under the deficiency-and-prejudice framework established by *Strickland v. Washington*.

B. *STRICKLAND*: INEFFECTIVE ASSISTANCE OF COUNSEL

Having concluded that the presumption of prejudice under *Cronic* does not apply, we turn to the Petitioner’s remaining claims under the conventional framework established by *Strickland*. The Petitioner raises two claims under this framework. First, he argues that trial counsel rendered ineffective assistance by failing to object to, or otherwise challenge, the State’s gang-related evidence. Second, he asserts that trial counsel’s personal and professional conduct, including his undisclosed use of prescription pain medication and his subsequent legal troubles, also amounts to rendering ineffective assistance of counsel.

We address each claim in turn.

1. Governing Law

“To prevail on a claim of ineffective assistance of counsel, a petitioner must establish both that counsel’s performance was deficient and that counsel’s deficiency prejudiced the defense.” *Moore*, 485 S.W.3d at 418-19 (citing *Strickland*, 466 U.S. at 687; *Goad v. State*, 938 S.W.2d 363, 369 (Tenn. 1996)). A petitioner may establish that counsel’s performance was deficient by showing that “counsel’s representation fell below an objective standard of reasonableness.” *Garcia v. State*, 425 S.W.3d 248, 256 (Tenn. 2013) (quoting *Strickland*, 466 U.S. at 688). As our supreme court has also recognized, this court must look to “all the circumstances” to determine whether counsel’s performance was reasonable and then objectively measure this performance “against the professional norms prevailing at the time of the representation.” *Kendrick v. State*, 454 S.W.3d 450, 457 (Tenn. 2015) (quoting *Strickland*, 466 U.S. at 688).

“If the advice given or services rendered by counsel are ‘within the range of competence demanded of attorneys in criminal cases,’ counsel’s performance is not deficient.” *Phillips v. State*, 647 S.W.3d 389, 407 (Tenn. 2022) (quoting *Baxter v. Rose*, 523 S.W.2d 930, 936 (Tenn. 1975)). Notably, because this inquiry is highly dependent on the facts of the individual case, “[c]onduct that is unreasonable under the facts of one case may be perfectly reasonable under the facts of another.” *State v. Burns*, 6 S.W.3d 453, 462 (Tenn. 1999).

In addition, a petitioner must establish that he or she has been prejudiced by counsel’s deficient performance such that the performance “render[ed] the result of the trial unreliable or the proceeding fundamentally unfair.” *Kendrick*, 454 S.W.3d at 458 (quoting

Lockhart v. Fretwell, 506 U.S. 364, 372 (1993)). In other words, a petitioner “must establish ‘a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.’” *Davidson v. State*, 453 S.W.3d 386, 393-94 (Tenn. 2014) (quoting *Strickland*, 466 U.S. at 694). “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Howard*, 604 S.W.3d at 58 (quoting *Strickland*, 466 U.S. at 694).

Our review of these questions is governed by a well-established standard. A claim of ineffective assistance of counsel presents “a mixed question of law and fact that this [c]ourt reviews de novo.” *Phillips*, 647 S.W.3d at 400 (citations omitted). “Appellate courts must generally defer to a post-conviction court’s findings concerning witness credibility, the weight and value of witness testimony, and the resolution of factual issues presented by the evidence.” *Kendrick*, 454 S.W.3d at 457. As such, we “are bound by the post-conviction court’s underlying findings of fact unless the evidence preponderates against them.” *Whitehead v. State*, 402 S.W.3d 615, 621 (Tenn. 2013). On the other hand, “we accord no presumption of correctness to the post-conviction court’s conclusions of law, which are subject to purely de novo review.” *Id.*; *Phillips*, 647 S.W.3d at 400.

2. Failure to Challenge the State’s Gang-Related Evidence

The Petitioner argues that trial counsel rendered ineffective assistance by failing to object to, or otherwise challenge, the State’s gang-related evidence and testimony from the State’s gang expert at his second trial. He contends that had trial counsel raised such a challenge, the trial court would have limited or excluded this evidence. The State responds that trial counsel was not deficient and that, in any event, the Petitioner cannot establish prejudice. We agree with the State that the Petitioner has not shown that any alleged deficiency by trial counsel resulted in prejudice.

A petitioner must establish both that counsel’s performance was deficient and that the deficiency prejudiced the defense. *Moore*, 485 S.W.3d at 418-19 (citing *Strickland*, 466 U.S. at 687). A court need not address both components, or address them in any particular order, if the petitioner makes an insufficient showing on one. *Goad*, 938 S.W.2d at 370; *Garcia*, 425 S.W.3d at 257.

We pause briefly on the deficiency question only to explain why we do not adopt the post-conviction court’s characterization of it. The post-conviction court found trial counsel performed deficiently because he believed, incorrectly, that the trial court’s ruling

from the first trial constituted the “law of the case.” But trial counsel’s underlying substantive judgment—that the gang-related evidence was relevant and admissible—was the same judgment the post-conviction court itself ultimately reached after full review of the merits.

We must always begin with a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance. *See Felts v. State*, 354 S.W.3d 266, 277 (Tenn. 2011). To this end, counsel is not required to raise an objection he does not believe is meritorious. *See Alexander v. State*, No. M2014-01022-CCA-R3-PC, 2015 WL 226115, at *5 (Tenn. Crim. App. Jan. 16, 2015), *perm. app. denied* (Tenn. Apr. 13, 2015). The post-conviction court treated trial counsel’s mistaken invocation of “law of the case” as dispositive of deficiency, without separately addressing whether his underlying judgment was sound. But whether an imprecise legal label for an otherwise correct judgment is sufficient to overcome that presumption is a more nuanced question. We need not resolve it here.

Even assuming, without deciding, that trial counsel’s performance was deficient, the Petitioner has not established prejudice. A petitioner must show a reasonable probability that, but for counsel’s error, the result of the proceeding would have been different. *Davidson v. State*, 453 S.W.3d 386, 393-94 (Tenn. 2014) (quoting *Strickland*, 466 U.S. at 694). The post-conviction court—the same judge who conducted the original Rule 404(b) hearing before the first trial—found that the gang-related evidence “provided important contextual background by establishing an association or connection between the Defendant and co-defendants.” *See State v. Reynolds*, 635 S.W.3d 893, 921-22 (Tenn. 2021); *State v. Gilliland*, 22 S.W.3d 266, 271-72 (Tenn. 2000). The post-conviction court found that this evidence had already “been through a 404(b) hearing,” that “nothing materially changed” between the first and second trials apart from the addition of a co-defendant as a witness, and that “the trial court therefore would have likely ruled the same way if the issue was properly raised and litigated[.]”

The Petitioner separately argues that his co-defendant’s testimony rendered the gang-related evidence cumulative and, under Tennessee Rule of Evidence 403, more prejudicial than probative. However, the post-conviction court considered and rejected this precise argument, finding that Mr. Marlin’s addition did not “materially” change the trial court’s likely ruling. We are bound by this factual finding unless the evidence preponderates against it, and the Petitioner has not shown that it does. *Whitehead*, 402 S.W.3d at 621.

Because the post-conviction court's findings establish that the gang-related evidence would have been admitted regardless of any objection trial counsel might have raised, the Petitioner cannot show a reasonable probability that the result of his trial would have been different. The Petitioner is not entitled to relief on this ground.

3. Use of Prescription Pain Medication During Trial

The Petitioner argues that trial counsel's undisclosed use of prescription pain medication throughout his representation, including during trial, amounted to ineffective assistance under the conventional *Strickland* analysis. He relies on trial counsel's own testimony that he did not disclose this use to the Petitioner, the trial court, or any other person. He also cites trial counsel's admission that he had intentionally exceeded his prescribed dosage at some time during his broader drug use.

The State responds that the Petitioner has identified no specific effect of this medication use on trial counsel's performance and that Tennessee law forecloses relief on this basis absent such proof. We agree with the State.

a. Trial Counsel's Substance Use

Tennessee courts have addressed claims that an attorney's substance use rendered his or her assistance constitutionally ineffective. In *Brimmer v. State*, this court held that "the abuse of drugs or alcohol is not[,] 'in and of itself, relevant to an ineffective assistance claim.'" 29 S.W.3d 497, 510 (Tenn. Crim. App. 1998) (quoting *Berry v. King*, 765 F.2d 451, 454 (5th Cir. 1985)). This principle applies even where an attorney's impairment is directly observed during trial. *See id.* (citing *Burnett v. Collins*, 982 F.2d 922, 930 (5th Cir. 1993) (rejecting a claim premised on the smell of alcohol on counsel's breath during trial and counsel's subsequent entry into treatment)). Rather, "alcohol or drug abuse by the defense attorney, without specific proof of its effect on performance, does not merit relief." *Id.* at 510. This court has applied that rule without regard to whether counsel disclosed the impairment or how long it lasted. *See Black v. State*, No. E2020-01008-CCA-R3-PC, 2021 WL 3750030 (Tenn. Crim. App. Aug. 25, 2021) (rejecting a claim where trial counsel disclosed his use of pain medication in open court and used it for one to two days), *perm. app. denied* (Tenn. Jan. 12, 2022); *State v. West*, No. 03C01-9306-CR-00193, 1994 WL 151323 (Tenn. Crim. App. Apr. 28, 1994) (rejecting a claim where the public defender's use of pain medication began approximately three weeks before trial), *perm. app. denied* (Tenn. Sept. 12, 1994).

The Petitioner attempts to distinguish his case on these same facts, arguing that trial counsel's concealment of his medication use, and the longer duration of that use, set this case apart from *Black* and *West*. But *Brimmer*'s rule does not turn on the degree of disclosure or the length of use—it requires specific proof of an effect on performance regardless of the surrounding circumstances. *Brimmer*, 29 S.W.3d at 510. A rule that treated concealment or duration alone as sufficient would effectively presume prejudice in every case of undisclosed substance or medication use, a result *Brimmer* forecloses.

The post-conviction court applied this standard and found that trial counsel's use of prescription pain medication did not entitle the Petitioner to relief. It expressly credited trial counsel's testimony that he "came into open court and testified truthfully about the events" underlying his representation, and it observed that there was "no specific proof of its effect on performance."

The record supports this finding. Trial counsel testified that he took strong prescription pain medication for a recent surgery throughout his representation of the Petitioner, including during trial, and that he did not disclose this use to the Petitioner, the trial court, or any other person. He testified that the medication gave him energy rather than making him lethargic and denied taking more than the amount legally prescribed to him during his representation of the Petitioner. Nevertheless, trial counsel later acknowledged that he had, at some point during his broader drug use, intentionally exceeded his prescribed dosage of pain medication. The record does not establish when this occurred relative to trial, but the Petitioner did not identify any evidence that trial counsel exceeded his prescribed dosage during the trial itself.

Nor has the Petitioner offered any proof connecting trial counsel's medication use to a specific deficiency in his performance. The type of medication, the dosage prescribed, and the timing of the prescription do not appear in the record, and the Petitioner did not call a medical or pharmacological witness to address these questions or their effect on trial counsel's functioning.

To the contrary, the record affirmatively describes trial counsel as an active participant in the trial. The Petitioner himself testified that trial counsel appeared energized throughout the proceedings, conferred with him between witness examinations, and shared notes regarding further questions. Trial counsel also testified that his strategy was to attack the State's theory of criminal responsibility by emphasizing the absence of proof that the Petitioner ever left the vehicle during the offenses. This is not the record of an attorney

whose performance was, in fact, impaired; rather, it is the record of an attorney pursuing a considered, if ultimately unsuccessful, defense strategy.

The Petitioner has not established a reasonable probability that trial counsel's medication use affected the result of his trial. As such, the Petitioner is not entitled to relief on this claim.

b. Trial Counsel's Disciplinary History and Pending Criminal Charges

The Petitioner also argues that trial counsel's 2020 suspension from the practice of law, his subsequent indictment and best-interest plea to the theft charge in Campbell County, and his pending charges in Anderson County collectively establish that his personal and professional conduct fell below constitutional standards. The State responds that the Petitioner has not shown that any of these matters affected trial counsel's performance in this case. We agree with the State.

Just as “the abuse of drugs or alcohol is not[,] ‘in and of itself, relevant to an ineffective assistance claim’” absent “specific proof of its effect on performance,” *Brimmer*, 29 S.W.3d at 510, an attorney's unrelated personal or professional legal troubles cannot establish deficient performance or prejudice without some showing that they affected the attorney's actual conduct of the case at issue.

Trial counsel's suspension from the practice of law occurred in 2020, nearly three years after the Petitioner's November 2017 trial. The Campbell County theft indictment concerned alleged conduct involving an unrelated client, some of which occurred close in time to the Petitioner's trial. Trial counsel testified that these charges were later resolved through a best-interest plea to a probated sentence and a permanent bar from practicing law. The Anderson County charges—simple possession, assault, and a first-offense DUI—remained pending at the time of the hearing, and the Petitioner has not identified when the underlying conduct occurred relative to the trial.

The Petitioner has identified no evidence connecting any of this history to trial counsel's actual performance in this case. To the contrary, the record reflects that trial counsel developed and pursued a defense theory, cross-examined the State's key witness, remained energized throughout trial, and conferred with the Petitioner between witness examinations. The post-conviction court expressly credited trial counsel's account of his

representation notwithstanding this history. Because the Petitioner has not established that trial counsel's disciplinary history or pending charges had any specific effect on his performance in this case, he has not established either deficient performance or prejudice on this basis.

Taken together with our resolution of the medication claim above, this record does not establish that trial counsel rendered ineffective assistance based on his personal and professional conduct.

4. Cumulative Error

Finally, the Petitioner argues that the post-conviction court erred by failing to make an explicit finding on his claim that the cumulative effect of trial counsel's alleged deficiencies entitled him to relief. The State responds that the post-conviction court implicitly addressed this claim and correctly concluded that no cumulative effect resulted from trial counsel's conduct. We agree that the Petitioner is not entitled to relief on this ground.

This court has recognized that, "in the context of an ineffective assistance of counsel claim, cumulative error examines the prejudicial effect of multiple instances of deficient performance." *Harris v. State*, No. E2022-00446-CCA-R3-PC, 2022 WL 17729352, at *9 (Tenn. Crim. App. Dec. 16, 2022) (citation and internal quotation marks omitted), *perm. app. denied* (Tenn. Apr. 18, 2023). Accordingly, a petitioner "who has failed to show that he received constitutionally deficient representation on any single issue may not successfully claim that his constitutional right to counsel was violated by the cumulative effect of counsel's errors." *Newton v. State*, No. M2016-02240-CCA-R3-PC, 2017 WL 5901032, at *10 (Tenn. Crim. App. Nov. 29, 2017), *perm. app. denied* (Tenn. Mar. 14, 2018). This principle applies with equal force where a petitioner has established a single instance of deficient performance rather than none at all. *See Harris*, 2022 WL 17729352, at *9 ("[T]he Petitioner has not demonstrated there were multiple instances of deficient performance so he is not entitled to relief under the cumulative error doctrine.").

In this case, the post-conviction court's order does not expressly resolve the Petitioner's cumulative-error claim. Nevertheless, assuming, without deciding, that the post-conviction court properly found deficient performance as it relates to the gang-related evidence, the record reflects, at most, a single instance of deficient performance. A single instance of deficient performance cannot establish a claim of cumulative error. *See*

Newton, 2017 WL 5901032, at *10; *Harris*, 2022 WL 17729352, at *9; *Martin v. State*, No. E2022-00688-CCA-R3-PC, 2023 WL 3361543, at *5 (Tenn. Crim. App. May 11, 2023) (“Cumulative error does not apply in post-conviction cases where the petitioner has failed to show any instance of deficient performance by counsel.”), *perm. app. denied* (Tenn. Sept. 11, 2023). Because the Petitioner has not established multiple instances of deficient performance, he is not entitled to relief on the basis of cumulative error.

CONCLUSION

In summary, we hold that the post-conviction court properly denied the Petitioner’s claims of ineffective assistance of counsel and cumulative error. Accordingly, because neither the Petitioner’s convictions nor sentences are void or voidable due to a violation of a constitutional right, we respectfully affirm the denial of post-conviction relief in all respects.

s/ *Tom Greenholtz*

TOM GREENHOLTZ, JUDGE