FILED
08/14/2026
Clerk of the
Appellate Courts

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs April 14, 2026

HAYDEN S. FRYER v. STATE OF TENNESSEE

Appeal from the Criminal Court for Davidson County
No. 2016-B-661 Steve R. Dozier, Judge

No. M2025-01312-CCA-R3-PC

The Petitioner, Hayden S. Fryer, appeals from the Davidson County Criminal Court's denial of his petition for post-conviction relief, arguing that the post-conviction court erred in sustaining the State's hearsay objection regarding a codefendant's out-of-court statements, in denying the Petitioner's request to make an offer of proof regarding those statements, and in finding that he failed to establish that trial counsel rendered ineffective assistance. Discerning no error, we affirm.

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

STEVEN W. SWORD, J., delivered the opinion of the court, in which ROBERT H. MONTGOMERY, JR., and TOM GREENHOLTZ, JJ., joined.

Daniel J. Murphy, Lewisburg, Tennessee, for the appellant, Hayden S. Fryer.

Jonathan Skrmetti, Attorney General and Reporter; Leslie Renee Byrd, Assistant Attorney General; Glenn R. Funk, District Attorney General; and Wesley King, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. FACTUAL AND PROCEDURAL BACKGROUND

A. TRIAL

In May 2016, a Davidson County Grand Jury returned a nine-count indictment against the Petitioner and three codefendants, Paige Elliott,[1] Tanjanekia Elliott,[2] and Javier Rivas. *State v. Rivas*, No. M2019-02241-CCA-R3-CD, 2021 WL 1625530, at *1 (Tenn. Crim. App. Apr. 27, 2021), *perm. app. denied* (Tenn. Aug. 4, 2021). The Petitioner and codefendants Paige Elliott and Javier Rivas were each charged with one count of first degree felony murder, one count of first degree premeditated murder, one count of attempted aggravated burglary, two counts of employment of a firearm during a dangerous felony, two counts of attempted first degree murder, one count of reckless endangerment with a deadly weapon, and one count of burglary of a motor vehicle. Codefendant Tanjanekia Elliott was charged with two counts of attempted first degree murder, one count of reckless endangerment with a deadly weapon, one count of burglary of a motor vehicle, and one count of employment of a firearm during a dangerous felony. The Petitioner and codefendant Rivas were tried together in January 2019 and convicted as charged. *Id*. The Petitioner received an effective sentence of life imprisonment plus fifty-two years. *Id*. at *24-26. On direct appeal, the Petitioner unsuccessfully challenged the sufficiency of the evidence as related to his convictions of first degree premeditated murder and attempted aggravated burglary. *Id*. at *22-23.

The Petitioner's convictions were based on events beginning in the evening hours of October 24, 2015, in which the four codefendants burglarized two vehicles on Lutie Street in Davidson County and shot at Christopher Corbett, Jessica Blankenship, and William Weaver. *Id*. at *6-13. Later, in the early hours of October 25, 2015, the Petitioner and codefendants Javier Rivas and Paige Elliott went to the home of Olympia Hobbs, on Hopewood Court in Davidson County, where the Petitioner and codefendent Rivas attempted to force their way into Ms. Hobbs' home and then shot and killed Ms. Hobbs. *Id*.

Codefendants Tanjanekia Elliott and Paige Elliott testified against the Petitioner at trial. Tanjanekia Elliott testified that they drove to Hopewood Court in Antioch and began to burglarize cars. *Id.* at *8. She stated that she entered a vehicle and was discovered by the owner. *Id*. As they were driving away, codefendant Rivas and the Petitioner started shooting at the owner from the back window of the car. *Id*. at *9. She later spoke to detectives and admitted her involvement. *Id*.

[1] The indictment and direct appeal opinion use the spelling "Elliott," but the transcript of the Petitioner's post-conviction evidentiary hearing in this case uses the spelling "Elliot." We will use the spelling contained in the indictment.

[2] As both Paige Elliott and Tanjanekia Elliott share the same last name, we will refer to them by their full names for clarity.

Codefendant Paige Elliott also testified that shots were fired on Lutie Street after Tanjanekia Elliott had broken into someone's car. *Id*. Later that evening, after dropping Tanjanekia Elliott off at a friend's house, she drove back to Hopewood Court with the Petitioner and codefendant Rivas to rob an individual named Ms. Hobbs. *Id*. She stated that codefendant Rivas fired a gun through the closed door and they left. She acknowledged during cross-examination that she told someone named "Pokey" that she shot Ms. Hobbs "with a 45[.]" *Id*. at *10. She also acknowledged that she initially lied to the police about being present during the shooting and told them that she let a friend borrow her car on the night of October 24. *Id*.

Detective Darry Baltimore also testified that he met with a witness, James Shelton, who had a recording of codefendant Paige Elliott in which she admitted to shooting and killing Ms. Hobbs "with a .45" while she was alone. *Id.* at *13.

B. Post-Conviction

On December 15, 2021, the Petitioner filed a pro se petition for post-conviction relief. The pro se petition included claims of ineffective assistance of trial counsel. Post-conviction counsel was subsequently appointed and allowed to withdraw; and substitute post-conviction counsel was appointed on August 24, 2022. Through substitute post-conviction counsel, the Petitioner filed an amended petition on April 15, 2025, incorporating his pro se petition and raising additional claims of ineffective assistance of trial counsel and challenges to the constitutionality of both Tennessee Supreme Court Rule 13 and the Tennessee Post-Conviction Procedure Act. On May 27, 2025, the State filed a response generally denying all allegations, and on June 26, 2025, the post-conviction court held an evidentiary hearing on the Petitioner's claims.

The Petitioner was the only witness at the post-conviction evidentiary hearing. The Petitioner testified that he understood his original charges, his convictions, and his sentence, but he claimed he was not guilty of the offenses. He testified that he did not recall the events of the evening of the offenses but that he "just [knew] . . . [his] rights were violated because [his] lawyer didn't do his job." He stated that he did not know where counsel was located.[3] He testified trial counsel did not investigate everyone he asked him to investigate and that "he didn't do nothing [he] asked him to do." When asked again about his recollection of the offenses, the Petitioner stated that he was "not here to speak on what happened" and that he was "just here stating [his] rights were violated." He reiterated that trial counsel "didn't do his job" and asserted that his "due process was violate[d]."

[3] Following the Petitioner's testimony, post-conviction counsel informed the post-conviction court that he believed trial counsel was living in Thailand.

The Petitioner testified that he was familiar with the codefendants Paige and Tanjanekia Elliott and recalled that they testified at his trial. He described their testimony as "[a] bunch of lies." He testified that he had not had any contact with Tanjanekia Elliott since his trial but that he had spoken with Paige Elliott since the conclusion of his trial-related proceedings.

When post-conviction counsel asked if Paige Elliott had said anything about the case to the Petitioner, the State objected on hearsay grounds. The Petitioner claimed that the response was not offered for the truth of the matter asserted and should be admitted. Post-conviction counsel stated that the statement was being offered to show what trial counsel could have discovered pretrial but did not. After the Petitioner indicated he would not be calling Paige Elliott to testify, the post-conviction court sustained the State's hearsay objection. The Petitioner sought to make an offer of proof regarding his claim that Tennessee Supreme Court Rule 13, which did not allow funds for investigation or expert witnesses in a non-capital post-conviction case, violated his constitutional rights. The Petitioner stated he sought to present what "the investigator would have found." The post-conviction court stated that the objection was sustained and noted that the statement the Petitioner sought to admit occurred after trial and would not have been available to trial counsel pretrial. Post-conviction counsel stated he believed the Petitioner would state that Paige Elliott had "changed her story," but the post-conviction court responded that Paige Elliott would need to testify for the statement to be admissible and that it was being offered for the truth of the matter asserted.

The Petitioner testified that he unsuccessfully sought indigent funds and that he and his family did not have the funds to privately hire an investigator. The Petitioner testified that he wanted both Paige and Tanjanekia Elliott investigated, that they both "got good deals," and that they both were already "out." On cross-examination, however, the Petitioner agreed that Paige Elliott received a thirty-year sentence to be served in the Department of Correction.

Following closing arguments, the post-conviction court took the matter under advisement. On July 31, 2025, the post-conviction court entered a written order denying the Petitioner's pro se petition for post-conviction relief, as well as his amended petition. With regard to the pro se petition, the post-conviction court found, "No facts substantiated the grounds submitted in the pro se petition[,] and the only one specifically addressed in the instant hearing was the ground of ineffective assistance of counsel. Where Petitioner has provisioned his pro se petition on infirm grounds without specific facts, it cannot be supported." The post-conviction court found that the Petitioner had failed to carry his burden of proof on both his claims that trial counsel failed to investigate State witnesses who were codefendants and failed to produce expert witness testimony concerning the

same witnesses' "sweetheart deals" and how this affected their testimonies. The post-conviction court also found the Petitioner's claim that he had been unconstitutionally deprived of funding for an expert witness or an investigator to be without merit. This timely appeal followed.

II. ANALYSIS

On appeal, the Petitioner argues that the post-conviction court committed three errors: 1) the court erred in sustaining the State's hearsay objection to Paige Elliott's out-of-court statements, 2) the court erred in denying the Petitioner's request to make an offer of proof concerning those statements, and 3) the court erred in finding that the Petitioner failed to establish that trial counsel rendered ineffective assistance. The State responds that the post-conviction court properly sustained the State's hearsay objection and appropriately found that the Petitioner failed to establish ineffective assistance of trial counsel.

A. HEARSAY AND OFFER OF PROOF

The Petitioner first argues that the post-conviction court erred in sustaining the State's hearsay objection to the Petitioner testifying to statements he alleges Paige Elliott made sometime after the conclusion of trial proceedings. The Petitioner further claims the post-conviction court erred by denying his request to make an offer of proof regarding those statements and that this hinders his ability to litigate the issue on appeal.

The Petitioner claims that Paige Elliott made a post-trial statement to him "with respect to the actual events that occurred during the course of the Hopewood [C]ourt murder," and this statement was "being offered to prove what trial counsel could have . . . discovered but for trial counsel's failure to properly investigate Paige Elliot[t]." The Petitioner argues on appeal that her statements "likely would have come in under the statements against penal interest exception to hearsay." The Petitioner further posits that if "Paige Elliot[t] made statements to [the Petitioner] that were contrary to statements she made at trial, such statements would call into question whether she committed perjury at trial and would thus subject her to criminal liability." Alternatively, the Petitioner submits that "Paige Elliot[t]'s out[-]of[-]court statements could have been submitted for non-hearsay purposes given that[,] regardless of their veracity, [the Petitioner] was submitting these statements as ones that could have been discovered had trial counsel conducted a diligent investigation," which would not necessarily mean the statement was "for the truth of the matter asserted." The State submits that the post-conviction court did not err because the Petitioner failed to establish that the out-of-court statements were not being introduced for the truth of the matter asserted and failed to establish that the witness, Paige Elliott, was unavailable.

A trial court's conclusions of law as to whether the challenged statement is hearsay and whether it qualifies as an exception to the rule against hearsay are reviewed de novo. *Kendrick v. State*, 454 S.W.3d 450, 479 (Tenn. 2015) (first citing *State v. Schiefelbein*, 230 S.W.3d 88, 128 (Tenn. Crim. App. 2007); and then citing *Keisling v. Keisling*, 196 S.W.3d 703, 721 (Tenn. Ct. App. 2005)). Hearsay statements are those "statement[s], other than one[s] made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Tenn. R. Evid. 801(c). Generally, hearsay statements are inadmissible, Tenn. R. Evid. 802, unless they fall into one of the exceptions listed in Tennessee Rules of Evidence 803 and 804. "If a statement is hearsay, but does not fit one of the exceptions, it is inadmissible, and the [trial] court must exclude the statement." *Kendrick*, 454 S.W.3d at 479. When considering whether a statement is inadmissible hearsay, the trial court must first determine whether the statement constitutes hearsay; if so, it must then determine whether it qualifies for an exception to the rule against hearsay. *Id*.

One of the exceptions to the rule against hearsay is for a statement against interest. Tenn. R. Evid. 804(b)(3). A statement against interest is one which, at the time it was made, "so far tended to subject the declarant to civil or criminal liability . . . that a reasonable person in the declarant's position would not have made the statement unless believing it to be true." *Id.* A statement against interest, however, is not admissible under Rule 804(b)(3) unless the proponent of the proof of the statement demonstrates that the declarant is unavailable. Tenn. R. Evid. 804(b). Pursuant to Tennessee Rule of Evidence 804(a), a declarant is unavailable if he or she: 1) "[i]s exempted by ruling of the court on the grounds of privilege from testifying"; 2) refuses to testify despite a court order; 3) "[d]emonstrates a lack of memory"; 4) "[i]s unable to be present or to testify at the hearing because of . . . death or then existing physical or mental illness or infirmity"; or 5) "is absent from the hearing because of the inability to procure her attendance by process." Tenn. R. Evid. 804(a).

Initially, we do not agree with the Petitioner's argument that the statement was not being offered for the truth of the matter asserted. The Petitioner claims he offered the statements to show what a proper investigation by trial counsel could have produced and its potential relevance to his claims of ineffective assistance of counsel. The State argues that the alleged statements were irrelevant unless true. We agree with this assessment. In addition, the fact that Paige Elliott "change[d] her story" during the case investigation was raised on cross-examination at trial for the jury to consider.

Next, the Petitioner argues that the testimony qualified under an exception to the hearsay exclusion rule as a statement against interest. However, the Petitioner failed to establish Paige Elliott's unavailability as a witness at the post-conviction hearing, a requirement for the exception to apply. Post-conviction counsel merely stated twice that

she would not be called as a witness. As the Petitioner was the proponent of the statement and did not establish the witness's unavailability, the post-conviction court properly sustained the State's hearsay objection.

The Petitioner also argues that the post-conviction court erred in denying him leave to make an offer of proof regarding the out-of-court statements allegedly made by Paige Elliott. Our courts have held that generally, when an evidentiary ruling results in the exclusion of evidence, courts must allow the proponent of the evidence to make an offer of proof. *State v. Torres*, 82 S.W.3d 236, 251 (Tenn. 2002). *See also* Tenn. R. Evid. 103(a)(2) ("In case the ruling is one excluding evidence, the substance of the evidence and the specific evidentiary basis supporting admission were made known to the court by offer or were apparent from the context."); Tenn. R. Evid. 103(b) ("[The court] shall permit the making of an offer in question and answer form."). However, "[i]n circumstances in which it is obvious from the record that the proffered evidence could, under no circumstances, be relevant to the issues, a trial court's refusal to grant an offer of proof is not error." *Alley v. State*, 882 S.W.2d 810, 816 (Tenn. Crim. App. 1994). Here, the post-conviction court did not err in ruling that the evidence was hearsay, and the Petitioner failed to establish Paige Elliott's unavailability, show that the statements were subject to another exception to the prohibition against hearsay, or call her as a witness. Without such, any alleged out-of-court statements made by Paige Elliott would be inadmissible hearsay. Thus, the post-conviction court did not err in denying the Petitioner the opportunity to make an offer of proof.

B. Ineffective Assistance of Counsel

The Petitioner next argues that the post-conviction court erred in denying his claim that he received ineffective assistance of counsel due to trial counsel's alleged failure to investigate Paige Elliott's post-trial out-of-court statements. The Petitioner claims that the court erred in concluding that he failed to establish both prongs of the *Strickland* test and that he was not entitled to relief. The State responds that the record does not preponderate against the court's determination that the Petitioner failed to meet his burden of proof on both prongs. We agree with the State.

The Post-Conviction Procedure Act provides relief only when a petitioner's "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. In a post-conviction proceeding, a petitioner has the burden of proving his allegations by clear and convincing evidence. Tenn. Code Ann. § 40-30-110(f); Tenn. S. Ct. R. 28, § 8(D)(1). "Evidence is clear and convincing when there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence." *Hicks v. State*, 983 S.W.2d 240, 245 (Tenn. Crim. App. 1998) (citing *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896, 901 n.3 (Tenn. 1992)). The post-conviction court's

findings of fact are conclusive on appeal unless the evidence preponderates against them, *Kendrick*, 454 S.W.3d at 457 (citations omitted), and its application of the law to those factual findings and the conclusions drawn therefrom are reviewed de novo with no presumption of correctness, *Holland v. State*, 610 S.W.3d 450, 455 (Tenn. 2020) (citations omitted).

Both the Constitution of the United States and the Constitution of Tennessee provide the criminal defendant the right to the effective assistance of counsel. U.S. Const. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence."); Tenn. Const. art. 1, § 9 ("That in all criminal prosecutions, the accused hath the right to be heard by himself and his counsel[.]"); *see also Davidson v. State*, 453 S.W.3d 386, 392-93 (Tenn. 2014). To succeed on a claim of ineffective assistance of counsel, the post-conviction petitioner must prove, and the record must affirmatively establish, both that counsel performed deficiently and that this deficient performance adversely impacted the petitioner's defense. *Strickland v. Washington*, 466 U.S. 668, 693 (1984); *Baxter v. Rose*, 523 S.W.2d 930, 936 (Tenn. 1975). "A court need not address both prongs if the petitioner fails to demonstrate either one of them." *Davidson*, 453 S.W.3d at 393. Each element of the *Strickland* analysis of an ineffective assistance of counsel claim is a mixed question of law and fact that this court reviews de novo. *Phillips v. State*, 647 S.W.3d 389, 400 (Tenn. 2022) (citing *Dellinger v. State*, 279 S.W.3d 282, 294 (Tenn. 2009)); *Kendrick*, 454 S.W.3d at 457.

Deficient performance is that which, in consideration of "all the circumstances" and the prevailing professional norms at the time of counsel's representation, falls below an objective standard of reasonableness. *Id*. (quoting *Strickland*, 466 U.S. at 688). We defer to counsel's strategic and tactical decisions, even if such decisions were unsuccessful or harmful to the defense, so long as they were "informed ones based upon adequate preparation." *Moore v. State*, 485 S.W.3d 411, 419 (Tenn. 2016) (citing *Goad v. State*, 938 S.W.2d 363, 369 (Tenn. 1996)). In other words, so long as counsel's decisions are made after adequate preparation, this court "will not grant the petitioner the benefit of hindsight, second-guess a reasonably based trial strategy, or provide relief on the basis of a sound, but unsuccessful, tactical decision made during the course of the proceedings." *Berry v. State*, 366 S.W.3d 160, 172-73 (Tenn. Crim. App. 2011). Thus, a petitioner who alleges ineffective assistance of counsel must, through clear and convincing evidence, overcome the strong presumption "that, under the circumstances, the challenged action might be considered sound trial strategy." *Strickland*, 466 U.S. at 689 (citation omitted).

A post-conviction petitioner must also prove that counsel's deficient performance prejudiced the petitioner; that is, there must be "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 that which is "sufficient to undermine confidence

in the outcome" of the trial. *Id*. Accordingly, "a petitioner must establish that counsel's deficient performance was of such a degree that it deprived him of a fair trial and called into question the reliability of the outcome." *Mobley v. State*, 397 S.W.3d 70, 81 (Tenn. 2013) (internal quotation marks omitted) (quoting *Pylant v. State*, 263 S.W.3d 854, 869 (Tenn. 2008)).

The Petitioner makes the following argument concerning his claim that he has met both prongs of the *Strickland* test:

> First, trial counsel was ineffective for failing to fully investigate Paige Elliot[t] and thus learn of the statements Paige Elliot[t] ultimately made to [the Petitioner] that would otherwise confirm that her trial testimony was predicated on falsehoods. Second, trial counsel's failure to properly investigate was prejudicial to the point that but for trial counsel's failure, the outcome of [the Petitioner's] trial likely would have been different. As the summary excerpt from the statement of facts indicates, Paige Elliot[t] was a key witness against [the Petitioner]; being afforded the ability to undermine her testimony with prior false statements she had made would have given [the Petitioner] a much better chance at an acquittal or reduced charges.

The Petitioner has not shown that the post-conviction court erred in finding that the Petitioner failed to demonstrate that trial counsel's performance was either deficient or prejudicial. The Petitioner did not present trial counsel or otherwise establish what investigation counsel conducted. He did not present Paige Elliott to establish what she would have told counsel before trial. Nor did he present evidence that any materially favorable information was reasonably available to trial counsel through further investigation. Under these circumstances, the Petitioner failed to establish trial counsel's deficiency or any prejudice related to his claim here. The post-conviction court ruled that the Petitioner did not present evidence to demonstrate any prejudice due to a perceived failure to investigate. The record does not preponderate against that finding.

III. CONCLUSION

Following our review of the record and based upon the foregoing analysis, we affirm the judgment of the post-conviction court.

s/ *STEVEN W. SWORD*
STEVEN W. SWORD, JUDGE