

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs August 4, 2026

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Clerk of the
Appellate Courts

BRADI BAKER v. STATE OF TENNESSEE

Appeal from the Circuit Court for Madison County
No. C-23-200 Donald H. Allen, Judge

No. W2025-01490-CCA-R3-PC

The Petitioner, Bradi Baker, shot and killed her ex-husband in 2019. After her conviction for second degree murder was affirmed on appeal, she filed a petition for post-conviction relief. The Madison County Circuit Court denied this petition after a hearing. She now appeals. Because the Petitioner's due process claims were waived, and her ineffective assistance claims lacked proof of both deficiency and prejudice, she failed to meet her burden under the Post-Conviction Procedure Act. We affirm.

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

STEVEN W. SWORD, J., delivered the opinion of the court, in which JOHN W. CAMPBELL, SR., and STACY L. STREET, JJ., joined.

Mariah McCallister, Memphis, Tennessee, for the appellant, Bradi Baker.

Jonathan Skrmetti, Attorney General and Reporter; Kelly M. Telfeyan, Assistant Attorney General; Jody Pickens, District Attorney General; and Shaun A. Brown, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. FACTUAL AND PROCEDURAL HISTORY

A. TRIAL

This case arises from the Petitioner's April 8, 2019 murder of her ex-husband, Geoffrey Brunkhorst. *State v. Baker*, No. W2021-00085-CCA-R3-CD, 2022 WL 6257471,

at *1 (Tenn. Crim. App. Oct. 10, 2022), *perm. app. denied* (Tenn. Feb. 8, 2023). On August 26, 2019, the Madison County Grand Jury returned an indictment charging the Petitioner with one count of first degree murder, and the Petitioner proceeded to trial in July 2020. *Id.*

The proof at trial established that the Petitioner and the victim married in 2010. *Id.* at *7. The victim filed for divorce in 2017, which resulted in extended litigation. *Id.* During the marriage, they owned two homes on the same street. *Id.* at *2 n.5. On April 8, 2019, the Petitioner saw the victim remove mail from the mailbox at the smaller residence. *Id.* She confronted him, and a physical struggle followed during which both parties grabbed a strap on the victim's messenger bag. *Id.* When the victim placed the Petitioner in a headlock, she released the bag. *Id.*

After disengaging, the Petitioner entered her nearby vehicle and drove toward the victim. *Id.* A neighbor intervened briefly, and the Petitioner spoke with him. *Id.* She then retrieved a nine-millimeter firearm from her vehicle and shot the victim five times. *Id.* A witness observed the shooting and called 911. *Id.*

After hearing the evidence, the jury acquitted the Petitioner of first degree murder but convicted her of second degree murder. *Id.* at *1. The trial court sentenced her to twenty-five years' incarceration. *Id.* On appeal, the Petitioner challenged the admission of video recordings recovered from the victim's cell phone, a video compilation created by law enforcement, the sufficiency of the evidence, and her sentence. *Id.* This court affirmed, and the Tennessee Supreme Court denied her application for review. *Id.*

B. POST-CONVICTION

On July 24, 2023, the Petitioner filed a timely pro se petition for post-conviction relief, alleging, among other grounds, that the policies enacted during the COVID-19 pandemic by the Madison County Jail, in which she was housed prior to her trial, limited her ability to communicate with trial counsel.¹ She also asserted she received the ineffective assistance of trial counsel. On July 25, 2023, the State filed a timely response in opposition to the petition. On August 17, 2023, the post-conviction court entered a preliminary order finding that the petition raised a colorable claim for post-conviction relief. The post-conviction court appointed counsel with instructions to file an amended petition within thirty days, if necessary.

¹ As explained below, the Petitioner was represented by lead counsel and co-counsel at trial. We will collectively refer to lead counsel and co-counsel as trial counsel when appropriate throughout this opinion.

Following the substitution of post-conviction counsel, the Petitioner filed an amended petition for post-conviction relief on October 15, 2024. In her amended petition, the Petitioner argued that the State, via the Madison County Jail, violated her right to due process by screening her legal mail and preventing her from receiving photographs in her legal mail. She also contended that her right to due process was violated by the jail's "refus[ing] access via private visitation with her attorney due to COVID[-19] restrictions" and, instead, requiring that all virtual visits with counsel occur in a public space. As relevant here, she also alleged that she received the ineffective assistance of counsel due to trial counsel's failure to 1) adequately prepare the case or the Petitioner for trial; 2) obtain medical records pertaining to her state of mind immediately prior to the shooting and "records showing domestic abuse"; 3) file a motion in limine to exclude photographs of her marital home from evidence; 4) provide her with the results of her forensic evaluation; and 5) review with her pretrial the photographs and video recordings received in discovery and introduced by the State at trial.

The post-conviction court conducted an evidentiary hearing on June 2, 2025. At the hearing, the Petitioner testified that co-counsel initially represented her after her arrest and that lead counsel was appointed following her indictment. She stated that co-counsel sent her a letter before trial indicating that he was "no longer on [her] case," yet he still participated as co-counsel during her trial.

The Petitioner testified that she received legal mail from trial counsel while she was incarcerated at the Madison County Jail. She asserted that, pursuant to jail policy, correctional officers "with[e]ld any kind of photographic images" from her legal mail, thus prohibiting her from receiving any photographs sent along with her legal mail. She stated that she sent several letters to lead counsel but that lead counsel sometimes did not receive her letters because the correctional officers "intercepted" them.

The Petitioner testified that she had one in-person meeting with lead counsel prior to the COVID-19 pandemic and that, afterward, she met with lead counsel in a "kiosk" located in the middle of the pod. She stated that the kiosk meeting was not private and noted that other inmates were present and "walking around." She recalled that she did not feel as though she could freely communicate with lead counsel during the meeting and, accordingly, she did not provide him with "a lot of information."

The Petitioner introduced an affidavit from Madison County Jail Lieutenant Chester Long regarding the jail's legal mail policies and COVID-19 restrictions. Lieutenant Long averred that correctional officers "open[ed] legal mail in the presence of the inmate" and, if the legal mail contained any photographs, those photographs would be removed and placed with the inmate's property. Lieutenant Long further stated that, during the COVID-19 pandemic, the jail began using "technology" to facilitate attorney-client visitations but

that it was possible, before this “technology” was “set up, that an inmate may have had to communicate with [his or her] attorney via the kiosk in the pod[,] which is inherently open and not private.”

The Petitioner testified that in 2017, she began visiting the Wo/Men’s Resource and Rape Assistance Program (WRAP), an organization she described as treating victims of domestic violence. She stated that she saw a counselor at WRAP for “issues” she was having with the victim in the years preceding the shooting. She further recalled that on January 30, 2018, she visited WRAP for assistance in obtaining an order of protection against an “abuser” who was entering her property without her consent. The Petitioner testified that she informed trial counsel that she was receiving treatment from WRAP, but she was unsure whether trial counsel retrieved any records pertinent to that treatment.

The Petitioner testified that although her divorce was finalized at the time of the shooting, she was involved in a “civil case of some sort” and was suffering from multiple mental health conditions in the days preceding the shooting. She recalled that she requested the court in her civil matter to order her to submit to a forensic examination. The Petitioner introduced her letter and motion requesting a forensic examination, filed in the Madison County Chancery Court on March 28, 2019, as exhibits to the evidentiary hearing. In her letter, the Petitioner alleged that her “legal predicament overlap[ped] with [her] mental care, issue[,] and health” and was “compounded by the use and effect of psychotropic medications.” In her motion, the Petitioner alleged that she had been diagnosed with “C-PTSD[,] a debilitating form of mental illness,” and that a “[c]ombination of medications and physical side effects may have presented multiple challenges to [her] cognizance and ability to comprehend the implications and magnitude of signing legally binding agreements.” The Petitioner testified that she informed trial counsel that she had filed this request, but she was unsure whether trial counsel retrieved it.

The Petitioner recalled that she had both “a State evaluation and a [d]efense evaluation” prior to her trial. She recalled that she was first examined by Dr. Richard Drewery, and she agreed that she received a copy of his findings following her examination. Trial counsel later obtained funds for a second forensic examination, performed by Dr. Keith Caruso. The Petitioner testified that she did not receive a copy of Dr. Caruso’s findings and was unaware of them prior to her trial. The Petitioner was unsure whether trial counsel provided her records from WRAP or her request for a forensic examination in her civil case to her forensic examiners in this case.

The Petitioner testified that, while incarcerated both prior to and following her trial, she received weekly treatments from Pathways of Tennessee (Pathways). She stated that she was treated by Elizabeth Sellari, who informed her that she was suffering from panic attacks, “C-PTSD,” and depression. She stated that trial counsel knew she was receiving

treatment from Pathways and that she asked trial counsel to contact Pathways regarding her treatment. She did not believe that trial counsel did so or procured any records pertinent to her treatment, and she opined that, had trial counsel done so, trial counsel could have called “some expert witness” or “counselor” to testify regarding her mental state prior to the shooting.

The Petitioner testified that the State introduced two video recordings of the shooting at her trial. She averred that, prior to her trial, she was unaware that more than one video recording of the altercation existed, and she stated that there was a “gap” in time between the two video recordings introduced at her trial. She recalled that she met with trial counsel on the weekend prior to her trial, that she informed trial counsel she believed she should see the video recordings the State intended to introduce, and that trial counsel did not provide her with the video recordings. She stated that, had she been able to review the video recordings prior to her trial, she could have advised trial counsel that there was “another narrative” and explained that she was “being choked” during the gap between the two video recordings.

The Petitioner agreed that she testified at her trial. She recalled that she informed trial counsel she wished to discuss “what would happen with testifying” during her meeting with trial counsel on the weekend prior to her trial but that they did not discuss her testifying. She stated that she and trial counsel first discussed whether she would testify during a break in proceedings at her trial in a conversation lasting a few minutes. She opined that, had trial counsel adequately prepared her prior to her testifying, “the jury would have understood” that the shooting was due to a “crisis that was happening.” She agreed that she testified that she did not remember shooting the victim.

On cross-examination, the Petitioner agreed that she testified that she was choked during the physical altercation with the victim. However, she maintained that trial counsel “could have explained more” and cross-examined the State’s witnesses more thoroughly if she had been permitted to review the video recordings prior to her trial. The Petitioner agreed that both of her forensic examinations concluded that she was competent to stand trial. On redirect examination, the Petitioner testified that she wrote a letter to lead counsel on June 18, 2020, asking when she would be examined by Dr. Caruso and expressing her concern that her trial date was approaching. She stated that she was unsure whether Dr. Caruso ever performed a forensic examination; she opined that she never saw any written findings and that trial counsel never discussed any findings with her. On recross-examination, she agreed that Dr. Caruso visited her at the Madison County Jail on June 30, 2020, and that they spoke “for a little while,” but she was unsure whether he performed a forensic examination during this meeting.

Lead counsel testified that he was appointed to represent the Petitioner following her indictment. He recalled exchanging letters with the Petitioner prior to her trial. He recalled meeting with the Petitioner several times both prior to and during the COVID-19 pandemic. He agreed that communicating with the Petitioner became more difficult due to the COVID-19 pandemic, and he noted that he was “sometimes” able to meet with the Petitioner via video conference during this time. However, he recalled that the Petitioner was not in a “private room” during these meetings. He also recalled that he and co-counsel met with the Petitioner in-person “not too long before the trial.” He stated that this meeting occurred in a “bondsman’s booth” and that he and co-counsel spoke with the Petitioner through a thick glass partition. He also stated that he and the Petitioner discussed whether the Petitioner would testify at trial and “generally how to testify.”

Lead counsel recalled that, at the time of the shooting, the Petitioner and the victim were engaged in a “heated civil battle” regarding their divorce. Lead counsel was unsure whether he requested the case file from the Petitioner’s civil matter, but he noted he received “some of the information” regarding the divorce. He recalled that the Petitioner requested a forensic examination in her civil matter shortly before the shooting, but he was unsure whether he obtained a copy of that request. He agreed that the jury was unaware of the Petitioner’s request for a forensic examination.

Lead counsel testified that the Petitioner submitted to two forensic examinations in this case to determine her mental state at the time of the shooting. He stated that he would have received a copy of Dr. Drewery’s findings regarding the Petitioner’s first forensic examination in discovery. Lead counsel could not recall whether he had reviewed Dr. Drewery’s report, but he opined that if the report was in the Petitioner’s case file, he would have read it.

Lead counsel testified that he requested and obtained funding for Dr. Caruso to perform a forensic examination prior to the Petitioner’s trial. On April 17, 2020, lead counsel informed the Petitioner via letter that the COVID-19 pandemic was posing issues in scheduling Dr. Caruso’s forensic examination. On June 18, 2020, lead counsel sent another letter to the Petitioner informing her that he might need to request a continuance of her trial due to the difficulties in scheduling her forensic examination. Lead counsel recalled that Dr. Caruso ultimately examined the Petitioner and met with lead counsel afterward to inform him that “he would not have been able to support a defense of either diminished capacity or insanity at the time of the offense.” Lead counsel stated that he thereafter met with the Petitioner and informed her that she “would not have a mental health defense.” He was unsure whether Dr. Caruso made any written findings regarding the forensic examination.

Lead counsel testified that he was unaware that the Petitioner was receiving treatment from WRAP in the years prior to the shooting and that he would have requested any records regarding her treatment, had he known of their existence. He stated he did not know whether the Petitioner informed him that she was receiving treatment from Pathways while she was incarcerated and that he did not believe he requested any records regarding her treatment there. However, he noted that he requested and obtained records from a “provider” in Shelby County and provided those documents and any others he received from the Petitioner to Dr. Caruso prior to the Petitioner’s forensic examination.

Lead counsel recalled that the State introduced two video recordings of the shooting taken from the victim’s cell phone at trial. He was unsure whether the Petitioner advised him of any reason for the gap between the two video recordings. Lead counsel also recalled that the State introduced photographs from the home the Petitioner shared with the victim. He testified that these photographs depicted several statements written on the walls, such as, “You will spend the rest of your life looking over your shoulder wondering”; “You leave bodies everywhere you’ve been;” and “Down south[,] women have fathers and brothers with guns. You might just get your wish.” Lead counsel did not recall whether he discussed these statements with the Petitioner. He agreed that he received the photographs in discovery materials, but he stated that he may not have been able to review them with the Petitioner prior to her trial because of COVID-19 restrictions. He also agreed that he did not file a pretrial motion to exclude the photographs from evidence.

On cross-examination, lead counsel testified that he had “numerous” “very long meetings” with the Petitioner prior to the COVID-19 pandemic in which they discussed her case. He stated that he reviewed discovery materials both personally and with the Petitioner, although he agreed that she may not have been able to review the video recordings of the physical altercation and the photographs of the marital home.

Lead counsel recalled that the Petitioner was engaged in a “contentious divorce” prior to the shooting and that she was treated by a counselor in Shelby County regarding the divorce. He stated that, prior to the shooting, the Petitioner attempted “to get the divorce settlement set aside or changed in some way.” He described the Petitioner as harboring a “lot of anger [and] hurt feelings” regarding the divorce. Lead counsel testified that he decided to seek funds for Dr. Caruso’s forensic examination after speaking to the Petitioner regarding her divorce and discussing her potential trial defenses. He recalled that Dr. Caruso performed the forensic examination during a meeting with the Petitioner at the Madison County Jail and that, afterward, Dr. Caruso met with him to discuss his findings. He testified that Dr. Caruso, like Dr. Drewery, concluded that the Petitioner was competent to stand trial, that there was no support for an insanity defense, and that there was no evidence to support a finding of diminished capacity. Lead counsel averred that he

believed there was no reason to call Dr. Caruso as an expert witness at trial considering his findings.

Lead counsel testified that, accordingly, his strategy at the Petitioner's trial was to seek a conviction on the lesser-included offense of voluntary manslaughter rather than the charged offense of first degree murder. He recalled advising the Petitioner that she was not likely to be acquitted "outright," given that the shooting was depicted in the video recordings. He stated that he elicited proof of "what was going on around that time" and that the Petitioner was "extremely upset" prior to and during the shooting. He noted that the jury ultimately acquitted the Petitioner of first degree murder and convicted her of the lesser-included offense of second degree murder. Lead counsel stated that he was able to cross-examine each of the witnesses the State called. He also stated that the Petitioner participated in her trial and was able to ask questions of him throughout the trial.

On redirect examination, lead counsel reiterated that he was unsure whether he reviewed the video recordings of the shooting or the photographs of the marital home with the Petitioner prior to trial; however, he noted that they reviewed police reports and "general things" contained in her discovery materials together. He stated that he was unsure whether they discussed any medications the Petitioner was taking at the time of the shooting or whether Dr. Drewery or Dr. Caruso were advised that she was taking any medications. He agreed that it could have been helpful if Dr. Drewery and Dr. Caruso had been able to review the Petitioner's request for a forensic examination in her civil matter. He testified that he and the prosecutor engaged in plea negotiations but that he ultimately understood that he was "going to have to try the case." He was unsure whether he would have cross-examined any of the State's witnesses differently if the Petitioner had informed him of the reason for the gap between the two video recordings of the shooting.

On questioning by the post-conviction court, lead counsel testified that, after reviewing discovery materials, the only piece of evidence that "surprised" him was "an overlay of the 911 call with the video" recording of the shooting that was created by an investigator. He recalled that he objected to the admission of this recording and that appellate counsel raised the denial of his objection as an issue on appeal. Lead counsel testified that he would have requested to review any documents regarding either the Petitioner's divorce or her mental health of which the Petitioner informed him. He reiterated that both Dr. Drewery and Dr. Caruso concluded that the Petitioner "was able to appreciate the nature or wrongfulness" of her actions at the time of the shooting so that an insanity defense could not be supported and that there was no evidence to support a finding of diminished capacity. He stated that the video recordings of the shooting were described in the police reports and averred that the Petitioner would have known that they would be introduced at trial. He also noted that he believed the evidence could have supported a

conviction of first degree murder and that the State could have introduced additional evidence of premeditation at trial but did not do so.

Co-counsel testified that he initially represented the Petitioner following her arrest and that he later assisted lead counsel in the Petitioner's trial. He estimated he met with the Petitioner five or six times prior to lead counsel's appointment and that he participated in at least one conversation with her along with lead counsel prior to her trial. He stated that he did not recall lead counsel showing any evidence to the Petitioner during their meeting. Co-counsel recalled that Dr. Drewery concluded that although the Petitioner exhibited some "psychotic features" at the time of the shooting, she was nevertheless "able to appreciate the nature or wrongfulness" of her actions. He did not recall whether Dr. Drewery's report was provided to Dr. Caruso.

Following this proof, the post-conviction court took the matter under advisement. On July 11, 2025, the post-conviction court entered an order denying post-conviction relief. The post-conviction court accredited lead counsel's testimony and found that he met with the Petitioner several times prior to her trial; that he reviewed and discussed discovery materials with her; that he was aware of her attempt to obtain a forensic examination regarding her divorce proceedings; and that he obtained funds for Dr. Caruso to perform a forensic examination, in which the doctor concluded that an insanity defense could not be supported and that there was no evidence of diminished capacity. The post-conviction court also accredited co-counsel's testimony that he met with the Petitioner prior to her trial and assisted lead counsel at trial. The post-conviction court found that the Petitioner failed to adduce any credible evidence that trial counsel performed deficiently, represented her improperly, or failed to adequately investigate her case. Accordingly, the post-conviction court concluded that the Petitioner did not receive ineffective assistance of counsel. This appeal followed.²

II. ANALYSIS

On appeal, the Petitioner contends that the State violated her right to due process prior to her trial and that she received ineffective assistance of counsel. The State responds that the Petitioner waived her due process claims by failing to raise them either during her trial proceedings or on direct appeal. The State further maintains that the post-conviction court properly denied all claims. We address each issue in turn.

² The Petitioner filed an untimely notice of appeal on October 6, 2025, and requested that this court waive the timely filing requirement pursuant to Tennessee Rule of Appellate Procedure 4(a) in the interest of justice. We granted the Petitioner's request on October 9, 2025.

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 or her allegations by clear and convincing evidence. *Id.* § -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 v. State*, 454 S.W.3d 450, 457 (Tenn. 2015) (citations omitted), while 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).

A. DUE PROCESS CLAIMS

The Petitioner asserts that the State violated her Fourteenth Amendment right to due process of law while she was incarcerated prior to her trial because the Madison County Jail's correctional officers 1) screened and removed photographs from her legal mail, 2) limited her access to private attorney-client communications, and 3) limited her ability to meet with trial counsel. She also asserts that her right to due process was violated because of "the inability to obtain expert funding to assist in showing a different outcome as it relates to [her] potential mental health defenses of insanity and/or diminished capacity." The State argues these claims are waived because the Petitioner failed to raise them during her trial or on direct appeal, and we agree.

In a post-conviction proceeding, "[a] ground for relief is waived if the petitioner personally or through an attorney failed to present it for determination in any proceeding before a court of competent jurisdiction in which the ground could have been presented[.]" Tenn. Code Ann. § 40-30-106(g). Additionally, "[t]here is a rebuttable presumption that a ground for relief not raised before a court of competent jurisdiction in which the ground could have been presented is waived." *Id.* § -110(f). It is well-established that "a post-conviction petition is not a vehicle to review errors of law as substitute for a direct appeal." *French v. State*, 824 S.W.3d 161, 163 (Tenn. 1992); *see also Brown v. State*, 489 S.W.2d 268, 270 (Tenn. Crim. App. 1972) ("Our procedure does not permit one the practice of deliberately withholding the timely assertion of his [c]onstitutional rights upon his trial[] to save them back for post-conviction attack in the event of a conviction."). This rule is subject to two exceptions: one for claims based upon newly recognized constitutional rights which require retroactive application, and the other for cases in which the "failure to

present the ground was the result of state action in violation of the federal or state constitution.” Tenn. Code Ann. § 40-30-106(g)(1), (2).

A review of the record indicates that both the Petitioner and trial counsel were aware of the factual basis for her due process claims during her trial proceedings. The Petitioner relies upon lead counsel’s June 18, 2020 letter in support of her claims. In this letter, which lead counsel stated he wrote in response to the Petitioner’s June 8, 2020 letter, lead counsel stated he was informed by “Captain Rudder” that the Madison County jail’s correctional officers inspect legal mail “only to ensure that there is no contraband contained therein.” He also stated that he was unaware that the visitation kiosk in which he spoke with the Petitioner was “not in a private area” until the Petitioner advised him accordingly. The Petitioner also relies upon several calendars she created while incarcerated which note several visits from trial counsel that were introduced at the post-conviction hearing. Plainly, the basis for the Petitioner’s due process challenges was known to her prior to her trial. Thus, she could have raised her challenges during her trial proceedings. She did not do so, and she offers no explanation for this omission. Because the Petitioner neglected to timely present these challenges to the trial court, she is barred from litigating them in her post-conviction petition. *Id.* § -106(g); *French*, 824 S.W.3d at 163, *Brown*, 489 S.W.2d at 270.

However, this waiver does not preclude our consideration of the Petitioner’s challenges as they relate to her claims of ineffective assistance of counsel. *See Rayfield v. State*, No. M2020-00546-CCA-R3-PC, 2021 WL 4205714, at *6 (Tenn. Crim. App. Sept. 16, 2021), *no perm. app. filed*. “[A] claim asserting the ineffective assistance of counsel with respect to a particular issue may be brought even when the underlying substantive issue has been waived or previously determined,” *Woodard v. State*, No. M2022-00162-CCA-R3-PC, 2022 WL 4932885, at *4 (Tenn. Crim. App. Oct. 4, 2022), *no perm. app. filed*, but our legal analysis of those claims is limited to the protections afforded by the Sixth Amendment, *Young v. State*, No. E2022-00235-CCA-R3-PC, 2023 WL 4946345, at *7 (Tenn. Crim. App. Aug. 3, 2023), *perm. app. denied* (Tenn. Dec. 20, 2023). We will, therefore, address these challenges more fully below.

The Petitioner also raises, as a separate claim for relief, an argument that her right to due process was violated because of “the inability to obtain expert funding to assist in showing a different outcome as it relates to [her] potential mental health defenses of incapacity and/or diminished capacity.” However, her argument on this basis appears to be more of a rebuttal to the State’s potential arguments in opposition to her claims for post-conviction relief:

It is anticipated that the State will argue that merely presenting the records is not sufficient and an expert should have been presented to show that the

records would have led to a different opinion from the trial court evaluator related to competency and/or diminished capacity defenses. It was an impossibility to do anything other than present for the [c]ourt's review the WRAP records, other court filings, Pathways records, and medication records at the hearing. Tenn[essee] Sup[reme] C[ourt] R[ule] 13 [section] 5 states, "The trial court cannot appoint experts in post-conviction cases except in capital cases where the petitioner is indigent." You cannot show by clear and convincing evidence that these records would have changed the opinion of the expert as no funds can be obtained under the law to have an assessment done by another expert including the missing records that were not submitted to the trial court level evaluator. . . . Should the State make the argument that an expert should have been presented to evaluate the not previously viewed records, this should not be held against [the Petitioner] due to her indigency.

Inasmuch as the Petitioner intends to assert any challenge to Tennessee Supreme Court Rule 13, we note that we have repeatedly reaffirmed that post-conviction petitioners are not entitled to funding for expert witnesses in non-capital cases. *See, e.g., Gonzalez v. State*, No. W2025-00894-CCA-R3-PC, 2026 WL 296388, at *16 (Tenn. Crim. App. Feb. 4, 2026), *perm. app. denied* (Tenn. July 21, 2026); *Mullins v. State*, No. M2024-00440-CCA-R3-PC, 2025 WL 1329103, at *5 (Tenn. Crim. App. May 7, 2025), *no perm. app. filed*; *Onyiego v. State*, No. W2022-00629-CCA-R3-PC, 2023 WL 2326336, at *24 (Tenn. Crim. App. Mar. 2, 2023), *perm. app. denied* (Tenn. Aug. 8, 2023). As the Petitioner correctly notes, her case is not a capital case, so she was not entitled to funding to hire an expert in her post-conviction proceedings; therefore, she is not entitled to relief on this basis. *See* Tenn. R. Sup. Ct. R. 13 § 5(a)(3).

B. INEFFECTIVE ASSISTANCE OF COUNSEL

The Petitioner alleges several instances of ineffective assistance by trial counsel. She claims counsel failed to obtain records related to her mental health and a prior allegation of domestic abuse; failed to provide the results of her second forensic evaluation; failed to file a motion in limine to exclude photographs of her marital residence; failed to show her video recordings and photographs the State intended to introduce; and failed to prepare both her case and her testimony adequately. She further alleges that both trial and appellate counsel performed ineffectively by failing to challenge an allegedly unconstitutional jury instruction. The State argues that the post-conviction court correctly rejected all claims, and we agree.

Both the Constitution of the United States and the Constitution of Tennessee provide a 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, a 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.

Regarding the first element, 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).

Regarding the second element, a post-conviction petitioner must also prove that counsel’s deficient performance affected the outcome of his or her trial; 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)).

1. Records

The Petitioner argues that she received ineffective assistance of counsel due to trial counsel's failure to procure 1) records of her treatment from WRAP and Pathways, 2) a copy of her March 28, 2019 request for a court-appointed forensic examination, and 3) a list of the medications she was taking at the time of the shooting. The Petitioner contends that these records would have "undermined confidence" in the jury's guilty verdict if introduced at trial and would have assisted her forensic examiners in determining her mental state at the time of the shooting.

As a preliminary matter, we note that the Petitioner did not argue that she received ineffective assistance of counsel due to trial counsel's failure to procure a list of the medications she was taking at the time of the shooting in her petition for post-conviction relief. In order to preserve a claim for appellate review, a petitioner must include that claim in his or her petition for post-conviction relief. See Tenn. Code Ann. §§ 40-30-104(d) (requiring a post-conviction petitioner to "include all claims" and "verify under oath that all the claims are included" in the petition), -110(c) (providing that "[p]roof upon the petitioner's claim or claims for relief shall be limited to evidence of the allegations of fact in the petition"). A post-conviction court has authority to consider and rule upon only those claims which are raised in the original petition for post-conviction relief or in a recognized amendment. *Lowe v. State*, 703 S.W.3d 319, 335 (Tenn. Crim. App. 2024). Accordingly, this claim is waived.

At the evidentiary hearing, lead counsel testified that he was unaware that the Petitioner was receiving assistance from WRAP prior to the shooting and that he was unsure whether the Petitioner informed him she was receiving treatment from Pathways while incarcerated. The post-conviction court accredited lead counsel's testimony and found that the Petitioner had failed to present any credible evidence establishing that trial counsel failed to adequately represent her or investigate her case. The record does not preponderate against these findings. It cannot be said that lead counsel performed deficiently for failing to recover records of treatment he was unaware the Petitioner had received. See *Brawner v. State*, No. W2013-00933-CCA-R3-PC, 2014 WL 1101990, at *5 (Tenn. Crim. App. Mar. 19, 2014) (holding that "trial counsel cannot be deficient for failing to do what he was unaware of"), *perm. app. denied* (Tenn. June 20, 2014). Moreover, lead counsel testified that he would have requested any records pertinent to the Petitioner's mental health if she advised him that such records existed. The post-conviction court did not err in denying relief on this basis.

The Petitioner also contends that if lead counsel had obtained a copy of her request for a court-appointed forensic examination in her civil matter, he could have provided it to her forensic examiners and to the jury to assist them in their respective determinations of her mental state during the shooting. But nothing in the record establishes, by clear and convincing evidence, that either her forensic examiners or the jury would have reached a

different conclusion if they had been privy to the Petitioner's request. In her request, the Petitioner alleged that she had been diagnosed with "C-PTSD[,] a debilitating form of mental illness," and that a "[c]ombination of medications and physical side effects may have presented multiple challenges to [her] cognizance and ability to comprehend the implications and magnitude of signing legally binding agreements." The Petitioner does not explain how this additional information would have led either her forensic examiners or the jury to a different conclusion, and we will not attempt to craft an explanation for her. Moreover, we note that the Petitioner testified in her defense at her trial. She had the opportunity to apprise the jury of her prior request for a forensic examination but did not avail herself of it. She did, however, inform the jury that she was taking a combination of medications at the time of the shooting to treat her depression, anxiety, and the "voices" she heard. *Baker*, 2022 WL 6257471, at *8. The post-conviction court did not err in denying relief on this basis.

In the context of this argument, the Petitioner also asserts that she was under the impression that trial counsel would pursue a "mental health" defense at trial and that she "never agreed to any different trial strategy." Inasmuch as the Petitioner intends to raise this as a separate claim for post-conviction relief, we note that it is belied by the record. Lead counsel testified that Dr. Drewery performed the Petitioner's first forensic examination and concluded that an insanity defense could not be supported and that there was no evidence of diminished capacity, and the Petitioner testified that she reviewed Dr. Drewery's findings. Lead counsel testified that Dr. Caruso reached the same conclusion following his examination of the Petitioner and that he informed the Petitioner of Dr. Caruso's findings. Trial counsel cannot be faulted for declining to pursue a strategy that relied on evidence of the Petitioner's "mental health" considering these findings. "The mere possibility of success based on a defense for which there existed little or no evidentiary support is not enough to establish constitutionally inadequate counsel." *Wilcoxson v. State*, 22 S.W.3d 289, 317 (Tenn. Crim. App. 1999). This claim is, accordingly, unavailing.

2. Motion in Limine

The Petitioner also contends that she received ineffective assistance of counsel due to trial counsel's failure to file a pretrial motion in limine to exclude the photographs of her marital home from admission at trial. She asserts that the admission of these photographs was prejudicial because the photographs were the State's "sole evidence" of premeditation, and she posits that she would have been convicted of voluntary manslaughter had they been excluded.

The State responds that this issue is waived because the Petitioner failed to raise it in her post-conviction petition. To be sure, the Petitioner did not raise this challenge in her

initial petition, but she included it in her October 15, 2024 amended petition, and it does not appear that the State challenged the propriety of that amendment. Thus, we find that this claim is not waived. *See Lowe*, 703 S.W.3d at 335.

However, the Petitioner is not entitled to relief. The crux of her claim is that trial counsel rendered ineffective assistance by failing to file a motion in limine seeking exclusion of the photographs of her marital home. A post-conviction petitioner who alleges that he or she received ineffective assistance of counsel based upon an alleged failure to file a suppression motion, or a motion to exclude evidence, must prove, by clear and convincing evidence, that “(1) a suppression motion would have been meritorious; (2) counsel’s failure to file such motion was objectively unreasonable; and (3) but for counsel’s objectively unreasonable omission, there is a reasonable probability that the verdict would have been different absent the excludable evidence.” *Phillips*, 647 S.W.3d at 404. To meet this burden of proof, a petitioner must, essentially, “incorporate a motion to suppress within the proof presented at the post-conviction hearing.” *Cecil v. State*, No. M2009-00671-CCA-R3-PC, 2011 WL 4012436, at *8 (Tenn. Crim. App. Sept. 12, 2011), *no perm. app. filed*. Axiomatically, a petitioner must also identify the evidence which should have been suppressed and the legal basis for its suppression. *Coyne v. State*, No. E2025-00589-CCA-R3-PC, 2026 WL 591536, at *6 (Tenn. Crim. App. Mar. 3, 2026), *no perm. app. filed*.

At the evidentiary hearing, lead counsel testified that he was aware of the photographs of the marital home, that he did not file a pretrial motion to exclude them, and that he was unsure whether he showed them to the Petitioner prior to their introduction at her trial. The post-conviction court accredited lead counsel’s testimony and found that his actions did not prejudice the Petitioner’s defense, and the record does not preponderate against that finding. Moreover, the Petitioner has presented no legal basis, either in her amended petition, in the proof at the evidentiary hearing, or on appeal, for a proposed challenge to the photographs’ admissibility. Her failure to incorporate a motion to exclude evidence within the proof presented at her evidentiary hearing renders her claims of ineffective assistance unavailing. *Id.*; *see also Ward v. State*, No. W2021-01421-CCA-R3-PC, 2022 WL 6957222, at *6 (Tenn. Crim. App. Oct. 12, 2022) (affirming the denial of post-conviction relief due, in part, to the petitioner’s failure to “explain the grounds upon which trial counsel should have argued [the evidence] should have been suppressed”), *perm. app. denied* (Tenn. Feb. 9, 2023).

We also note that the Petitioner’s only allegation of prejudice on this basis is a conclusory argument that she would have been convicted of voluntary manslaughter rather than second degree murder but for the State’s introduction of the photographs. She characterizes the photographs as the State’s “sole evidence” of her premeditation. However, the jury acquitted the Petitioner of the charged offense of first degree murder and convicted her of the lesser-included offense of second degree murder, which does not

require proof of a defendant's premeditation. *See* Tenn. Code Ann. §§ 39-13-202 (defining first degree murder), -210 (defining second degree murder). Consequently, the Petitioner's claim of prejudice is unavailing. The post-conviction court did not err in denying relief on this basis.

3. Forensic Examination

The Petitioner also contends that she received ineffective assistance of counsel due to trial counsel's failure to provide her with the results of Dr. Caruso's forensic examination. She argues that she proceeded to trial under the assumption that trial counsel would present a mental health defense and that she was unaware that trial counsel's strategy had changed prior to her trial. The State responds that the post-conviction court appropriately denied relief.

At the evidentiary hearing, lead counsel testified that he procured funding for Dr. Caruso to perform a forensic examination on the Petitioner prior to her trial. Following this examination, Dr. Caruso concluded that a defense of insanity could not be supported and that there was no evidence of diminished capacity. Lead counsel testified that Dr. Caruso informed him of his conclusions and that he, in turn, informed the Petitioner of Dr. Caruso's conclusions. The post-conviction court accredited lead counsel's testimony, and the record does not preponderate against that finding. Accordingly, the Petitioner's claim that she was unaware of Dr. Caruso's conclusions is belied by the record. In addition, since the Petitioner intends to claim that trial counsel rendered ineffective assistance by failing to pursue a "mental health" defense, the record demonstrates that she submitted to two forensic examinations and that both concluded that a defense of insanity could not be supported and that there was no evidence of diminished capacity. As we have repeatedly held, trial counsel does not perform deficiently by failing to raise a meritless claim, and prejudice does follow from that failure. *Wilcoxson*, 22 S.W.3d at 317; *see also, e.g., Cooper v. State*, No. E2022-01776-CCA-R3-PC, 2024 WL 4143828, at *46 (Tenn. Crim. App. Sept. 11, 2024), *perm. app. denied* (Tenn. Mar. 14, 2025); *Golden v. State*, No. W2022-00388-CCA-R3-PC, 2023 WL 2145567, at *6 (Tenn. Crim. App. Feb. 22, 2023), *no perm. app. filed*. The post-conviction court did not err in denying relief on this basis.

4. Discovery Materials

The Petitioner also contends that she received ineffective assistance of counsel due to trial counsel's failure to show her the video recordings of the shooting and the photographs of her marital home prior to their introduction at trial. She asserts that she would have been able to assist trial counsel in cross-examining the State's "leading witness" if she had been able to review the video recordings. She also argues that trial counsel's failure to show her these discovery materials "undermines the confidence" in the

jury's verdict, and she posits that, had she been able to review these materials prior to her trial, "a multitude of vital decisions" would have "likely" been "affected," including defense strategy, her decision to testify, and plea negotiations. The State does not respond to this argument.

At the evidentiary hearing, lead counsel testified repeatedly that he could not remember whether he showed the Petitioner the video recordings of the shooting or the photographs of her marital home prior to their introduction at trial. He further testified that he reviewed discovery materials, which included the police reports, with the Petitioner prior to her trial. Lead counsel recalled that the police reports described the video recordings of the shooting and that the Petitioner would have known they would be introduced at trial. The post-conviction court accredited lead counsel's testimony and found that he obtained and discussed discovery materials with the Petitioner. The record does not preponderate against this finding.

Additionally, the Petitioner has failed to establish prejudice. She does not explain how her plea negotiations or defense strategy would have changed if she had been able to review the video recordings of the shooting or the photographs of her marital home prior to her trial; she merely contends that a different result "likely" would have followed if trial counsel had taken a different course of action. These conclusory arguments fall far short of establishing her burden of proving prejudice by clear and convincing evidence. See *Taylor v. State*, No. W1999-00977-CCA-R3-PC, 2000 WL 714387, at *3 (Tenn. Crim. App. May 26, 2000) ("Unsupported allegations by a [post-conviction] petitioner will not suffice to establish prejudice."), *perm. app. denied* (Tenn. Dec 4, 2000). Regardless, we note that it is unclear, from a review of the record, that the State was willing to engage in extensive pretrial plea negotiations in this case. Lead counsel testified that he engaged in plea negotiations with the prosecutor but that he ultimately understood he was "going to have to try the case." It does not logically follow that the State's decision would have altered in any way if the Petitioner had been permitted to review potentially incriminatory evidence. Moreover, when a petitioner claims that trial counsel performed deficiently by failing to adequately cross-examine a witness, he or she must "present that witness at the post-conviction evidentiary hearing to show how the witness would have responded to trial counsel's questioning." *Keene v. State*, No. E2022-01410-CCA-R3-PC, 2023 WL 5978223, at *5 (Tenn. Crim. App. Sept. 14, 2023), *perm. app. denied* (Tenn. Feb. 13, 2024). A petitioner should also provide "specifics regarding what questions trial counsel should have asked the witness." *Id.* (quoting *McDonald v. State*, No. E2016-02565-CCA-R3-PC, 2017 WL 4349453, at *4 (Tenn. Crim. App. Sept. 29, 2017), *no perm. app. filed*). The Petitioner did neither in this case, so her claim is unavailing. The post-conviction court did not err in denying relief on this basis.

5. Preparation for Trial

The Petitioner also contends that she received ineffective assistance of counsel due to trial counsel's failure to adequately prepare her to testify and prepare her case for trial. She asserts that trial counsel performed deficiently by failing to "adequately prepare himself through communications" with her, reiterating her claims regarding her limited ability to meet with counsel and to engage in confidential attorney-client communications due to the COVID-19 pandemic's restrictions.³

The State responds that this issue is waived because the Petitioner failed to raise it in her post-conviction petition. Like the Petitioner's claim regarding trial counsel's alleged failure to file a motion in limine challenging the admission of the photographs of her marital home, the Petitioner did not raise this claim in her initial petition, but she included it in her October 15, 2024 amended petition, and it does not appear that the State challenged the propriety of that amendment. Therefore, this claim is not waived. *See Lowe*, 703 S.W.3d at 335.

However, the Petitioner is not entitled to relief. At the evidentiary hearing, lead counsel testified that he had "numerous" "very long meetings" with the Petitioner prior to the COVID-19 pandemic in which they discussed her case. Lead counsel further testified that, although the Madison County Jail's policy changes during the COVID-19 pandemic frustrated his ability to communicate with the Petitioner, he nevertheless continued to do so. Co-counsel also testified that he met with the Petitioner several times prior to her trial, both before and after lead counsel was appointed. The post-conviction court accredited trial counsel's testimony and concluded that the Petitioner had failed to establish any inadequacy in trial counsel's preparation and investigation of her case.

The record does not preponderate against the post-conviction court's findings. Trial counsel testified that they met with the Petitioner numerous times prior to her trial, and lead counsel testified that he reviewed discovery both personally and with the Petitioner and obtained an independent forensic examination for the Petitioner. Inasmuch as the Petitioner claims that the COVID-19 pandemic limited her ability to communicate with counsel, we note that, although the policies enacted by the Madison County Jail were entirely outside of trial counsel's control, trial counsel nevertheless continued to meet and communicate with the Petitioner during the pandemic as her trial approached. Although the Petitioner alleges that she was unable to communicate privately with lead counsel during these meetings, we note that lead counsel wrote that he was unaware their communications were not private until the Petitioner advised him otherwise. Moreover,

³ The Petitioner also reiterates that trial counsel failed to obtain records and share them with her forensic examiners and to seek the suppression of the photographs of her marital home prior to their introduction at trial. As noted above, the Petitioner has failed to establish she received ineffective assistance of counsel on these claims, so we will not readdress them here.

the Petitioner does not explain how prejudice inured from trial counsel's alleged failure to adequately prepare for her trial; she merely asserts that prejudice "is shown in the verdict itself." As noted above, this falls far short of the clear and convincing proof necessary to establish prejudice. *Taylor*, 2000 WL 714387, at *3.

The Petitioner also asserts that trial counsel failed to adequately prepare her to testify. She presents no legal argument in support of this claim, so it is waived. *See* Tenn. R. App. P. 27(a)(7) (requiring an appellant to present a brief which sets forth "the contentions of the appellant with respect to the issues presented, and the reasons therefor, including the reasons why the contentions require appellate relief[.]"); Tenn. R. Ct. Crim. App. 10(b) ("Issues which are not supported by argument, citation to authorities, or appropriate references to the record will be treated as waived in this court."). Waiver notwithstanding, the post-conviction court accredited trial counsel's testimony that he met with the Petitioner and discussed her decision to testify prior to her trial, and the record does not preponderate against this conclusion. The post-conviction court did not err in denying relief on this basis.

6. Jury Instruction

Finally, the Petitioner also contends that she received ineffective assistance of both trial and appellate counsel due to their failure to challenge the trial court's inclusion of voluntary manslaughter as a lesser-included offense of first degree and second degree murder. She contends that this jury instruction was unconstitutional because a conviction of voluntary manslaughter requires proof of an additional essential element which is not included in the greater offense of second degree murder. The State responds that this claim is waived because the Petitioner failed to include her jury charge "and other related materials" in the appellate record.

As with claims of ineffective assistance of trial counsel, we assess a petitioner's claim that he or she received the ineffective assistance of appellate counsel under the two-pronged *Strickland* analysis. *Carpenter v. State*, 126 S.W.3d 879, 886 (Tenn. 2004). That is, we must consider whether appellate counsel performed deficiently and whether that deficient performance resulted in prejudice. *Strickland*, 466 U.S. at 693; *Baxter*, 523 S.W.2d at 936. Appellate counsel is not required to raise every issue a defendant desires to raise in an appeal; indeed, "[t]he determination of which issues to raise on appeal is generally within appellate counsel's sound discretion." *Carpenter*, 126 S.W.3d at 887. However, when a petitioner alleges he or she received ineffective assistance of counsel due to appellate counsel's failure to raise a particular issue, we must determine the merits of the omitted claim. *Id.* As with claims of ineffective assistance of trial counsel, appellate counsel does not perform deficiently by failing to raise a meritless claim, and prejudice does not follow from that failure. *Id.*

We agree with the State that this claim is waived, albeit on a different basis. This court may take judicial notice of its own records, *see* Tenn. R. App. P. 13(c); *Harris v. State*, 301 S.W.3d 141, 147 n.4 (Tenn. 2010), and the record from the Petitioner’s direct appeal includes a transcript of the final instructions the trial court issued to the jury. However, as the Petitioner concedes, she failed to raise this constitutional challenge in her original trial proceedings, so it is waived. Tenn. Code Ann. § 40-30-106(g); *French*, 824 S.W.3d at 163; *Brown*, 489 S.W.2d at 270. Although we may nevertheless consider this claim as it pertains to an allegation of ineffective assistance of counsel, the Petitioner did not raise it in either her original or amended petition for post-conviction relief and did not present any evidence to support it at the evidentiary hearing, so it is waived. Tenn. Code Ann. § 40-30-104(d); *Lowe*, 703 S.W.3d at 335.

The Petitioner acknowledges the procedural infirmity of this claim. Nevertheless, she posits that the “interest of justice” merits consideration of whether the jury instruction in her trial was constitutional. She extensively cites Justice Sotomayor’s statement respecting the United States Supreme Court’s denial of certiorari in *Black v. Tennessee*, 145 S. Ct. 2622 (2025), in support of her argument, and she asserts that she did not raise this claim in her petition for post-conviction relief because Justice Sotomayor’s statement had not yet been published when she filed her petition. Be that as it may, the Petitioner’s claim is waived regardless, and plain error relief is not available in post-conviction petitions. *See Holland*, 610 S.W.3d at 458 (“[T]he plain error rule, which would otherwise permit an appellate court to address the issue sua sponte, may not be applied in post-conviction proceedings to grounds that would otherwise be deemed waived or previously determined.”) (quoting *Grindstaff v. State*, 297 S.W.3d 208, 219 (Tenn. 2009) (internal quotation marks omitted)). The Petitioner is not entitled to relief.

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