

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

DONQUARIUS PERSON v. STATE OF TENNESSEE

Appeal from the Criminal Court for Shelby County

No. 11-06594

Chris Craft, Judge

No. W2025-01756-CCA-R3-PC

The Petitioner, Donquarius Person, appeals the denial of his petition for post-conviction relief from his 2013 Shelby County Criminal Court jury convictions of first degree murder, aggravated assault, and attempted first degree murder, arguing that he was deprived of the effective assistance of counsel at trial. We conclude that the Petitioner's brief does not comply with the requirements of Tennessee Rule of Appellate Procedure 27(a) but that, notwithstanding waiver, the record supports the ruling of the trial court. Accordingly, we affirm the denial of post-conviction relief.

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

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

Ernest J. Beasley (at second evidentiary hearing and on appeal) and Joseph Taggart (at first evidentiary hearing), Memphis, Tennessee, for the appellant, Donquarius Person.

Jonathan Skrmetti, Attorney General and Reporter; Elizabeth Evan, Assistant Attorney General; Steven J. Mulroy, District Attorney General; and Joseph Leon and Leslie Byrd, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

This appeal arises from the denial of the Petitioner's bid for post-conviction relief from his convictions related to the robbery and murder of Calvin Leon Sims, Jr., the attempted murder of Calvin Sims, Sr., and the attempted murder of Freddie Sheffa.

Factual and Procedural Background

Regarding the May 19, 2011 shooting that led to the convictions in this case, this court succinctly summarized that

[t]he proof adduced at trial established that the [Petitioner] lost money to Mr. Sims, Jr., playing dice, and the [Petitioner], angered over the loss, procured a handgun and threatened violence against Mr. Sims, Jr., if he did not return the money. When Mr. Sims, Jr., refused, the [Petitioner] shot him twice. The [Petitioner] also shot Mr. Sheffa and Mr. Sims, Sr., before stealing money from the pockets of Mr. Sims, Jr.

State v. Person, No. W2013-00843-CCA-R3-CD, 2014 WL 2159545, at *1 (Tenn. Crim. App. May 20, 2014), *no perm. app. filed*. Mr. Sheffa identified the Petitioner as the person who shot him and Mr. Sims, Jr. *See id.* at *4. After the Petitioner shot him, Mr. Sheffa heard other gunshots, presumably those that resulted in gunshot wounds to Mr. Sims, Sr. *See id.* at *3-4. Seventeen-year-old Daniel Rawlings also witnessed the Petitioner shoot Mr. Sheffa and Mr. Sims, Jr. *See id.* at 6. Although Mr. Rawlings did not see the Petitioner shoot Mr. Sims, Sr., he saw the Petitioner running from the scene just after he heard Mr. Sims, Sr., scream, followed by gunshots. *See id.*

Based on this evidence, the jury convicted the [Petitioner] as charged of felony murder in perpetration of a robbery, first degree premeditated murder, two counts of attempted first degree murder, and the lesser offense of aggravated assault. The trial court merged the felony murder conviction with the first degree premeditated murder conviction and imposed an automatic sentence of life imprisonment Following a sentencing hearing, the trial court sentenced the [Petitioner] to four years for the aggravated assault conviction and 20 years for each of the attempted first degree murder convictions. The trial court ordered the latter three convictions to be served concurrently to one another but consecutively to the life sentence, for an effective sentence of life plus 20 years.

Id. at *9.

On direct appeal, the Petitioner challenged the admission of hearsay evidence and the sufficiency of the convicting evidence. *See generally id.* After this court affirmed the Petitioner's convictions and accompanying total effective sentence of life plus twenty years' imprisonment, *see id.*, the Petitioner timely filed a pro se petition for post-conviction relief, arguing that he had been deprived of the effective assistance of counsel at trial. The post-conviction court appointed first post-conviction counsel in July 2015, but first post-conviction counsel did not file an amended petition.

At the first evidentiary hearing on the petition on February 15, 2018, first post-conviction counsel indicated that the Petitioner had asked him to withdraw so that the attorney he intended to retain could take over the case.¹ The post-conviction court observed that it had already reset the case at the Petitioner's request more than a dozen times over the course of two and one-half years. As a result, the court concluded that the Petitioner would be required to proceed with the hearing on that day but that it would give the Petitioner's retained counsel the opportunity to have another hearing and present additional evidence if necessary.

I. February 2018 Hearing

The Petitioner testified that prior to trial, he told trial counsel that he intended to rely on an alibi defense and that Carolyn McLemore and Demarco Blakely would support his alibi. He agreed that Mr. Blakely had testified at trial and said that Mr. Blakely supported his claimed alibi "the second time." The Petitioner said that both the State and his trial counsel made unsuccessful attempts to locate Ms. McLemore.

The Petitioner claimed that Mr. Rawlings told him that the State had "put \$1,000 on a credit card" for him in exchange for his testimony at the Petitioner's trial. The Petitioner said that trial counsel told him that the decision whether to testify at trial was his and that he chose not to testify on his own behalf. The Petitioner stated that trial counsel communicated the State's plea offer of a fifty-one-year effective sentence in exchange for his pleading guilty as charged and that he rejected it.

During cross-examination, the Petitioner insisted that he only met with trial counsel two or three times in the two years that his case was pending prior to trial and that he had "never seen her" at his many pretrial court appearances. He said that his meetings with trial counsel focused on trial counsel's attempts to locate Ms. McLemore, a woman with whom the Petitioner and Mr. Blakely purportedly engaged in sexual relations at the time of the offenses.²

The Petitioner made several other complaints unrelated to his claim of ineffective assistance of counsel that were either waived or previously determined, *see* T.C.A. §§ 40-30-106(g) ("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[.]"); -106(h) ("A

¹ The attorney named by the Petitioner was not the attorney who eventually represented the Petitioner at the second evidentiary hearing.

² Mr. Blakely testified at the Petitioner's trial that he and the Petitioner went to the apartment of a woman, "watched movies, kicked it, then we had sex" and that he drove the Petitioner to his mother's house after the encounter. *Id.* at *8.

ground for relief is previously determined if a court of competent jurisdiction has ruled on the merits after a full and fair hearing.”), and we will not recount them here.

II. July 24, 2025 Hearing

At the July 24, 2025 hearing, the Petitioner was represented by second post-conviction counsel, who also represents him in this appeal.

As is relevant to this appeal, the Petitioner testified that trial counsel was ineffective for failing to challenge the affidavit of complaint in support of the warrant for his arrest on grounds that it was “void ab inertia.” The Petitioner’s primary claims seemed to be the Memphis Police Department’s use of a “48-hour hold” and the qualifications of the judicial commissioner who purportedly signed the warrant. Trial counsel did not testify. Second post-conviction counsel made no specific argument with regard to the issues raised but merely asked the post-conviction court to take “everything that was said . . . into consideration.”

The post-conviction court denied relief via written order. As is relevant to this appeal,³ the post-conviction court found that trial counsel did not perform deficiently by failing to present Ms. McLemore as a witness at trial because nine years’ effort by the State and the Petitioner’s various attorneys had failed to uncover her location. The post-conviction court specifically found that Mr. Blakely was not a credible witness and that his account of the encounter with Ms. McLemore was also lacking credibility. The court concluded that, given the fact that no one had been able to locate the witness in nine years and that Mr. Blakely was the only person with whom Ms. McLemore had ever actually communicated, there was no proof “that she ever even existed.” The trial court also found that trial counsel was not deficient for failing to raise any issue with regard to the Petitioner’s arrest or the affidavit of complaint in support of his arrest because his valid indictment cured all the alleged issues.

Analysis

On appeal, the Petitioner asserts that he was deprived of the effective assistance of counsel at trial. The State contends that this court should dismiss the appeal because the Petitioner’s brief does not comply with procedural requirements. In the alternative, the State contends that the post-conviction court did not err by denying relief.

³ We will not recount the post-conviction court’s findings regarding issues presented below that qualify as waived or previously determined under the terms of the Post-Conviction Procedure Act or those claims that, although cognizable in a post-conviction proceeding, were not supported by proof at the evidentiary hearing.

I. Waiver

As an initial matter, we must address the State's claims regarding the Petitioner's brief. The State contends that the Petitioner has waived consideration of the single issue presented on appeal, whether he was deprived of the effective assistance of counsel at trial, by failing to cite the record below at any point in his brief. The State also notes that the argument section of the Petitioner's brief is "almost verbatim the argument section of" *Taylor v. State*, No. W2025-01087-CCA-R3-PC, and *Bass v. State*, No. W2025-01757-CCA-R3-PC, both of which are currently pending before this court.

We agree with the State that the Petitioner's brief does not comply with the requirements of Rule 27 in several respects.⁴ He has failed to include a summary of the facts from the post-conviction hearing and has included in his statement of facts a single sentence adopting this court's recitation of facts from the Petitioner's trial. *See* Tenn. R. App. P. 27(a)(6) (providing that the appellant's brief "shall contain" a statement of the facts of the case "relevant to the issues presented for review with appropriate references to the record"). The argument portion of his brief contains citations to relevant authorities but does not include an explanation of how those authorities apply to his case. *See* Tenn. R. App. P. 27(a)(7) (providing that the argument section of the appellant's brief "shall contain" the appellant's assertions as to the issues raised "and the reasons therefor . . . including the reasons why the contentions require appellate relief, with citations to the authorities and appropriate references to the record"). Moreover, as the State correctly observes, he has copied the argument section from other briefs before this court and, in consequence, has included information that is both irrelevant and inapplicable to this case. For example, he argues that trial counsel performed deficiently by failing to object to the collection of the Petitioner's DNA and that he was prejudiced by the deficiency because the DNA evidence "was key to his conviction." No DNA evidence was presented in the Petitioner's case. *See Person*, 2014 WL 2159545, at *1-9. Based upon these deficiencies, we conclude that these claims are waived.

Waiver notwithstanding, the Petitioner's claim of ineffective assistance of counsel, which was fully litigated in the post-conviction court, is straightforward, and the record contains the original post-conviction petition, transcripts from both evidentiary hearings, and the comprehensive findings of the post-conviction court related to the claim. *See DiNovo v. Binkley*, 706 S.W.3d 334, 336 (Tenn. 2025) (noting that finding waiver for failing to comply with procedural rules regarding the contents of briefs generally involves "egregious errors that prejudice the opposing party, force the court to act as a party's counsel, or otherwise significantly frustrate the court's ability to decide an appeal"). The record before us is sufficient to examine the claims made by the Petitioner in the post-

⁴ Counsel is reminded that Rule 27 requires accurate and complete briefing. *See also* Tenn. Sup. Ct. R. 8, R.P.C. 1.1.

conviction court, had we not found them waived. We will, therefore, discuss the claim of ineffective assistance of counsel. *See DiNovo*, 706 S.W.3d at 336 (stating that although “litigants have an obligation to file briefs that comply with all applicable rules,” “the overall intent of the appellate rules is ‘to disregard technicality in form in order to determine every appellate proceeding on its merits’” (quoting *Trezevant v. Trezevant*, 696 S.W.3d 527, 530 (Tenn. 2024))).

II. Ineffective Assistance of Counsel

The only two issues related to trial counsel’s performance that were raised in either the original or amended petition, litigated in the evidentiary hearing, and addressed by the post-conviction court are counsel’s failure to locate and present the testimony of Ms. McLemore and her failure to raise any issue related to the Petitioner’s arrest.

Both the state and federal constitutions guarantee the right to counsel, *see* U.S. Const. amend. VI (“In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defen[s]e.”); Tenn. Const. art. 1, § 9 (“That in all criminal prosecutions, the accused hath the right to be heard by himself and his counsel[.]”). These provisions “envision[] counsel’s playing a role that is critical to the ability of the adversarial system to produce just results,” and, accordingly, “the right to counsel is the right to the effective assistance of counsel.” *Strickland v. Washington*, 466 U.S. 668, 685-86 (1984) (quoting *McMann v. Richardson*, 397 U.S. 759, 771, n. 14 (1970)). To prevail on a claim that he or she has been denied the constitutional right to the effective assistance of counsel, the petitioner must establish “both that counsel’s performance was deficient and that counsel’s deficient performance prejudiced the defense.” *Kendrick v. State*, 454 S.W.3d 450, 457 (Tenn. 2015) (first citing *Strickland*, 466 U.S. at 687; and then *Felts v. State*, 354 S.W.3d 266, 276 (Tenn. 2011)). Because the right to the effective assistance of counsel is constitutionally guaranteed, the denial of the effective assistance of counsel may be raised in a petition for post-conviction relief. *See Phillips v. State*, 647 S.W.3d 389, 401 (Tenn. 2022) (citing *Mobley v. State*, 397 S.W.3d 70, 79-80 (Tenn. 2013)).

To obtain relief on a claim of ineffective assistance of counsel, the petitioner must prove that “the advice given, or the services rendered by the attorney, are [not] within the range of competence demanded of attorneys in criminal cases,” *see Baxter v. Rose*, 523 S.W.2d 930, 936 (Tenn. 1975), and “that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different,” *Strickland*, 466 U.S. at 694. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. This means that “the petitioner is required to prove the *fact* of counsel’s alleged error by clear and convincing evidence” and that the post-conviction court determines from the factual showing whether the alleged “error ‘fell below an objective standard of reasonableness[]’ and

whether the error raised ‘a reasonable probability . . . that the result of the proceedings would have been different.’” *Phillips*, 647 S.W.3d 401 (quoting *Dellinger v. State*, 279 S.W.3d 282, 294 (Tenn. 2009)) (emphasis in *Dellinger*). “A court need not address both requirements if the [petitioner’s] proof fails to support either prong.” *Howard v. State*, 604 S.W.3d 53, 57-58 (Tenn. 2020) (first citing *Strickland*, 466 U.S. at 687; and then *Goad v. State*, 938 S.W.2d 363, 370 (Tenn. 1996)).

Our analysis of counsel’s performance “begins with the strong presumption that counsel provided adequate assistance and used reasonable professional judgment to make all significant decisions.” *Kendrick*, 454 S.W.3d at 458 (Tenn. 2015) (citing *Strickland*, 466 U.S. at 689). “The petitioner bears the burden of overcoming this presumption.” *Id.* (citing *Strickland*, 466 U.S. at 697); *see also Goad*, 938 S.W.2d at 370. This court will not second-guess a reasonable trial strategy and will not grant relief on the basis of a sound, but unsuccessful, tactical decision made after adequate preparation. *See Adkins v. State*, 911 S.W.2d 334, 347 (Tenn. Crim. App. 1994); *Cooper v. State*, 847 S.W.2d 521, 528 (Tenn. Crim. App. 1992); *see also Strickland*, 466 U.S. at 691 (stating that “[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment”). We do not view the Petitioner’s claim through the lens of hindsight but, instead, “evaluate the conduct from counsel’s perspective at the time.” *Phillips*, 647 S.W.3d at 407 (quoting *Strickland*, 466 U.S. at 689).

“Appellate review of an ineffective assistance of counsel claim is a mixed question of law and fact,” and our review is de novo, granting a presumption of correctness to the post-conviction court’s findings of fact but not its conclusions of law. *Phillips*, 647 S.W.3d at 400 (citations omitted).

As to trial counsel’s failure to call Ms. McLemore, the record fully supports the post-conviction court’s finding that despite near Herculean efforts, no one had ever been able to locate Ms. McLemore. Certainly, the Petitioner did not present Ms. McLemore as a witness at the evidentiary hearing. *See Black v. State*, 794 S.W.2d 752, 757 (Tenn. Crim. App. 1990) (“When a petitioner contends that trial counsel failed to discover, interview, or present witnesses in support of his defense, these witnesses should be presented by the petitioner at the evidentiary hearing.”). Trial counsel can hardly be faulted for failing to find a witness that no other person had been able to find and whose existence was supported only by the statement of Mr. Blakely, whom the trial court deemed incredible. The Petitioner is not entitled to relief on this issue.

As to the Petitioner’s claim that trial counsel was deficient for failing to raise any issue with regard to his arrest—including assertions that she should have challenged the probable cause for his arrest, the perceived procedural deficiencies in the arrest warrant, or his being placed on a “48-hour hold” prior to being formally placed under arrest—we

agree with the trial court that the valid indictment charging the Petitioner cured any issues related to his arrest. *See, e.g., Logan v. Vantell*, No. W2022-01413-CCA-R3-HC, 2023 WL 4014725, at *2 (Tenn. Crim. App. June 15, 2023) (“It is well-settled that a valid indictment cures any defect in the underlying arrest warrant.” (citing *State v. Campbell*, 641 S.W.2d 890, 893 (Tenn. 1982))). The Petitioner is not entitled to relief on this issue.

Conclusion

Based upon the foregoing, we affirm the judgment of the post-conviction court.

s/ *Stacy L. Street*

STACY L. STREET, JUDGE