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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

MARK BONCZ,
Petitioner-Appellant,
vs.
STATE OF IDAHO,
Respondent.

No. 41597
Bonner Co. Case No.
CV-2012-297

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF BONNER

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District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Mark Boncz appeals from the summary dismissal of his petition for post-conviction relief.

Statement Of The Facts And Course Of The Proceedings

A grand jury indicted Boncz on one count of lewd conduct with a child under the age of sixteen. (R., p.129.) After a bench trial, the district court found that Boncz was guilty of the crime. (R., pp.108, 129.) On March 12, 2010, the district court entered judgment against Boncz and sentenced him to a unified term of life imprisonment with 15 years fixed. (R., pp.108, 129-30.) Boncz did not file an appeal from the judgment.¹ The judgment, therefore, became final on April 23, 2010.

Almost two years later, in February 2012, Boncz filed his petition for post-conviction relief.² (R., pp.15-25.) Six months later, in August, he filed an amended petition for post-conviction relief, in which he alleged ineffective assistance of counsel resulting in an illegal indictment and lack of a thorough defense. (R., pp.68-71.) The state filed a motion for summary dismissal on the basis that Boncz had failed to make a *prima facie* claim of ineffective assistance of counsel. (R., pp.75-81.)

¹ While Boncz did file a Rule 35 motion and appeal from the district court's subsequent denial of that motion, that appeal cannot serve as an appeal from the judgment. State v. Mosqueda, 123 Idaho 858, 859, 853 P.2d 603, 604 (Ct. App. 1993).

² Clearly Boncz's petition for post-conviction relief was not timely. See I.C. § 19-4902 ("An application may be filed at any time within one (1) year from the expiration of the time for appeal..."). However, as the statute of limitations issue was not discussed below, the state will not address it further in this appeal.

Later, Boncz filed a second amended petition for post-conviction relief, alleging ineffective assistance of counsel and a deprivation of his “5th, 6th, and 14th Amendment rights to a fair trial and due process of law,” both on the identical grounds that “counsel should have hired an expert on my behalf, and I should have been permitted to testify.” (R., pp.107-09.) The state renewed its motion for summary dismissal. (R., p.115.)

The district court held a hearing on the state’s motion. (R., pp.127-28; see also Tr.) At the hearing, Boncz’s counsel clarified that they were withdrawing the claims relating to the grand jury and focusing on Boncz’s not being able to testify. (Tr., p.11, L.15 – p.12, L.22.) The district court took the matter under advisement and ultimately granted the state’s motion for summary dismissal (R., pp.129-36), and dismissed Boncz’s petition (R., p.159). Boncz filed a timely notice of appeal. (R., pp.140-42.)

ISSUE

Boncz states the issue on appeal as:

Did the district court err when it concluded, against the uncontradicted evidence, that summary dismissal was appropriate as to the claims that Mr. Boncz was deprived of his constitutional right to testify at trial and received ineffective assistance of counsel when his attorney did not permit him to testify?

(Appellant's brief, p.4.)

The state rephrases the issue as:

Has Boncz failed to show error in the district court's summary dismissal of his petition for post-conviction relief?

ARGUMENT

Boncz Has Failed To Show Error In The District Court's Summary Dismissal Of His Petition For Post-Conviction Relief

A. Introduction

In his second amended post-conviction petition, Boncz asserted that he was entitled to relief because, he argued, his attorney “should have hired an expert on [his] behalf, and [he] should have been permitted to testify.” (R., pp.107-09.) The district court summarily dismissed those claims. (R., pp.129-36.) Boncz asserts that the district court erred by dismissing his post-conviction petition. (Appellant’s brief, pp.5-14.) However, application of the correct legal standards to the facts of this case shows that summary dismissal was proper.

B. Standard Of Review

“On review of a dismissal of a post-conviction relief application without an evidentiary hearing, this Court will determine whether a genuine issue of fact exists based on the pleadings, depositions and admissions together with any affidavits on file” Workman v. State, 144 Idaho 518, 523, 164 P.3d 798, 803 (2007) (citing Gilpin-Grubb v. State, 138 Idaho 76, 80, 57 P.3d 787, 791 (2002)).

C. Boncz Is Not Entitled To Post-Conviction Relief

Post-conviction proceedings are governed by the Uniform Post-Conviction Procedure Act. I.C. § 19-4901, *et seq.* A petition for post-conviction relief initiates a new and independent civil proceeding in which the petitioner bears the burden of establishing that he is entitled to relief. Workman, 144 Idaho at 522, 164 P.3d at 802; State v. Bearshield, 104 Idaho 676, 678, 662 P.2d 548, 550 (1983). Generally, the

Idaho Rules of Civil Procedure apply to petitions for post-conviction relief. Pizzuto v. State, 146 Idaho 720, 724, 202 P.3d 642, 646 (2008). However, unlike other civil complaints, in post-conviction cases the “application must contain much more than a short and plain statement of the claim that would suffice for a complaint under I.R.C.P. 8(a)(1).” Monahan v. State, 145 Idaho 872, 875, 187 P.3d 1247, 1250 (Ct. App. 2008) (quoting Goodwin v. State, 138 Idaho 269, 271, 61 P.3d 626, 628 (Ct. App. 2002)). Instead, the application must be supported by a statement that “specifically set[s] forth the grounds upon which the application is based.” Id. (citing I.C. § 19-4903). “The application must present or be accompanied by admissible evidence supporting its allegations, or the application will be subject to dismissal.” State v. Payne, 146 Idaho 548, 561, 199 P.3d 123, 136 (2008) (citing I.C. § 19-4903).

Idaho Code § 19-4906(c) authorizes summary dismissal of an application for post-conviction relief in response to a party’s motion. “To withstand summary dismissal, a post-conviction applicant must present evidence establishing a *prima facie* case as to each element of the claims upon which the applicant bears the burden of proof.” State v. Lovelace, 140 Idaho 53, 72, 90 P.3d 278, 297 (2003) (citing Pratt v. State, 134 Idaho 581, 583, 6 P.3d 831, 833 (2000)). Thus, a claim for post-conviction relief is subject to summary dismissal “if the applicant’s evidence raises no genuine issue of material fact” as to each element of the petitioner’s claims. Workman, 144 Idaho at 522, 164 P.3d at 802 (citing I.C. § 19-4906(b), (c)); Lovelace, 140 Idaho at 72, 90 P.3d at 297. While a court must accept a petitioner’s un rebutted allegations as true, the court is not required to accept either the applicant’s mere conclusory allegations, unsupported by admissible evidence, or the applicant’s conclusions of law. Workman, 144 Idaho at 522, 164 P.3d

at 802 (citing Ferrier v. State, 135 Idaho 797, 799, 25 P.3d 110, 112 (2001)). “Allegations contained in the application are insufficient for the granting of relief when (1) they are clearly disproved by the record of the original proceedings, or (2) do not justify relief as a matter of law.” Id.

Articulating and applying relevant legal standards, the district court addressed and dismissed the claims and assertions contained in Boncz’s second amended petition for post-conviction relief and supporting affidavit. The state adopts as part of its argument on appeal the district court’s detailed legal analysis, found at pages 4-8 of its “Opinion and Order on State’s Motions for Summary Disposition,” a copy of which is attached as “Appendix A.”

On appeal, Boncz does not challenge the dismissal of his claim that his attorney should have hired an expert. (Appellant’s brief, p.9, n.7.) Because Boncz does not challenge the dismissal of this claim on appeal, the district court’s order regarding this claim should be affirmed. Instead, Boncz confines his arguments on appeal to his claim that he “should have been permitted to testify.” (Appellant’s brief, pp.5-14.) Primarily, he argues that the district court “failed to perceive Mr. Boncz’s claim that he was deprived of his constitutional right to testify as separate and distinct from his claim of ineffective assistance of counsel with respect to his attorney’s refusal to call him to testify.” (Id., p.5.) He also asserts that he made the necessary showing of prejudice to survive summary dismissal of his ineffective assistance of counsel claim. (Id., pp.10-14.) Both arguments fail.

The failure of a defendant to testify may be examined in post-conviction either as a claim of deprivation of a constitutional right, or as a claim of ineffective assistance of

counsel. Rossignol v. State, 152 Idaho 700, 706, 274 P.3d 1, 7 (Ct. App. 2012) (citations omitted). Where the issue is viewed as a deprivation of a constitutional right, the defendant bears the burden of establishing that he was deprived of a constitutional right and the state bears the burden of showing that the deprivation was harmless. Id. at 704, 274 P.3d at 5 (citing State v. Darbin, 109 Idaho 516, 522, 708 P.2d 921, 927 (Ct. App. 1985)). Where the issue is viewed as a claim of ineffective assistance of counsel, it is analyzed under the Strickland³ standard, requiring the defendant to identify both his counsel's deficient performance and resultant prejudice. Id.

Contrary to Boncz's arguments, the district court did recognize that Boncz was attempting to raise his "should have been permitted to testify" claim both as an assertion that he was deprived of a constitutional right and as an assertion of ineffective assistance of counsel. (See R., p.132.) The district court first addressed Boncz's claim that he was deprived of his constitutional right to testify and found that it was unsupported by the record. (R., p.133.) At sentencing, when given the opportunity to allocute, Boncz "went on at some length" informing "the trial judge of the many errors he believed were committed by his trial counsel." (Id.) Boncz never claimed, however, that he was prevented from testifying. (Id.) Because there was no evidence supporting Boncz's claim that he was deprived of the right to testify, the district court correctly dismissed that claim.

Even if the district court had failed to distinguish the two claims, that would not impact the ultimate outcome in this case. The only relevant difference between the two standards is, assuming that Boncz had shown an affirmative deprivation of his right to

³ Strickland v. Washington, 466 U.S. 668 (1984).

testify (which he did not), the state would have the burden of establishing the absence of prejudice. But in this case the district court did not merely find that Boncz had failed to show prejudice; it found that there was no prejudice. (R., pp.133-34.)

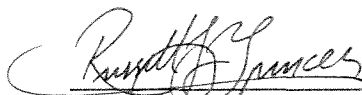
Boncz asserts that he made a *prima facie* showing of prejudice because he claimed in his affidavit that, in addition to denying that he committed the crime, he would have disputed irrelevant facts, such as the location of his bed in relation to his trailer. (Appellant's brief, p.13; R., pp.102-03.) Boncz would not, however, have offered any exonerating testimony. (R., pp.133-34.) Because Boncz received a bench trial, the district court was in the unique position of being able to say with certainty whether Boncz's proffered testimony would have affected the verdict. The court determined that, even had he testified, nothing in Boncz's affidavit would have changed the outcome of this case. (R., p.136.) Therefore, there was no prejudice.

The district court correctly dismissed Boncz's petition for post-conviction relief because Boncz failed to show that he was deprived of his constitutional right to testify at his bench trial and because, assuming deficient performance, Boncz was not prejudiced by not testifying at his bench trial. The district court's order summarily dismissing Boncz's untimely petition for post-conviction relief should be affirmed.

CONCLUSION

The state respectfully requests that this Court affirm the district court's order summarily dismissing Boncz's petition for post-conviction relief.

DATED this 26th day of September, 2014.




RUSSELL J. SPENCER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 26th day of September, 2014, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

ERIC D. FREDERICKSEN
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.



RUSSELL J. SPENCER
Deputy Attorney General

RJS/pm

APPENDIX A

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

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CLERK DISTRICT COURT

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CLERK DISTRICT COURT

BY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

MARK BONCZ,)
)
 Petitioner,)
)
 v.)
)
 STATE OF IDAHO,)
)
 Respondent.)

CASE NO. CV12-00297

OPINION AND ORDER
ON STATE'S MOTIONS FOR
SUMMARY DISPOSITION

This matter is before the Court on the State of Idaho's Motion for Summary Dismissal of Mark Boncz's Second Amended Petition for Post-Conviction Relief. The Court, having read the Petition, affidavit, briefs of the parties, having reviewed transcripts of the grand jury proceeding, the court trial, and sentencing, and being fully advised in the matter, hereby renders its decision.

FACTUAL AND PROCEDURAL BACKGROUND

Mark Boncz was indicted by a grand jury on one count of lewd conduct with a minor under sixteen years of age in violation of I.C. § 18-508. A court trial was held in the matter and, after hearing testimony from witnesses, Boncz was found guilty of the charge. On March 12, 2010, Boncz was sentenced to the custody of the Idaho State Board of Correction for a unified

life sentence, with a fixed period of incarceration of not less than fifteen (15) years. On July 6, 2010, Boncz filed a Motion for Reduction of sentence, which was denied by the trial court on July 27, 2010. Boncz filed an appeal of the denial of his Rule 35 Motion for Reduction of Sentence. However, his sentence was affirmed in an unpublished opinion entered September 7, 2011 by the Idaho Court of Appeals. Boncz then filed the above-entitled Petition for Post-Conviction Relief, an Amended Petition for Post-Conviction Relief, and a Second Amended Petition for Post-Conviction Relief. The State subsequently filed a Motion for Summary Dismissal.

POST-CONVICTION RELIEF STANDARD

Under the Uniform Post-Conviction Procedure Act, a person sentenced for a crime may seek relief upon making one of the following claims:

- (1) That the conviction or the sentence was in violation of the constitution of the United States or the constitution or laws of this state;
- (2) That the court was without jurisdiction to impose sentence;
- (3) That the sentence exceeds the maximum authorized by law;
- (4) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
- (5) That his sentence has expired, his probation, or conditional release was unlawfully revoked by the court in which he was convicted, or that he is otherwise unlawfully held in custody or other restraint;
- (6) Subject to the provisions of section 19-4902(b) through (f), Idaho Code, that the petitioner is innocent of the offense; or
- (7) That the conviction or sentence is otherwise subject to collateral attack upon any ground or alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding, or remedy.

I.C. § 19-4901(a).

Petitions for post-conviction relief are a special proceeding distinct from the criminal action that led to the petitioner's conviction. *Sanchez v. State*, 127 Idaho 709, 711, 905 P.2d 642 (Ct.App.1995). "An application for post-conviction relief initiates a proceeding which is civil in

nature." *Fenstermaker v. State*, 128 Idaho 285, 287, 912 P.2d 653 (Ct.App.1995). However, unlike an ordinary civil action that requires only a short and plain statement of the claim, an application for post-conviction relief "must be verified with respect to facts within the personal knowledge of the applicant, and affidavits, records or other evidence supporting its allegations must be attached, or the application must state why such supporting evidence is not included with the petition. I.C. § 19-4903." *Fenstermaker* at 287.

A petitioner in an application for post-conviction relief bears the burden of pleading and proof imposed upon a civil plaintiff. "Thus, an applicant must allege, and then prove by a preponderance of the evidence, the facts necessary to establish his claim for relief." *Martinez v. State*, 125 Idaho 844, 846, 875 P.2d 941 (Ct.App.1994). A petition for post-conviction relief "may be filed at any time within one (1) year from the expiration of the time for appeal or from the determination of an appeal or from the determination of a proceeding following an appeal, whichever is later." I.C. § 19-4902(a).

Under I.C. § 19-4906, summary disposition of a petition for post-conviction relief may occur upon motion of a party or upon the court's own initiative. However, "[s]ummary dismissal is permissible only when the applicant's evidence has raised no genuine issue of material fact which, if resolved in the applicant's favor, would entitle the petitioner to the requested relief." *Fenstermaker* at 287. "If the application raises material issues of fact, the district court must conduct an evidentiary hearing and make specific findings of fact on each issue." *Sanchez* at 711. "It is also the rule that a conclusory allegation, unsubstantiated by any fact, is insufficient to entitle a petitioner to an evidentiary hearing." *Baruth v. Gardner*, 110 Idaho 156, 159, 715 P.2d 369 (Ct.App.1986).

ANALYSIS

Petitioner's Second Amended Petition seeks post-conviction relief based on claims of ineffective assistance of counsel and violations of his 5th, 6th, and 14th Amendment rights to a fair trial and due process of law. Specifically, Petitioner contends trial counsel did not allow him to testify in his own defense at trial and trial counsel was ineffective by failing to hire an expert to testify on his behalf.

This Court has "adopted the *Strickland* two-prong test to evaluate whether a criminal defendant received effective assistance of counsel." *Dunlap III*, 141 Idaho 50, 59, 106 P.3d 376, 385 (2004) (citing *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Mathews*, 133 Idaho 300, 306, 986 P.2d 323, 329 (1999)). In order to survive a motion for summary dismissal, post-conviction relief claims based upon ineffective assistance of counsel must establish "the existence of material issues of fact as to whether: (1) counsel's performance was deficient, and (2) that deficiency prejudiced appellant's case." *Kelly v. State*, 149 Idaho 517, 522, 236 P.3d 1277, 1282 (2010) (citing *Saykhamchone*, 127 Idaho at 323, 900 P.2d at 799). To prove deficient performance, the appellant "must show the attorney's representation fell below an objective standard of reasonableness." *Dunlap III*, 141 Idaho at 59, 106 P.3d at 385 (citing *Gilpin-Grubb v. State*, 138 Idaho 76, 81, 57 P.3d 787, 792 (2002)). To demonstrate prejudice, the appellant "must show a reasonable probability that, but for the attorney's deficient performance, the outcome of the trial would have been different." *Id.* " 'A reasonable probability is a probability sufficient to undermine confidence in the outcome.' " *Cullen v. Pinholster*, — U.S. —, 131 S.Ct. 1388, 1403, 179 L.Ed.2d 557 (2011) (quoting *Strickland*, 466 U.S. at 694). This "requires a 'substantial, not just 'conceivable,' likelihood of a different result.'" *Id.* (quoting *Harrington v. Richter*, — U.S. —, 131 S.Ct. 770, 791, 178 L.Ed.2d 624 (2011)).

The appellant must also overcome "a strong presumption that trial counsel was competent and that trial tactics were based on sound legal strategy." *Dunlap III*, 141 Idaho at 58–59, 106 P.3d at 384–85 (citing *Strickland*, 466 U.S. at 689; *Mathews*, 133 Idaho at 306, 986 P.2d at 329). "A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." *Strickland*, 466 U.S. at 689. Thus, strategic decisions are "virtually unchallengeable" if made after a "thorough investigation of the law and facts relevant to plausible options...." *Id.* at 690–91. Decisions "made after less than complete investigation" are still reasonable to the extent "that reasonable professional judgments support the limitations on investigation." *Id.* Counsel is permitted to develop a strategy

"that was reasonable at the time" and may "balance limited resources in accord with effective trial tactics and strategies." *Richter*, — U.S. —, 131 S.Ct. at 789, 178 L.Ed.2d 624.

State v. Dunlap, — P.3d —, 2013 WL 4539806 (2013).

Petitioner claims he wanted to testify at trial, but was prevented from doing so by his trial counsel. The Court, after reviewing a transcript of the trial, notes that at the time defense counsel informed the court it was resting, the court made no inquiry of Boncz to insure he understood he had the right to testify, but was not required to testify. While it is helpful when a court creates a clear record by asking a defendant if he has consulted with his attorney and has decided not to testify, in the instant matter this Court finds the sentencing transcript helpful in addressing the issue. Prior to imposing sentence, the trial judge asked Petitioner Boncz if he had anything he wanted to say. With that invitation, Boncz went on at some length. In addition to his efforts to discredit the testimony of witnesses, Boncz informed the trial judge of the many errors he believed were committed by his trial counsel. Conspicuously missing from Boncz's accusations of ineffective assistance of counsel was any statement to the trial court that he was prevented from testifying by his attorney.

In order to survive the State's Motion for Summary Dismissal, Petitioner Boncz must show the existence of material issues of fact as to whether: (1) counsel's performance was deficient, and (2) that deficiency prejudiced appellant's case. Petitioner claims he wanted to testify but was prevented from doing so by his counsel, which is a material issue of fact as to whether trial counsel's representation was deficient. However, Petitioner has failed to meet the second prong of the *Strickland* test, which is to show the existence of material issues of fact that he was prejudiced by not being allowed to testify. During his statement to the court at sentencing, Petitioner Boncz provided the court with no exculpatory facts or evidence not

produced at trial. The same is true of his Petition, as Boncz offers the Court no exculpatory facts not already presented at trial.

Petitioner suggests in his Petition that his trial counsel failed to present an alternate perpetrator theory to the court, but he offers no facts that support such a theory nor does the trial transcript support Boncz's theory. There was evidence presented to the court that the young victim disclosed two separate events. The first event described by the victim involved Petitioner Boncz. The second event she described involved a thwarted attempt by a different individual that occurred several months after the event involving Petitioner. The victim was very clear in differentiating the two events and was clear who the perpetrator was in each event.¹ Petitioner Boncz has presented no new facts that bring into doubt the facts presented at trial or that support in any way his theory that an alternate perpetrator defense should have been presented. Rather, he merely asserts his trial counsel should have pursued an alternate perpetrator theory despite the lack of facts or evidence in support of such a theory.

Next, Petitioner Boncz asserts his trial counsel was ineffective by failing to hire an expert to testify in his defense. "Under the second prong of the *Strickland* test for ineffective assistance of counsel, a showing of prejudice requires more than mere speculation about what an expert witness may have said if trial counsel employed them. *Raudebaugh v. State*, 135 Idaho 602, 605, 21 P.3d 924, 927 (2001)." *Self v. State*, 145 Idaho 578, 581, 181 P.3d 504 (Ct.App.2007).

To justify an evidentiary hearing in a post-conviction relief proceeding, it is incumbent on the applicant to tender written statements from potential witnesses who are able to give testimony themselves as to facts within their knowledge. *Drapeau v. State*, 103 Idaho 612, 617, 651 P.2d 546, 551 (Ct.App.1982). It is not enough to simply allege that an expert should have been secured without providing, through affidavits, evidence of the substance of the expert's testimony. *Hall v. State*, 126 Idaho 449, 453, 885 P.2d 1165, 1169 (Ct.App.1994). Absent an affidavit from the expert explaining what he or she would have testified to, or

¹ Trial Tr. p. 103.

some other verifiable information about what the substance of the expert's testimony would have been, an applicant fails to raise a genuine issue of material fact. *See generally Drapeau*, 103 Idaho at 617, 651 P.2d at 551.

Self v. State, 145 Idaho 578, 581, 181 P.3d 504 (Ct.App.2007).

Petitioner Boncz has presented no affidavit from an expert setting forth the substance of such expert's testimony if called to testify before the Court at an evidentiary hearing. Petitioner Boncz has failed to meet his burden on this issue, having failed to present sufficient evidence to meet the *Strickland* two prong test.

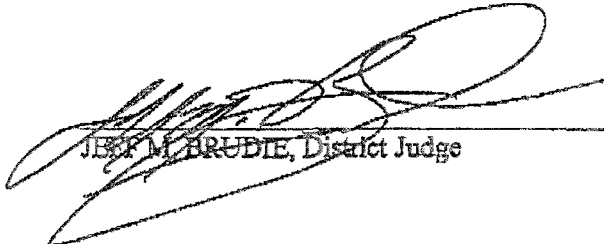
The remaining claims of ineffective assistance of counsel presented in Petitioner's Affidavit in Support of his Second Amended Petition are issues related to trial strategy. Petitioner alleges trial counsel failed to object to inadmissible hearsay evidence, failed to impeach the testimony of witnesses, and failed to cross examine the victim regarding inconsistent testimony. Petitioner, however, offers no facts that would have allowed his trial counsel to impeach testimony that was presented, articulates no specific hearsay evidence that was wrongly admitted because his trial counsel failed to object, and he fails to direct the Court to any inconsistent statements by the victim at trial. Petitioner Boncz presented this Court with no facts that support a finding that his trial attorney's representation fell below an objective standard of reasonableness, nor has he demonstrated that there is a reasonable probability that, but for trial counsel's deficient performance, the outcome of the trial would have been different. In the instant matter, a court trial was held. After the attorneys gave their closing arguments, but before announcing his decision in the case, the trial judge listed the elements the State was required to prove, defined reasonable doubt, discussed the inconsistencies in the evidence, made note of the limited assistance he received from the expert testimony, and explained the weight that he gave

to the victim's testimony and why.² Petitioner Boncz offers this Court no new evidence that has a reasonable probability of undermining the outcome of the trial, offers no evidence of any specific failure on the part of his trial attorney that has a reasonable probability of changing the outcome of the trial, and offers the Court no affidavit of an expert regarding testimony that would be presented at an evidentiary hearing. Petitioner Boncz has simply failed to offer this Court anything more than mere speculation that, but for the alleged ineffective assistance of his trial counsel, there is a reasonable probability that the outcome of the trial would have been different.

ORDER

The State's Motion for Summary Dismissal is hereby GRANTED.

Dated this 2 day of October 2013.



JEFF M. BRUDIE, District Judge

² Trial Tr. pp. 290-296.