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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1892**

Samuel Johosephat Taylor, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed November 26, 2018
Affirmed
Hooten, Judge**

Hennepin County District Court
File No. 27-CR-12-8727

Samuel Taylor, Bayport, Minnesota (pro se appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Brittany D. Lawonn, Assistant County
Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Halbrooks, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

In this appeal from the denial of his postconviction petition, appellant argues that
the postconviction court abused its discretion by determining that his trial attorney's

conflict of interest, because of a sexual encounter with appellant's wife, did not render his representation ineffective. We affirm.

FACTS

On March 14, 2012, a taxicab driver was shot and killed in north Minneapolis after responding to a call for a cab. Witnesses heard a gunshot and saw the victim stumble out of his car before collapsing to the ground. Forensic evidence showed that the shooting took place inside the victim's taxicab, though there were no bullet casings in the car. This indicated to police that the victim was likely shot with a revolver. Witnesses told police that upon hearing a gunshot, they saw an African-American man, whom they described as 6' to 6'3" tall with short, probably braided, hair wearing a white shirt and dark pants. The witnesses saw the man exit the taxi's rear passenger door with his right hand on a gun and flee the scene on foot.

Police went to the address where the taxi had been dispatched to pick up the victim and interview the residents. They discovered that a cell phone belonging to one of the residents was the phone used to request the taxi. Upon further questioning, one of the residents, D.M., told police that appellant Samuel Johosephat Taylor had called twice for a taxi, had been wearing a white shirt and dark blue jeans, owned a revolver, and had gotten into the victim's taxicab by himself. D.M. also told police that Taylor had used drugs and alcohol that night. Police also intercepted a call between D.M. and his sister, T.M., wherein his sister, upon being confronted by D.M., admitted that she witnessed D.M. and Taylor standing outside the house, observed Taylor using a cellphone to call the taxicab, and saw Taylor walking to the taxicab as she was leaving.

The next day, one of the eyewitnesses identified Taylor in a photo lineup as the person he had seen fleeing the victim's taxicab. A confidential informant also told police that on the night of the murder, Taylor admitted to shooting the victim and that he may have disposed of the murder weapon.

A few days later, police learned of Taylor's girlfriend. Over the course of several interviews, Taylor's girlfriend, who became his wife prior to trial, stated that she had dropped Taylor off near the house where the taxicab had been dispatched approximately three hours before the murder. Later that night, Taylor called her. During the call, he was breathing heavily as though he had been running. He explained that he was panicking, had done something bad, and demanded she pick him up. She refused. She later saw Taylor at a nightclub, noted that he had changed his appearance by taking out his braids, and that his hands smelled like bleach. While at the nightclub, Taylor told her that he shot someone during an attempted robbery. She also told police that Taylor had admitted to shooting a man in the back, even though the fact that the victim had been shot in the back was not yet public.

On March 22, 2012, the Hennepin County Attorney's Office charged Taylor with second-degree murder. Following a grand jury indictment, the state amended the complaint to add a charge of first-degree murder as well. Following this amendment, Taylor and his family decided to retain William Keith Bulmer II to represent Taylor with the understanding that Bulmer would receive a retainer of \$1,000 plus periodic payments

under an installment plan.¹ Sometime in December of 2012, Taylor’s wife was unable to pay Bulmer an installment payment. Taylor’s wife testified at the evidentiary hearing that she and Bulmer worked out an arrangement wherein she performed an exotic dance and had sex with him in lieu of the installment payment. Bulmer admitted to the sexual encounter but denied that the sex was in exchange for payment.²

Around this same time, the state made an offer to Taylor that if he pleaded guilty to second-degree intentional murder, the state would dismiss the first-degree murder charge. Bulmer filed notices to present alibi and alternative perpetrator defenses (together the “alternate defenses”) with the district court. In response, the state re-opened its investigation and developed additional evidence to rebut these defenses. Specifically, police obtained additional witness statements, DNA test results, and cell phone records relating to the murder. All of this evidence tended to incriminate Taylor and exculpate the supposed alternative perpetrator. The state also informed Bulmer that it intended to move to prevent Taylor from offering the alternate defenses and would revoke its proposed offer for Taylor to plead guilty to second-degree intentional murder if Taylor opposed this motion at a contested hearing. Bulmer advised Taylor to drop the alternate defenses and take the state’s offer, and Taylor pleaded guilty to second-degree intentional murder.

¹ While there is some dispute about exactly how much the final fee was and how often payments were supposed to be made, the engagement agreement is not in evidence, and it appears that all parties agree about the basic structure of the agreement.

² For this and other indiscretions, Bulmer received a three-year suspension from the practice of law. *In re Disciplinary Action Against Bulmer*, 899 N.W.2d 183, 185 (Minn. 2017).

Before sentencing, Taylor moved to withdraw his guilty plea because he did not understand the amount of time he would have to serve under the terms of his plea deal. The district court denied the motion, and Taylor appealed to this court for the first time. While the appeal was pending, Taylor first learned of Bulmer's sexual encounter with his wife. A panel of this court affirmed the district court's denial of his motion to withdraw his plea. *State v. Taylor*, No. A13-1299, 2014 WL 3799141, at *3 (Minn. App. Aug. 4, 2014).

Almost three years later, Taylor filed a petition for postconviction relief, claiming Bulmer's sexual encounter with his wife created a conflict of interest that rendered Bulmer's representation ineffective. After an evidentiary hearing, the postconviction court denied Taylor's petition. While the postconviction court found that Bulmer had a conflict of interest because of the sexual encounter with Taylor's wife, it concluded that Bulmer's conflict of interest did not affect his representation of Taylor. This appeal follows.

D E C I S I O N

When reviewing a postconviction court's denial of a claim of ineffective assistance of counsel, "we will consider the court's factual findings that are supported in the record, conduct a de novo review of the legal implication of those facts on the ineffective assistance claim, and either affirm the court's decision or conclude that the district court abused its discretion because postconviction relief is warranted." *State v. Nicks*, 831 N.W.2d 493, 503–04 (Minn. 2013).

The appellant bears the burden of proof when bringing an ineffective-assistance-of-counsel claim. *State v. Miller*, 666 N.W.2d 703, 716 (Minn. 2003). Typically, to succeed

on such a claim, an appellant must “demonstrate that counsel’s representation fell below an objective standard of reasonableness, and that a reasonable probability exists that the outcome would have been different but for counsel’s errors.” *State v. Lahue*, 585 N.W.2d 785, 789 (Minn. 1998) (citing *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984)). But when an appellant alleges that counsel’s effectiveness was undermined by an unobjected-to conflict of interest, he does not need to meet either prong of *Strickland*. See *Cuyler v. Sullivan*, 446 U.S. 335, 350, 100 S. Ct. 1708, 1719 (1980) (holding that a separate standard applies to claims of ineffective assistance of counsel predicated on unobjected-to conflicts of interest). Instead of the typical two-prong analysis, “[a] Sixth Amendment violation can be demonstrated by showing that an actual conflict of interest adversely affected counsel’s performance.” *Cuypers v. State*, 711 N.W.2d 100, 104 (Minn. 2006) (citing *Sullivan*, 446 U.S. at 348, 100 S. Ct. at 1719).³

A. Conflict of Interest

The district court found the unacceptable sexual encounter between Bulmer and Taylor’s wife created an actual conflict of interest between Bulmer and Taylor. While the parties contested this issue before the postconviction court, the state does not specifically

³ There appears to be some conflict regarding the applicability of the lower *Sullivan* standard to cases involving conflicts of interest that are not caused by representation of multiple defendants. See *Mickens v. Taylor*, 535 U.S. 162, 174, 122 S. Ct. 1237, 1245 (2001) (noting with concern the trend of circuit courts “unblinkingly” applying *Sullivan* to “all kinds of alleged attorney ethical conflicts”) (citing *Sullivan*, 446 U.S. at 350, 100 S. Ct. at 1719). However, we apply the lower *Sullivan* standard both because the parties agree the lower *Sullivan* standard should apply, and because the result of this case is the same under either standard.

challenge this finding on appeal. Therefore, we assume without deciding that there was an actual conflict of interest between Bulmer and Taylor.

B. There is Support in the Record for Conclusion that Bulmer’s Conflict of Interest Did Not Affect His Representation.

The postconviction court found that although a conflict existed, there is no evidence that this conflict actually affected Bulmer’s actions in representing Taylor. Taylor argues that Bulmer’s representation was ineffective due to his: (1) pressuring Taylor into pleading guilty; (2) failing to pursue other defenses; and (3) failing to advise Taylor of the conflict of interest.

1. Pressuring Taylor to Plead Guilty

Taylor’s first argument to the postconviction court was that Bulmer pressured him to plead guilty because Bulmer was afraid a trial would expose his affair with Taylor’s wife. Taylor contends that there was a serious risk of the affair coming to light because Taylor’s wife was a witness in the case and she would be forced to testify if the case went to trial. The district court rejected this assertion and found Bulmer did not advise Taylor to plead guilty because of his affair with Taylor’s wife. There appears to be support in the record for the district court’s finding. *See Nicks*, 831 N.W.2d at 503–04 (noting “[t]he scope of our review of factual matters is to determine whether there is sufficient support in the record to sustain the postconviction court’s findings”).

First, the district court rejected this argument because it found Taylor had failed to meet his burden of proving that Bulmer’s actions were motivated by this fear. *See Cooper v. State*, 565 N.W.2d 27, 33 (Minn. App. 1997), *review denied* (Minn. Aug. 5, 1997)

(“[V]ague unfounded allegations are insufficient to establish that the attorney’s conflict affected his representation.”). We agree. Our independent review of the record uncovered no evidence to support Taylor’s claim.

Second, the district court found that Bulmer appeared to be content to proceed to trial when he thought he would be allowed to argue the alternate defenses. The court reasoned that if Bulmer had been interested in keeping Taylor’s wife off the stand, he “presumably would have started laying the groundwork for a plea” much earlier. The fact that Bulmer had not “laid the groundwork” for a guilty plea is supported in the record. Taylor testified at the evidentiary hearing on this matter that his attorney’s attitude, advice, and demeanor suddenly changed on the Friday before the hearing on the alternate defenses, from being optimistic to suddenly telling Taylor there was no hope.

We conclude that the postconviction court’s finding that Bulmer had no plan to advise Taylor to plead guilty until after he learned of the prosecution’s motion to prevent Taylor from presenting the alternate defenses at trial is supported by the record. We also agree with the court’s reasoning that if Bulmer had intended to pressure Taylor into pleading guilty, he would have advocated for that position before the prosecution threatened to revoke its offer.

Third, the postconviction court reasoned that Bulmer’s willingness to assert the alternate defenses is evidence that he was not concerned about the testimony of Taylor’s wife. Taylor’s wife would have been expected to testify about Taylor trying to hide evidence the night of the murder by changing his hair and washing his hands in bleach. Pursuing the alternate defenses would have required Bulmer to confront this expected

testimony. As the postconviction court concluded, Bulmer's actions were "not the actions of an attorney attempting to avoid, at all costs, having to confront [Taylor's wife] in open court as a hostile witness, if he was in fact motivated to protect his own personal interest in not having his sexual encounter with [Taylor's wife] come to light." This reasoning is supported by the record.

To conclude, the district court gave three reasons to support its finding that Bulmer's advice to Taylor to plead guilty was not based on his affair with Taylor's wife. We hold that there is factual support in the record for each of these findings, and for the overall conclusion that Bulmer did not advise Taylor to plead guilty in order to protect himself from evidence of his affair with Taylor's wife becoming public.

2. Failing to Pursue Other Defenses

Taylor also argues Bulmer's representation was affected by the conflict of interest because he failed to pursue other viable defenses, such as the lesser-included offense of second-degree unintentional murder. Taylor argues:

[A]dverse effect on performance is established when a petitioner identifies a plausible alternate defense strategy that his defense counsel might have pursued, shows that the alternative strategy was objectively reasonable under the facts of the case, and establishes that defense counsel's failure to pursue that strategy was linked to the actual conflict.

Plunk v. Hobbs, 766 F.3d 760, 764 (8th Cir. 2014).

The postconviction court concluded that Bulmer's failure to pursue any other alternate defenses was not motivated by his affair with Taylor's wife. The court reasoned

that Taylor failed to provide any proof that the failure to pursue alternate defenses was in any way related to the sexual encounter between Bulmer and Taylor's wife.

We agree. Our review of the record supports the postconviction court's conclusion that there is no evidence of a connection between the decision not to pursue other alternate defenses and Bulmer's unacceptable sexual encounter with Taylor's wife. Taylor's only claim is that Bulmer wanted to keep Taylor's wife from testifying to avoid the affair becoming public. But the district court had already found that there was no evidence Bulmer wanted to keep Taylor's wife from testifying, and in fact the record supports the court's conclusion that Bulmer pursued the alternate defenses that would have forced him to cross-examine her.⁴

3. Failing to Advise Appellant of the Conflict Before Appellant's Guilty Plea

Taylor also argues that Bulmer's representation was affected because he "intentionally failed to give [Taylor] all the information he needed to have in order to consider his lawyer's advice to plead guilty to second degree intentional murder." Taylor does not cite to any legal authority establishing why Bulmer's failure to inform him of the affair with Taylor's wife entitles him to relief.

And in fact, a conflict of interest must have "actually affected the adequacy of [the attorney's] representation . . ." to entitle a defendant to relief. *Sullivan*, 446 U.S. at 350, 100 S. Ct. at 1719. But Taylor only alleges his reaction might have been different, not that

⁴ We further note that Taylor did not cite to any binding authority that would allow him to establish the "adverse effect" prong by showing unpursued alternate defenses. But because appellant cannot show that he meets this standard, we decline to resolve the issue.

the adequacy of Bulmer's representation was affected. Even accepting Taylor's claim as true, under *Sullivan*, we hold that this claim is insufficient to entitle Taylor to relief.

Based upon this record and Taylor's failure to show that Bulmer's conflict affected his representation, we conclude that the postconviction court did not abuse its discretion by denying Taylor's petition for postconviction relief.

Affirmed.