

Circuit Court for Baltimore City
Case No. 120280007

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 847

September Term, 2022

DANJUAN MCBRIDE

v.

STATE OF MARYLAND

Graeff,
Zic,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: July 5, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

A jury in the Circuit Court for Baltimore City convicted appellant, Danjuan McBride, of first-degree murder, second-degree murder, use of a handgun in the commission of a crime of violence, and possession of a regulated firearm after a disqualifying conviction. The court sentenced appellant to life imprisonment on the conviction for first-degree murder, 15 years, concurrent, on the conviction for use of a handgun, and seven years, concurrent, on the conviction for possession of a firearm.

On appeal, appellant presents the following question for this Court's review, which we have rephrased slightly, as follows:

Was appellant denied effective assistance of counsel when his trial counsel failed to request voir dire questions regarding the venire's ability to follow instructions about appellant's fundamental rights, specifically his right not to testify?

For the reasons set forth below, we shall affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On July 25, 2020, police responded to a homicide at the 300 block of Franklinton Road in Baltimore City. The victim, Tavonte Briggs, had been shot five times in the neck and back. On July 27, 2020, Detective Eric J. Perez obtained a witness statement from appellant's mother, Angie Jones. Ms. Jones told Detective Perez that appellant came to her home after the murder and confessed to killing Mr. Briggs, who was known as "Smack."

On August 19, 2020, police apprehended appellant and brought him to the homicide unit headquarters. Detective Perez interviewed appellant about the murder, after obtaining

a waiver of his *Miranda* rights.¹ Appellant denied killing Mr. Briggs. Detective Perez obtained a search warrant for appellant's girlfriend's residence, where he recovered a lock box containing a revolver and several rounds of ammunition. Forensic analysis could not conclusively link the revolver or the type of ammunition found to the murder.

On August 31, 2020, Detective Perez interviewed appellant's stepmother, Shirley Bethea. Ms. Bethea stated that appellant called her following the murder. He told her that he "finally caught [Mr. Briggs] slipping," pulled out a gun on Mr. Briggs, and "finally got him," which Ms. Bethea interpreted as meaning that appellant had shot Mr. Briggs. Ms. Bethea indicated that the shooting "extended from an incident" in 2017, when Mr. Briggs allegedly killed appellant's uncle.

On March 16, 2022, trial began. During voir dire, the court asked the venire various questions, including, in pertinent part, whether they would "draw any inferences of guilt from the fact that a person has been charged with or indicted for a crime." No prospective juror indicated an affirmative response to this question. The court then stated: "In a criminal case, the defendant is presumed [innocent] until proven guilty. The burden of proving the defendant's guilt rests solely and entirely on the State. The defendant does not have to prove their innocence. Do you feel you will have any difficulty following these principles?" No member of the venire indicated an affirmative response to this question. The court continued: "Is there any reason whatsoever that you could not render a fair and impartial decision based solely upon my instructions as well as the evidence and law

¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

presented to you during the course of this trial?” All but one of the jurors who responded affirmatively to this question were ultimately stricken; the remaining juror, on individual questioning by the court, indicated that he or she “could listen to the evidence, follow [the court’s] instructions on the law, and render a fair and impartial verdict based only upon the evidence presented and [the court’s] instructions on the law.”

At the conclusion of the State’s case, defense counsel instructed appellant, outside of the presence of the jury, on his right to testify, which he waived. The court then instructed the jury, as follows:

The defendant is presumed to be innocent of the charges. This presumption remains throughout every stage of the trial. It is not overcome unless you are convinced beyond a reasonable doubt that the defendant is guilty.

The State has the burden of proving the guilt of the defendant beyond a reasonable doubt. This means that the State has the burden of proving beyond a reasonable doubt each and every element of the crimes charged.

* * *

This burden remains on the State throughout the trial. The defendant is not required to prove his innocence. . . .

* * *

The defendant has an absolute constitutional right not to testify. The fact that the defendant did not testify must not be held against the defendant and may not be considered by you in any way or even discussed by you.

DISCUSSION

Appellant contends that he received ineffective assistance of counsel when his attorney failed to request that the court ask prospective jurors during voir dire whether they would be able to follow instructions regarding appellant’s fundamental rights.² Appellant states that, although “[a] sound trial strategy is not ineffective assistance of counsel . . . some actions disserve a client on their face and no evidentiary hearing is needed to determine that no trial strategy existed.” He contends that, although such a claim is normally reserved for a post-conviction proceeding, his claim is appropriate for direct appeal because it “does not require testimony and evidence to sufficiently establish itself.”

The State contends that this Court should decline “to take the extremely rare step of finding, on direct appeal, that trial counsel rendered ineffective assistance of counsel in failing to request” that question. Rather, it asserts that this claim should be resolved through a post-conviction proceeding, “where additional facts necessary to decide the claim can be adduced.”

² Although appellant’s Question Presented refers specifically to the defendant’s right not to testify, his brief discusses “three fundamental rights secured by” *Kazadi v. State*, 467 Md. 1, 9 (2020). In *Kazadi*, the Court held that “**on request**, during *voir dire*, a trial court must ask whether any prospective jurors are unwilling or unable to comply with the jury instructions on the fundamental principles of presumption of innocence, the State’s burden of proof, and the defendant’s right not to testify.” *Id.* (emphasis added). Appellant did not object to any failure of the court in reference to *Kazadi*, and therefore, he has waived his ability to raise this complaint as error on direct review. *See Lopez-Villa v. State*, 478 Md. 1, 20 (2022) (appellant waived claim that the court violated his rights under *Kazadi* by failing to raise contemporaneous objection to court’s denial of proposed voir dire questions). Accordingly, he asks this Court to consider his claim of ineffective assistance of counsel.

“Generally, in Maryland, a defendant’s attack of a criminal conviction due to ineffective assistance of counsel occurs at post-conviction review.” *Crippen v. State*, 207 Md. App. 236, 250 (2012). *Accord Bailey v. State*, 464 Md. 685, 703 (2019) (Maryland’s appellate courts will “rarely consider ineffective assistance of counsel claims on direct appeal.”); *In re Parris W.*, 363 Md. 717, 726 (2001) (“It is the general rule that a claim of ineffective assistance of counsel is raised most appropriately in a post-conviction proceeding.”). “The primary reason behind the rule is that, ordinarily, the trial record does not illuminate the basis for the challenged acts or omissions of counsel.” *In re Parris W.*, 363 Md. at 726. *Accord Bailey*, 464 Md. at 704 (“[P]ost-conviction proceedings are preferred with respect to ineffective assistance of counsel claims because the trial record rarely reveals why counsel acted or omitted to act.”) (quoting *Mosley v. State*, 378 Md. 548, 560 (2003)). Although there are exceptions to the rule,

[t]he rare instances in which we have permitted direct review are instructive, because they indicate our willingness to entertain such claims on direct review only when the facts in the trial record sufficiently illuminate the basis for the claim of ineffectiveness of counsel. As we explained in *In re Parris W.*, direct review is an exception that applies only when “the critical facts are not in dispute and the record is sufficiently developed to permit a fair evaluation of the claim.”

Crippen, 207 Md. App. at 251 (quoting *Tetso v. State*, 205 Md. App. 334, 378, *cert. denied*, 428 Md. 545 (2012)).

We are not persuaded that this case is one of those rare instances in which review of an ineffective assistance claim is appropriate to consider on direct appeal. Post-conviction proceedings are the appropriate vehicle to address why defense counsel did not

request an instruction pursuant to *Kazadi v. State*, 467 Md. 1 (2020), and whether the failure to address it resulted in prejudice. *See Wallace v. State*, 475 Md. 639, 654 (2021) (To prevail in an ineffective assistance of counsel claim, the defendant must show: (1) that his attorney's performance was deficient; and (2) that the defendant was prejudiced as a result.).

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**

The correction notice(s) for this opinion(s) can be found here:

<https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0847s22cn.pdf>