

IN THE CIRCUIT COURT OF BOONE COUNTY
STATE OF MISSOURI

JOSEPH D. ELLEDGE,)	
)	
Movant,)	
)	
v.)	Case No. 23BA-CV04364
)	
STATE OF MISSOURI,)	
)	
Respondent.)	

AMENDED MOTION UNDER RULE 29.15

Comes now movant, Joseph D. Elledge, by and through counsel, and amends his previously filed pro se motion under Rule 29.15, stating as follows:

1. Custody status: Mr. Elledge is in custody at Southeast Correctional Center, 300 East Pedro Simmons Dr., Charleston, MO 63834.
2. Name and location of court which imposed sentence: Boone County Circuit Court, at Columbia, Missouri; the Honorable J. Hasbrouck Jacobs, Judge, presiding.
3. Criminal case number and offense: 20BA-CR00698-01; murder in the second degree.
- 4(a). Date and terms of sentence: January 7, 2022; 28 years imprisonment.
- 4(b). Timeliness of filings: Mr. Elledge's pro se motion was timely because it was filed on November 3, 2023, which was within 90 days of the August 23, 2023, direct appeal mandate. Rule 29.15(b). This amended motion is timely if it is filed within 120 days of undersigned counsel's February 2, 2024, entry of appearance. Rule 29.15(g). However, because the 120th day falls on a Saturday, this amended motion is finally due on Monday, June 3, 2024. Rule 44.01(a).

5. The judgment followed a jury trial.

6-7. Appeal was taken to the Missouri Court of Appeals, Western District, which affirmed the judgment on August 23, 2023, in Appeal No. WD85109.

8-9. Claims for postconviction relief and supporting facts:

Mr. Elledge's conviction must be set aside because he received ineffective assistance of counsel, in violation of the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 18(a) of the Missouri Constitution, and there is a reasonable probability that the outcome of the proceeding would have otherwise been different. Counsel was ineffective in the following ways:

A. By failing to timely object to the State's expert witnesses under the *Daubert* standard;

B. By offering the State's evidence of audio recordings;

C. By failing to timely object to the State's evidence of irrelevant photographs;

D. By calling Mr. Elledge as a defense witness despite the defendant's desire to remain silent; and

E. By failing to present text messages, photographs, and videos to rebut the State's theory that Mr. Elledge had a turbulent marriage.

Legal Standard

This motion raises five claims of ineffective assistance of trial counsel.

Under the Sixth Amendment to the United States Constitution, applicable to Missouri by the Fourteenth Amendment, criminal defendants are

entitled to effective assistance of counsel. *Williams v. State*, 367 S.W.3d 652, 654 (Mo. App. 2012) (citing *Strickland v. Washington*, 466 U.S. 668, 686 (1984)). A successful claim of ineffective assistance of counsel entails a two-part showing. First, the post-conviction movant must demonstrate counsel's performance was deficient, that is, counsel was not functioning as the "counsel" guaranteed by the Sixth Amendment. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). This requires a showing that counsel's performance did not conform to the degree of skill, care and diligence of a reasonably competent attorney, and that the movant was thereby prejudiced. *Id.* To prove prejudice, a movant must show a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. *State v. Butler*, 951 S.W.2d 600, 608 (Mo. 1997). A "reasonable probability" is a probability sufficient to undermine confidence in the outcome. *State v. Johnson*, 968 S.W.2d 686, 695 (Mo. 1998).

Supporting Facts and Analysis

Claim A – Ineffective assistance of counsel by failing to timely object to the State's expert witnesses under the *Daubert* standard:

In Paragraph IV of Mr. Elledge's motion for new trial, trial counsel argued that the State's four expert witnesses should have been excluded because their testimony failed under the *Daubert* standard. Counsel elaborated that the experts' opinions were not reliable because the methodologies were subjective, were not subject to peer review, had not been tested, had no known error rate, etc.

However, trial counsel had failed to timely object on these grounds when the experts testified at trial (Tr. 1252-1340; 1361-1414; 1414-1477; 1496-1541). When trial counsel did not make contemporaneous objections to the experts' testimony at trial, the defense's pretrial and post-trial *Daubert* arguments were waived.

Trial counsel were ineffective by failing to timely object to the State's four expert witnesses under the *Daubert* standard. Such performance fell below a customary level of skill and diligence. Reasonably competent counsel would have objected when each of the four witnesses began testifying about their methods and opinions. There was no reasonable strategy for failing to object. Trial counsel had already crafted the objections and argued them at the pretrial *Daubert* hearing, but counsel failed to repeat their objections at trial.

Had counsel's performance conformed to a customary level of skill and diligence, there is a reasonable probability that Mr. Elledge would not have been found guilty. Trial counsel's failure to object undermines confidence in the verdict because the State was allowed to persuade the jury of Mr. Elledge's involvement through four experts whose testimony was not properly admissible.

In support of this claim, movant will rely on his own testimony; the testimony and client file of trial counsel S.R. and M.S.; the testimony and client file of direct appeal counsel J.L.; and the Court's files and transcripts in Boone Case No. 20BA-CR00698-01.

Claim B – Ineffective assistance of counsel by offering the State's evidence of audio recordings:

In Paragraph V of Mr. Elledge's motion for new trial, trial counsel argued that the Court admitted over nine hours of audio recordings over the Defendant's objection. At trial, however, defense counsel themselves offered the State's audio recordings (Tr. 817).

Trial counsel were ineffective by offering the State's audio exhibits of Mr. Elledge and the alleged victim arguing in the year leading up to her death. Such performance fell below a customary level of skill and diligence. Reasonably competent counsel would have objected to the audio recordings and

would not have agreed to offer them as exhibits. There was no reasonable strategy for trial counsel's decision to offer the State's audio recordings.

Had counsel's performance conformed to a customary level of skill and diligence, there is a reasonable probability that Mr. Elledge would not have been found guilty. Trial counsel's decision to offer the audio recordings undermines confidence in the verdict because they were irrelevant, they contained hearsay, and there was not a proper foundation. The exhibits served to smear Mr. Elledge's character and portray him as an abusive husband.

In support of this claim, movant will rely on his own testimony; the testimony and client file of trial counsel S.R. and M.S.; the testimony and client file of direct appeal counsel J.L.; and the Court's files and transcripts in Boone Case No. 20BA-CR00698-01.

Claim C – Ineffective assistance of counsel by failing to timely object to the State's evidence of irrelevant photographs:

In Paragraph VI of Mr. Elledge's motion for new trial, trial counsel argued that the Court erred in admitting irrelevant photographs of the alleged victim during the guilt phase of the trial. The photographs elicited sympathy for the alleged victim and painted her as a good character. At trial, however, defense counsel did not object when the State offered the binders of photographs (Tr. 1787).

Trial counsel were ineffective by failing to object to the photographs. Such performance fell below a customary level of skill and diligence. Reasonably competent counsel would have objected. There was no reasonable strategy for failing to object.

Had counsel's performance conformed to a customary level of skill and diligence, there is a reasonable probability that Mr. Elledge would not have been found guilty. Trial counsel's failure to object undermines confidence in

the verdict because the irrelevant photographs distracted the jury from the legal elements, had no probative value, and were only appropriate for the punishment phase of the trial.

In support of this claim, movant will rely on his own testimony; the testimony and client file of trial counsel S.R. and M.S.; the testimony and client file of direct appeal counsel J.L.; and the Court's files and transcripts in Boone Case No. 20BA-CR00698-01.

Claim D – Ineffective assistance of counsel by calling Mr. Elledge as a defense witness despite the defendant's desire to remain silent:

Mr. Elledge's insufficiency of the evidence claim failed on direct appeal failed because Mr. Elledge testified in his own defense at trial (Slip Op. 2, 6). However, Mr. Elledge did not want to testify at trial.

Mr. Elledge will testify in support of this motion. He will testify that, in the months leading up to trial, he had conversations with his attorneys about whether he would testify at the trial. Both trial attorneys visited him together, over the course of two days, a couple of months before trial. Counsel M.S. had visited one additional time about six months earlier. Other than those visits, Mr. Elledge primarily consulted with his attorneys over the phone while he remained in jail.

In some of their phone calls, S.R. told Mr. Elledge that he would do what Mr. Elledge wanted, but he strongly argued against any ideas that Mr. Elledge had. Sometimes M.S. backed up Mr. Elledge's thoughts, but S.R. shot him down too.

As trial approached, S.R. told Mr. Elledge that he would be found guilty of first-degree murder and get life without parole if he did not testify. S.R. added that if Mr. Elledge did testify, it would be at worst 10 years for manslaughter. S.R. calculated that Mr. Elledge would only serve 33% of the

10-year sentence before parole, and Mr. Elledge already had almost enough jail credit for that.

About a month before trial, when talking on the phone to trial counsel S.R., Mr. Elledge felt that his attorney had a foregone conclusion that Mr. Elledge would testify.

Mr. Elledge will testify that, during the jury trial, at the close of the State's evidence, he leaned over to S.R. and said, "Maybe I should not testify." S.R. responded, "I'm going to call you to the stand." Mr. Elledge did not respond. Mr. Elledge felt that S.R. was taking his choice, and Mr. Elledge did not have any say in it.

Trial counsel were ineffective by calling Mr. Elledge as a witness when Mr. Elledge did not desire to testify. Such performance fell below a customary level of skill and diligence. Reasonably competent counsel would have allowed Mr. Elledge to remain silent. There was no reasonable strategy for calling Mr. Elledge to the stand when he wished to remain silent.

Had counsel's performance conformed to a customary level of skill and diligence, there is a reasonable probability that Mr. Elledge would not have been found guilty. The State would not have had a submissible case for any degree of homicide if Mr. Elledge had not conceded essential elements through his testimony. Similarly, the jury would have found reasonable doubt as to all degrees of homicide had Mr. Elledge not testified. Counsel's deficient performance in calling Mr. Elledge as a witness against his wishes undermines confidence in the verdict because the choice to testify should be left to the defendant alone.

In support of this claim, movant will rely on his own testimony; the testimony and client file of trial counsel S.R. and M.S.; the testimony and client

file of direct appeal counsel J.L.; and the Court's files and transcripts in Boone Case No. 20BA-CR00698-01.

Claim E – Ineffective assistance of counsel by failing to present text messages, photographs, and videos to rebut the State's theory that Mr. Elledge had a turbulent marriage:

At trial, the State attacked Mr. Elledge's character by portraying him as an abusive husband and an uncaring father. The State presented audio recordings, photographs, and other exhibits to support its argument. But the exhibits presented were out of context and did not portray an accurate picture.

The defense had its own text messages, photographs, and videos available that trial counsel failed to present. The defense exhibits would have portrayed the opposite of the State's theory. Available text messages discussed missing each other, going out together, having a good time, preparing meals, joking, banter, emojis, laughing, hearts, and kissing, etc. Available photos and videos depicted a happy life together consisting of birthday parties, mini golfing, traveling, playing with their daughter, cooking together, etc.

Trial counsel were ineffective by failing to counter the State's narrative with accurate exhibits depicting Mr. Elledge's life with the alleged victim. Such performance fell below a customary level of skill and diligence. Reasonably competent counsel would have presented text messages, photos, and videos available from discovery to correct the inaccurate portrayal of Mr. Elledge's family life by the State. There was no reasonable strategy for failing to present available exhibits to un-smear the defendant's character.

Had counsel's performance conformed to a customary level of skill and diligence, there is a reasonable probability that Mr. Elledge would not have been found guilty. Counsel's deficient performance in failing to present

available evidence undermines confidence in the verdict because the jury did not see an accurate portrayal before it voted to convict Mr. Elledge.

In support of this claim, movant will rely on his own testimony; the discovery from trial; the testimony and client file of trial counsel S.R. and M.S.; the testimony and client file of direct appeal counsel J.L.; and the Court's files and transcripts in Boone Case No. 20BA-CR00698-01.

10-14. Prior to this motion, Mr. Elledge has not filed any other petitions, applications, or motions regarding this conviction.

15-16. Prior counsel: Mr. Elledge was represented at trial and sentencing by S.R. and M.S. He was represented on direct appeal by J.L.

WHEREFORE, Mr. Elledge prays the Court will grant an evidentiary hearing and vacate, set aside, or amend the judgment in 20BA-CR00698-01 as necessary to remedy the claims listed herein.

Respectfully submitted,

Tyler P. Coyle

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CERTIFICATE OF SERVICE

I, Tyler P. Coyle, hereby certify that on June 3, 2024, a copy of the foregoing was served upon all counsel of record via e-filing service.

Tyler P. Coyle

Tyler P. Coyle