

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs June 23, 2026

FILED

07/02/2026

Clerk of the
Appellate Courts

FRANK DELMAR RAINES, JR. v. STATE OF TENNESSEE

**Appeal from the Circuit Court for Blount County
No. C-29419 David R. Duggan, Judge**

No. E2025-01374-CCA-R3-PC

Frank Delmar Raines, Jr., the Petitioner, appeals from the Blount County Circuit Court's denial of his petition for post-conviction relief from his convictions for attempted rape and attempted aggravated kidnapping, for which he is serving an effective thirty-year sentence. On appeal, the Petitioner claims that the post-conviction court erred in denying relief on his ineffective assistance of counsel claims related to trial counsel's investigation of a State's witness and counsel's decision not to call character witnesses at the sentencing hearing. We affirm the judgment of the post-conviction court.

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

ROBERT H. MONTGOMERY, JR., J., delivered the opinion of the court, in which TIMOTHY L. EASTER and STEVEN W. SWORD, JJ., joined.

Brett A. Cole, Alcoa, Tennessee, for the appellant, Frank Delmar Raines, Jr.

Jonathan Skrmetti, Attorney General and Reporter; Michael J. Hurst, Qualified Law Student; Benjamin A. Ball, Senior Assistant Attorney General; Ryan Desmond, District Attorney General; Tyler B. Parks, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

The Petitioner's convictions arose from his January 26, 2022 attempted rape and attempted aggravated kidnapping of the seventeen-year-old daughter of a family acquaintance. He received an effective thirty-year sentence. He appealed, and this court affirmed his convictions. *State v. Frank Delmar Raines, Jr.*, No. E2022-01045-CCA-R3-CD, 2023 WL 3944903, at *6 (Tenn. Crim. App. June 12, 2023), *perm. app. denied* (Tenn. Oct. 13, 2023).

Following his unsuccessful appeal, the Petitioner filed a timely pro se petition for post-conviction relief. Post-conviction counsel was appointed and filed an amended petition. As relevant to this appeal, the petitions alleged that the Petitioner received the ineffective assistance of counsel because trial counsel failed to (1) conduct a thorough investigation of the mental health of the Petitioner's son, who was a State's witness and who was present when the offenses occurred, and (2) investigate character witnesses and call them to testify at the sentencing hearing.

As relevant to this appeal, trial counsel testified at the post-conviction hearing that he was the third or fourth attorney appointed to represent the Petitioner. He stated that he spoke with the Petitioner's previous attorney to understand the Petitioner's case. He said that he met with the Petitioner "pretty quickly" after being appointed to the case, that they met "close to twenty times" before the Petitioner posted bail, and that he met with the Petitioner "many times" after the Petitioner posted bail.

Trial counsel testified that he was aware of the Petitioner's son, who was age seventeen or eighteen at the time of the offenses and had been present when the offenses occurred, and who testified as a State's witness at the Petitioner's trial. Counsel said that the Petitioner informed him that his son suffered from a schizophrenic disorder, that the son had a history of "certain psychotic breaks," and that the son had a "psychotic break" and was hospitalized in a psychiatric facility after the Petitioner was arrested. Counsel said he interviewed the Petitioner's son outside the Petitioner's presence. Counsel said the son claimed to have no memory of the events in this case. Trial counsel stated that, during cross-examination at the trial, he focused on the Petitioner's son's mental health issues and their impact on his recall of traumatic events. Counsel said he emphasized this evidence in his closing argument. Counsel said he also focused on the recording of the Petitioner's son's police interrogation, in which the son initially disclaimed any memory of the Petitioner's raping the victim. Counsel also focused on the portion of the son's pretrial statement in which, after being informed that he could be charged as an accessory after the fact, the son implicated the Petitioner in the victim's rape. Counsel acknowledged that he did not have an independent mental health evaluation of the Petitioner's son. Counsel believed the Petitioner's son's testimony was helpful to the defense "in the sense that it was unreliable" because it demonstrated the son's inconsistency regarding his memory of the relevant events. Counsel also thought the son's inconsistent testimony supported the defense theory that the victim had lied and that no rape occurred, which counsel argued during closing argument. Counsel thought the jury "got the full picture" of the son's mental health from the son's testimony and the son's recorded pretrial statement. Counsel noted that the jury acquitted the Defendant of the charged offenses and returned verdicts of guilt of lesser included offenses.

Trial counsel testified that the defense theory changed dramatically between the trial, at which the defense theory was one of "factual and legal innocence," and the

sentencing hearing. Counsel explained that the Petitioner admitted that he had sex with the victim during the psychosexual evaluation that was completed for the purposes of sentencing. Counsel said that the Petitioner also made an inculpatory statement during a recorded jail telephone call with the Petitioner's mother. Counsel said he was at a "great disadvantage," having lost the argument of actual innocence by virtue of the Petitioner's admissions, and that he shifted to a strategy of emphasizing the mitigating evidence of the Petitioner's history of childhood physical and sexual abuse and the Petitioner's having taken responsibility for his actions in the present case.

Regarding his decision not to call the witnesses, including the Petitioner's family members, as sentencing hearing witnesses, trial counsel testified that he had become close to the family, having spent time at their home, having had a meal with them, and having gone to the home to tell the Petitioner's mother about the guilty verdict. Counsel said he had not wanted to call the Petitioner's mother as a witness due to "information in the reports" about her having been the victim of domestic violence during the Petitioner's childhood. Counsel thought she might deny these accounts, which would undermine her testimony and his arguments as to mitigating evidence. He said that, based upon his knowledge of the Petitioner's family members, he was concerned that they might be "loose cannons" on cross-examination and might open the door to the Petitioner's prior statements, which might be used against the Petitioner.

Trial counsel testified that the Petitioner's son was at the family home when counsel and the Petitioner were involved in extensive trial preparations there. Counsel thought he and the Petitioner's son had good rapport. Counsel said his strategy for explaining the Petitioner's son's pretrial statement was that the son initially told the truth when he said "nothing happened" but that the son implicated the Petitioner after the threat of prosecution. Counsel agreed that he questioned the son about the son's schizophrenia and prior psychiatric hospitalizations. Counsel said he had no legal basis to move for suppression of the son's pretrial statement.

The Petitioner testified that he met with trial counsel fewer than the twenty times to which counsel had testified. The Petitioner said counsel met with him "a couple of times" at the jail before the bond was decreased and the Petitioner was released. The Petitioner said counsel came to his home "maybe three times" and had some chicken with them on one of those occasions.

The Petitioner testified that he and trial counsel discussed the Petitioner's son's mental state and law enforcement's treatment of the son. The Petitioner said he told "them" that his son had "mental breakdowns." The Petitioner explained that he was "very delicate" with his son due to his son's mental state. When asked if he asked counsel to "look into [the son's] mental health," the Petitioner responded, "Not in the way that you're

questioning me here today. . . . I feel that he done wrong. The good Lord tells me that he done wrong.”

The Petitioner testified that he did not think he had a fair trial. He said counsel did not get “another doctor to look at [the Petitioner’s son’s] mental issues.” The Petitioner did not think that counsel “had enough time to prepare” the case.

The Petitioner testified he met with trial counsel “back here in a room” before the sentencing hearing, when counsel advised him that the State wanted to present evidence of a telephone call between the Petitioner and his mother. The Petitioner said he spoke with counsel about having the Petitioner’s brother testify at the sentencing hearing. The Petitioner said that he worked for his brother and that his brother never abused him during childhood. The Petitioner said that counsel stated at the sentencing hearing that the Petitioner worked for his brother but that counsel did not call any witnesses. The Petitioner said that his stepfather would have been an available witness who could have “spoke[n] on what [the Petitioner] wanted presented to the jury” but that his stepfather was now deceased. The Petitioner said his biological father was also unavailable for unspecified reasons to testify at the post-conviction hearing.

Trial counsel was recalled and testified that he did not know the specific number of times he met with the Petitioner in preparation for the sentencing hearing but said he “knew it was a couple of times.”

After receiving the evidence, the post-conviction court found that the Petitioner had failed to prove by clear and convincing evidence that he received the ineffective assistance of counsel. The court denied relief. This appeal followed.

Post-conviction relief is available “when the conviction or sentence is void or voidable because of the abridgment of any right guaranteed by the Constitution of Tennessee or the Constitution of the United States.” T.C.A. § 40-30-103 (2025). A petitioner has the burden of proving his factual allegations by clear and convincing evidence. *Id.* § 40-30-110(f) (2025). A post-conviction court’s findings of fact are binding on appeal, and this court must defer to them “unless the evidence in the record preponderates against those findings.” *Henley v. State*, 960 S.W.2d 572, 578 (Tenn. 1997); see *Fields v. State*, 40 S.W.3d 450, 456-57 (Tenn. 2001). A post-conviction court’s application of law to its factual findings is subject to a de novo standard of review without a presumption of correctness. *Fields*, 40 S.W.3d at 457-58.

To establish a post-conviction claim of the ineffective assistance of counsel in violation of the Sixth Amendment, a petitioner has the burden of proving that (1) counsel’s performance was deficient and (2) the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); see *Lockhart v. Fretwell*, 506 U.S.

364, 368-72 (1993). The Tennessee Supreme Court has applied the *Strickland* standard to an accused's right to counsel under Article I, Section 9 of the Tennessee Constitution. See *State v. Melson*, 772 S.W.2d 417, 419 n.2 (Tenn. 1989).

A petitioner must satisfy both prongs of the *Strickland* test in order to prevail in an ineffective assistance of counsel claim. *Henley*, 960 S.W.2d at 580. “[F]ailure to prove either deficiency or prejudice provides a sufficient basis to deny relief on the ineffective assistance claim.” *Goad v. State*, 938 S.W.2d 363, 370 (Tenn. 1996). To establish the performance prong, a petitioner must show that “the advice given, or the services rendered . . . are [not] within the range of competence demanded of attorneys in criminal cases.” *Baxter v. Rose*, 523 S.W.2d 930, 936 (Tenn. 1975); see *Strickland*, 466 U.S. at 690. The post-conviction court must determine if these acts or omissions, viewed in light of all of the circumstances, fell “outside the wide range of professionally competent assistance.” *Strickland*, 466 U.S. at 690. A petitioner “is not entitled to the benefit of hindsight, may not second-guess a reasonably based trial strategy by his counsel, and cannot criticize a sound, but unsuccessful, tactical decision.” *Adkins v. State*, 911 S.W.2d 334, 347 (Tenn. Crim. App. 1994); see *Pylant v. State*, 263 S.W.3d 854, 874 (Tenn. 2008). This deference, however, only applies “if the choices are informed . . . based upon adequate preparation.” *Cooper v. State*, 847 S.W.2d 521, 528 (Tenn. Crim. App. 1992). To establish the prejudice prong, a petitioner must show 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.” *Id.*

The Defendant argues that the post-conviction court erred in denying relief on his ineffective assistance of counsel claims related to the impeachment of his son’s testimony and the lack of character witnesses at the sentencing hearing. The State responds, as to both claims, that the evidence does not preponderate against the post-conviction court’s findings, which, in turn, support the court’s conclusion that the Petitioner was not entitled to relief. We agree with the State.

I

Impeachment of the Petitioner’s Son’s Testimony

The Petitioner argues that the post-conviction court erred in denying relief on his claim related to his son’s testimony. In his view, the proof showed that trial counsel failed to investigate the Petitioner’s son’s mental health by obtaining a mental health evaluation or his mental health records.

In denying relief on this claim, the post-conviction court found that trial counsel built a rapport with the Petitioner’s son, interviewed him, and gained information about the

son's schizophrenia diagnosis and hospitalizations. The court found that counsel did not obtain a mental health evaluation of the son but that counsel had investigated the extent of the son's mental health disorder. The court found that counsel developed a strategy, based upon the investigation, which portrayed the son as "vulnerable and susceptible to coercion and suggestion by law enforcement" via cross-examination and closing argument. The court found that the Petitioner did not ask counsel to "check into his son's mental health, let alone seek an independent evaluation of his health."

The record does not preponderate against the post-conviction court's findings relative to the extent of trial counsel's investigation of the Petitioner's son's mental health and his formulation of trial strategy based upon the information obtained in counsel's investigation. The court's findings support its implicit conclusion that trial counsel did not perform deficiently. Regarding the question of prejudice, although the Petitioner argues that trial counsel should have obtained a mental health evaluation of the Petitioner's son, he did not offer evidence of such an evaluation at the post-conviction hearing in order to show what evidence counsel might have obtained. The Petitioner did not offer his son's mental health records as hearing evidence. Thus, the court had no evidence before it to show the alleged prejudice to the Petitioner as a result of counsel's not having obtained a mental health evaluation of the Petitioner's son or not introducing as evidence the son's mental health records. *Cf. Black v. State*, 794 S.W.2d 752, 757 (Tenn. 1990) (holding that a post-conviction petitioner who claims his trial counsel failed to investigate and present a witness at the trial must present the witness at the post-conviction hearing to show that the witness would have offered favorable trial testimony). The court did not err in denying post-conviction relief on the ineffective assistance of counsel claim related to trial counsel's investigation of the Petitioner's son's mental health.

The Petitioner is not entitled to relief on this basis.

II

Lack of Character Witnesses at the Sentencing Hearing

The Petitioner contends that the post-conviction court erred in denying relief on his ineffective assistance of counsel claim related to the lack of character witnesses at the sentencing hearing. The Petitioner argues that counsel failed to investigate and call the Petitioner's family members as character witnesses.

In his appellate brief, the Petitioner has not identified by name the character witnesses he claims trial counsel should have investigated and called at the sentencing hearing. In his pro se petition, he identified four people by name and alleged that they could testify about his "good standing in the community and his employment history." The amended petition prepared by post-conviction counsel repeated the allegation that

“4 different character witnesses . . . could have provided information as to the [Petitioner’s] standing in the community and employment history.” None of the individuals identified in the pro se petition testified at the post-conviction hearing. *See id.*

Trial counsel testified at the hearing that his defense theory shifted between the trial and the sentencing hearing due to (1) the Petitioner’s admission during the psychosexual evaluation that he had sex with the victim, and (2) the Petitioner’s inculpatory statement to his mother in a recorded jail telephone call. Counsel said he chose not to call the Petitioner’s family members as witnesses at the sentencing hearing based upon his familiarity with the family members, whom he thought might be “loose cannons” and could open the door to unfavorable evidence, and based upon information that the Petitioner’s mother had been the victim of domestic violence, which he thought she might deny and thereby undermine the defense argument that the Petitioner grew up in an abusive household. Counsel said his sentencing strategy was to portray the Petitioner as a victim of childhood abuse in a violent home as mitigating proof.

The Petitioner testified that he wanted his brother, who was also his employer, to testify at the sentencing hearing. The Petitioner also wanted his stepfather to testify at the hearing, but the stepfather was now deceased. The Petitioner said his biological father was also unavailable to testify. The Petitioner did not state the specific facts about which his stepfather or biological father could have testified. Likewise, his brother did not testify at the hearing about the mitigating evidence he could have offered if he had been called as a sentencing hearing witness. *See id.*

The post-conviction court found that, based upon events which occurred between the trial and sentencing, trial counsel changed his sentencing strategy to one in which he characterized the Petitioner as a sympathetic figure due to a history of childhood abuse. The court found that this strategy allowed counsel to avoid the danger of calling the family members, who might have been “loose cannons” and might “have done more harm than good.” The court also found that counsel’s strategy avoided the possibility of the Petitioner’s mother denying that she had been the victim of domestic violence, thereby undermining her own credibility as to any favorable character evidence about the Petitioner.

The post-conviction court found that the Petitioner failed to prove his ineffective assistance claim related to trial counsel’s performance relative to the sentencing hearing. The evidence does not preponderate against the court’s determination in this regard. The court did not err in denying relief on this basis.

In consideration of the foregoing and the record as a whole, the judgment of the post-conviction court is affirmed.

s/ Robert H. Montgomery, Jr.
ROBERT H. MONTGOMERY, JR., JUDGE