IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 52457

JEVON OLY GOFF,	)	
	)	**Filed: September 22, 2026**
Petitioner-Appellant,	)	
	)	**Melanie Gagnepain, Clerk**
v.	)	
	)	
STATE OF IDAHO,	)	
	)	
Respondent.	)	
	)	

Appeal from the District Court of the Third Judicial District, State of Idaho, Payette County. Hon. Davis F. VanderVelde, District Judge.

Judgment denying petition for post-conviction relief, affirmed.

Nevin, Benjamin & McKay LLP; Dennis Benjamin, Boise, for appellant.

Hon. Raúl R. Labrador, Attorney General; Kale D. Gans, Deputy Attorney General, Boise, for respondent.

TRIBE, Chief Judge

Jevon Oly Goff appeals from the district court's judgment denying his petition for post-conviction relief. We affirm.

I.

FACTUAL AND PROCEDURAL BACKGROUND

The State charged Goff with rape and alleged that he is a persistent violator of the law. Goff pled not guilty and asserted his right to a speedy trial. The trial court initially scheduled the jury trial within the six-month statutory speedy trial period.

On the scheduled jury trial date, Goff's trial counsel did not appear. The trial court explained that it had spoken with trial counsel and that trial counsel was finishing another jury trial in another county and could not appear that morning. The trial court acknowledged Goff had not waived his right to a speedy trial but found good cause to continue the jury trial because trial counsel could not proceed that morning. The trial court proposed resetting the jury trial outside the statutory speedy trial deadline. The prosecutor advised the trial court that one of the prosecutor's witnesses would be unavailable on the proposed jury trial date. Goff objected to the continuance and stated that he did not wish to waive his speedy trial right. The trial court responded that circumstances had arisen and that it had determined good cause existed to continue the jury trial beyond the speedy trial period. The jury trial was held approximately two months after the statutory speedy trial deadline had expired. A jury found Goff guilty of rape (Idaho Code § 18-6101(1)), and he admitted to the persistent violator enhancement (I.C. § 19-2514).

Goff filed a direct appeal asserting that the trial court abused its discretion by imposing an excessive sentence, which this Court rejected and affirmed Goff's judgment of conviction and sentence in an unpublished opinion.[1] Goff later filed a petition for post-conviction relief alleging more than thirty claims. The only claim relevant to this appeal is Goff's assertion that appellate counsel was ineffective for failing to argue on direct appeal that the trial court abused its discretion by continuing the jury trial beyond the statutory speedy trial deadline.

The district court held a two-day evidentiary hearing on Goff's post-conviction claims. Goff testified that he discussed the speedy trial issue with his appellate counsel and believed it should have been raised on direct appeal. Appellate counsel testified that he reviewed the record, identified numerous potential appellate issues, but concluded that the speedy trial issue was not viable because the trial court had continued the jury trial for good cause based on trial counsel's absence.

Following the evidentiary hearing, the district court denied Goff's petition for post-conviction relief. The district court concluded that a motion to dismiss based on speedy trial grounds would not have been successful and that Goff's right to a speedy trial was not violated under the applicable statutory and constitutional standards. Goff appeals.

II.
STANDARD OF REVIEW

When reviewing a district court's decision to grant or deny a petition for post-conviction relief following an evidentiary hearing, this Court will not disturb the district court's factual findings unless they are clearly erroneous. *Marr v. State*, 163 Idaho 33, 36, 408 P.3d 31, 34

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[1] *See State v. Goff*, Docket No. 47045 (Ct. App. June 22, 2020).

(2017). The reviewing court, however, exercises free and independent review of the district court's application of law. *Estrada v. State*, 143 Idaho 558, 561, 149 P.3d 833, 836 (2006).

III.

ANALYSIS

Goff argues the district court erred in denying his claim that appellate counsel provided ineffective assistance by failing to raise a speedy trial claim under I.C. § 19-3501. Goff contends that the trial court lacked good cause to continue the jury trial beyond the six-month statutory deadline and that the speedy trial issue was clearly stronger than the excessive sentence claim raised on direct appeal. The State responds that, because the speedy trial claim lacked merit, Goff cannot show ineffective assistance of appellate counsel and, even if the district court erred in denying the ineffective assistance of appellate counsel claim, any error was harmless.

A claim of ineffective assistance of counsel may properly be brought under the Uniform Post-Conviction Procedure Act. *Barcella v. State*, 148 Idaho 469, 477, 224 P.3d 536, 544 (Ct. App. 2009). To prevail on an ineffective assistance of counsel claim, the petitioner must show that the attorney's performance was deficient and that the petitioner was prejudiced by the deficiency. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Self v. State*, 145 Idaho 578, 580, 181 P.3d 504, 506 (Ct. App. 2007). To establish a deficiency, the petitioner has the burden of showing that the attorney's representation fell below an objective standard of reasonableness. *Aragon v. State*, 114 Idaho 758, 760, 760 P.2d 1174, 1176 (1988); *Knutsen v. State*, 144 Idaho 433, 442, 163 P.3d 222, 231 (Ct. App. 2007). To establish prejudice, the petitioner must show a reasonable probability that, but for the attorney's deficient performance, the outcome of the trial would have been different. *Aragon*, 114 Idaho at 761, 760 P.2d at 1177; *Knutsen*, 144 Idaho at 442, 163 P.3d at 231. This Court has long adhered to the proposition that tactical or strategic decisions of trial counsel will not be second-guessed on appeal unless those decisions are based on inadequate preparation, ignorance of relevant law, or other shortcomings capable of objective evaluation. *Gonzales v. State*, 151 Idaho 168, 172, 254 P.3d 69, 73 (Ct. App. 2011).

A. Deficient Performance

Goff argues the trial court failed to determine whether trial counsel might become available later that day or whether the jury trial could have been reset within the remaining statutory period. The State responds that appellate counsel reasonably declined to raise the speedy trial issue because trial counsel's unavailability was due to an ongoing jury trial, which constituted good cause for a continuance.

The trial court was informed that trial counsel remained engaged in an ongoing jury trial in another county that had gone longer than expected and that she had been court-ordered to remain in that county until the jury trial concluded. Further, appellate counsel testified at the evidentiary hearing that he considered raising a speedy trial claim under I.C. § 19-3501 but concluded the issue was unlikely to succeed on appeal. Appellate counsel is not required to raise every nonfrivolous issue and may select among potential claims to maximize the likelihood of success on appeal. *Smith v. Robbins*, 528 U.S. 259, 288 (2000). Generally, only when an omitted issue is clearly stronger than those presented, will the presumption of effective assistance be overcome. *Id*.

Because the trial court found good cause to continue the jury trial based on trial counsel's unavailability, appellate counsel could reasonably conclude a statutory speedy trial challenge was unlikely to succeed and, on this record, was not clearly stronger than the issue appellate counsel elected to pursue. Although the speedy trial claim was nonfrivolous, Goff has not shown that it was clearly stronger than the issue appellate counsel chose to raise. Appellate counsel, therefore, was not required to select the speedy trial claim merely because it presented a potentially viable issue. Accordingly, Goff has not shown that appellate counsel's performance fell below an objective standard of reasonableness.

B. Prejudice

Because Goff has failed to establish deficient performance, he cannot prevail on his ineffective assistance of counsel claim. Nevertheless, we also address prejudice in the alternative. Even assuming Goff could establish deficient performance, he also fails to establish prejudice. Goff argues he was prejudiced because the charge would have been dismissed had appellate counsel raised the statutory speedy trial issue on direct appeal. The State argues that Goff cannot demonstrate a reasonable probability he would have prevailed on appeal.

Because Goff challenges appellate counsel's performance, Goff must show a reasonable probability that, had appellate counsel raised the statutory speedy trial claim, the outcome of Goff's appeal would have been different. The record reflects that trial counsel's participation in another jury trial in another county created a legitimate scheduling conflict because the trial had gone longer than expected. Good cause exists where there is a substantial reason that rises to the level of a legal excuse for the delay. *State v. Clark*, 135 Idaho 255, 260, 16 P.3d 931, 936 (2000). Given the trial court's finding that trial counsel was unavailable due to an ongoing jury trial and was ordered to remain in that county until the jury trial concluded, Goff has not shown a reasonable probability that this Court would have concluded the trial court abused its discretion in finding good cause.

Goff further argues that prejudice exists because dismissal is the remedy for a statutory speedy trial violation pursuant to I.C. § 19-3501. However, Goff did not move to dismiss the charge on statutory speedy trial grounds in the district court. Thus, there was no dismissal to which the statutory provision applied, and Goff has not shown that he would have been entitled to dismissal had appellate counsel raised the issue on direct appeal. Because Goff has not demonstrated a reasonable probability that the statutory speedy trial claim would have resulted in reversal, he has not established prejudice under *Strickland*.

IV.

CONCLUSION

Goff has failed to demonstrate that appellate counsel performed deficiently or that, but for appellate counsel's failure to raise the statutory speedy trial issue, there is a reasonable probability that the outcome of the direct appeal would have been different. Accordingly, the district court's judgment denying Goff's petition for post-conviction relief is affirmed.

Judge FLEMING, **CONCURS**.

Judge LORELLO, **SPECIALLY CONCURRING.**

I concur in affirming the district court's decision denying Goff relief on his ineffective assistance of appellate counsel claim. I write separately to elaborate on the standard of review and to specifically address Goff's argument on appeal that any claim is clearly stronger than an excessive sentence claim.

Ineffective assistance of counsel claims are evaluated under the familiar two-part test from *Strickland v. Washington*, 466 U.S. 668 (1984). This standard requires a post-conviction petitioner to establish, by a preponderance of evidence, that counsel's performance was deficient and that the petitioner was prejudiced as a result of the deficiency. *Strickland*, 466 U.S. at 687-88. This same two-part test applies to claims of ineffective assistance of appellate counsel, albeit with nuance particular to the appellate context. *Dunlap v. State*, 159 Idaho 280, 296, 360 P.3d 289, 305 (2015).

For example, when a post-conviction petitioner alleges appellate counsel was deficient for failing to pursue a particular claim on appeal, the petitioner must show the attorney made an objectively unreasonable decision to omit the claim. *Id*. It is widely considered a hallmark of effective appellate advocacy to forego raising claims that have little or no likelihood of success. *Id*. Thus, appellate counsel's decision to omit a particular claim will not be second-guessed unless the decision is based on inadequate preparation, ignorance of relevant law, or other shortcomings capable of objective evaluation. *Gonzales v. State*, 151 Idaho 168, 172, 254 P.3d 69, 73 (Ct. App. 2011). With respect to prejudice resulting from appellate counsel's decision to omit a claim from consideration on appeal, the question is whether, but for appellate counsel's decision, a reasonable probability exists that the defendant would have prevailed on appeal. *Dunlap*, 159 Idaho at 297, 360 P.3d at 306.

In his post-conviction petition, Goff alleged a number of ineffective assistance of appellate counsel claims, including a claim that appellate counsel was ineffective for failing to raise a claim that the trial court violated Goff's right to a speedy trial. On direct appeal, Goff was represented by an attorney from the State Appellate Public Defender's office. Appellate counsel who represented Goff on direct appeal testified at the post-conviction evidentiary hearing. Appellate counsel testified that, after he receives the appellate record, including any transcripts and exhibits, his "habit is to go through it chronologically" and "flag any potential issues" for the purpose of evaluating them to see if they are "viable for appeal." Appellate counsel followed that process in his representation of Goff. Appellate counsel explained:

> There were at least 11 separate issues that I flagged and either discarded because they weren't preserved for appeal, there were issues with different aspects of the legal analysis that I couldn't prove.
>
> The ones that [Goff] wanted me to look at in particular were speedy trial, a motion based on his attorney's alleged intoxication and then an actual innocence claim.

When asked whether he raised any of these issues, appellate counsel testified he did not because "[n]one of them were viable for appeal." Appellate counsel elaborated:

> In order to run an issue to be viable on appeal, we have to be able to show an error in the District Court. We bear the burden on appeal. And so, I have to be able to show the decision on the issue was wrong.
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> So, for example, on the speedy trial, it was focused on--the motion that got filed was focused on the fact that the trial counsel wasn't available for the initial

> trial date. The next trial hearing was set beyond the statutory speedy trial range. And so, the question was whether that extension was justified.
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> The Court considered the issue, it ruled that the attorney's absence was for good cause, that another trial had run long. I can't prove that that was an abuse in reasoning by the District Court. There's case law that says a missing witness in similar circumstances is good cause. If a witness is missing, it's good cause. If an attorney is missing, it's probably also good cause. So, there's just no issue to run on appeal there.

Appellate counsel further explained that, in deciding what issues to raise, his ethical obligations preclude him from raising a claim he "know[s] to be frivolous," with one "caveat," which is:

> The Idaho Supreme Court does not allow us to withdraw from an appeal that is--where there are no issues that we can run.
>
> And so, in those cases, because we're appointed, because there's a right to an appeal, we raise something, but we usually flag it to the Court, you know, here's the controlling case law on the issue. But we still raise an issue in those circumstances.
>
> But if I have the option between a frivolous issue and a nonfrivolous issue . . . . I have the obligation to raise the viable issue, not the frivolous issue.

With respect to his decision to not pursue a speedy trial violation on appeal, appellate counsel explained that, after reading *State v. Clark*, 135 Idaho 255, 16 P.3d 931 (2000) and considering the factors from *Barker v. Wingo*, 407 U.S. 514 (1972), he concluded that the trial court did not err in continuing Goff's trial beyond the speedy trial deadline. As such, there was no basis to argue otherwise on appeal.

The district court denied relief on Goff's claim that appellate counsel was ineffective for failing to raise a claim on appeal that the trial court violated Goff's speedy trial rights. The district court reasoned that, because "there was good cause for both the short delay of the trial to first ensure [Goff's] counsel could be present and then to allow the State to secure the appearance of witnesses" and because the "overall delay" was not "constitutionally unreasonable" under *Barker*, Goff's right to a speedy trial was not violated. For those same reasons, appellate counsel was not ineffective for not pursuing a speedy trial claim on direct appeal.

Goff contends the district court erred in denying relief on his claim that appellate counsel was deficient for "fail[ing] to raise the speedy trial issue on appeal" because such a claim was stronger than the issue appellate counsel raised, i.e., that Goff's sentence is excessive. According to Goff, "nearly *any* issue is stronger than a challenge to the reasonableness of a legal sentence" because "hundreds of such appeals [are] brought every year" and "[n]one of them are successful."[2] Goff attributes this lack of success to the "highly deferential standard of review" applicable to excessive sentence claims and contends that this Court "apparently recognizes the near impossible burden to meet because its unpublished per curium opinions all closely resemble one another and often do not even set forth facts of the case." Goff, therefore, concludes: "To find an issue clearly stronger than the sentencing issue filed here is an exceptionally low bar to overcome."

Goff's argument invokes the "clearly stronger" standard referenced in *Smith v. Robbins*, 528 U.S. 259 (2000), which was cited in *Dunlap*, 159 Idaho at 297, 360 P.3d at 306, as well as other Idaho cases. It is important to understand the context surrounding the Supreme Court's inclusion of that language in *Robbins*. The issue in *Robbins* was whether California's procedure governing the obligations of counsel appointed on appeal to represent an indigent defendant complied with the Court's prior decision in *Anders v. California*, 386 U.S. 738 (1967). *Robbins*, 528 U.S. at 284. The Court in *Anders* stated:

> The constitutional requirement of substantial equality and fair process can only be attained where counsel acts in the role of an active advocate in behalf of his client, as opposed to that of amicus curiae. The no-merit letter and the procedure it triggers do not reach that dignity. Counsel should, and can with honor and without conflict, be of more assistance to his client and to the court. His role as advocate requires that he support his client's appeal to the best of his ability. Of course, if counsel finds his case to be wholly frivolous, after a conscientious examination of it, he should so advise the court and request permission to withdraw. That request must, however, be accompanied by a brief referring to anything in the record that might arguably support the appeal. A copy of counsel's brief should be furnished the indigent and time allowed him to raise any points that he chooses; the court—not counsel—then proceeds, after a full examination of all the proceedings, to decide whether the case is wholly frivolous. If it so finds it may grant counsel's request to withdraw and dismiss the appeal insofar as federal requirements are concerned, or proceed to a decision on the merits, if state law so requires. On the other hand, if it finds any of the legal points arguable on their merits (and therefore not frivolous) it must, prior to decision, afford the indigent the assistance of counsel to argue the appeal.

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[2] Goff does not appear to distinguish between the types of sentencing appeals, which include sentences following a trial that could give rise to other potential appellate issues, sentences following an unconditional guilty plea, sentences ordered executed following a probation revocation, sentences related to the relinquishment of jurisdiction, or the denial of I.C.R. 35 relief related to a sentence.

Anders, 386 U.S. at 744.

After *Anders* was decided, California revised its procedure from the "no-merit letter" the Court rejected to a process requiring appointed appellate counsel who concluded an appeal was frivolous to nevertheless file a brief summarizing the procedural and factual history of the case accompanied by an attestation that counsel "reviewed the record, explained his evaluation of the case to his client, provided the client with a copy of the brief, and informed the client of his right to file a *pro se* supplemental brief." *Robbins*, 528 U.S. at 265. The procedure also required appointed appellate counsel to "request[] that the court independently examine the record for arguable issues." *Id.* The Court in *Robbins* held that this revised procedure did not offend the constitutional concern addressed in *Anders*. In reaching this conclusion, the Court noted its post-*Anders* cases made "clear that the Constitution itself does not compel the *Anders* procedure;" rather, the states are free "to experiment with solutions to difficult problems of policy" like appellate representation of indigent defendants. *Robbins*, 528 U.S. at 273. Importantly, the Court reiterated "that the right to appellate representation does not include a right to present frivolous" appeals and an attorney is "under an ethical obligation to refuse to prosecute" such appeals. *Id.* at 272.

Further, in articulating the reasons why the two-part *Strickland* standard applies to ineffective assistance of appellate counsel claims, the Supreme Court explained that "appellate counsel who files a merits brief need not (and should not) raise every nonfrivolous claim, but rather may select from among them in order to maximize the likelihood of success on appeal." *Robbins*, 528 U.S. at 288. Although "it is still possible to bring a *Strickland* claim based on counsel's failure to raise a particular claim," demonstrating counsel was incompetent is "difficult." *Id.* It was this latter point that was supported by a "*see, e.g.*" parenthetical citation to *Gray v. Greer*, 800 F.2d 644, 646 (7th Cir. 1986), in which the Seventh Circuit wrote: "Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance be overcome." *Robbins*, 528 U.S. at 288 (quoting *Gray*, 800 F.2d at 646). This single sentence from *Gray* does not reflect the context in which it was made. The context reads:

> When a claim of ineffective assistance of counsel is based on failure to raise viable issues, the district court must examine the trial court record to determine whether appellate counsel failed to present significant and obvious issues on appeal. Significant issues which could have been raised should then be compared to those

> which were raised. Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome.

Gray, 800 F.2d at 646. This context reflects that the Seventh Circuit's emphasis was on the failure to raise "significant and obvious" issues. Moreover, the express holding in *Gray* still required a review of whether appellate counsel's decision was "strategic." *Id*.

The Court in *Robbins* followed its reference to *Gray* by explaining:

> With a claim that counsel erroneously failed to file a merits brief, it will be easier for a defendant-appellant to satisfy the first part of the *Strickland* test, for it is only necessary for him to show that a reasonably competent attorney would have found one nonfrivolous issue warranting a merits brief, rather than showing that a particular nonfrivolous issue was clearly stronger than issues that counsel did present.

Robbins, 528 U.S. at 288. This excerpt reflects that the Court was distinguishing between filing a merits brief and not.

Citing *Robbins* (quoting *Gray*), the "clearly stronger" language has gained traction in Idaho as a significant part of the standard for evaluating a claim that counsel was ineffective for failing to raise a particular claim on appeal. *See, e.g., Dunlap*, 159 Idaho at 297, 360 P.3d at 306 (citing *Robbins*, 528 U.S. at 288); *Mintun v. State*, 144 Idaho 656, 661, 168 P.3d 40, 45 (Ct. App. 2007) (citing *Robbins*, 528 U.S. at 288). Even so, the standard does not exist in a vacuum. Well-settled principles governing ineffective assistance of counsel claims, reiterated in *Robbins* and *Dunlap*, still inform the inquiry. For purposes of establishing deficiency, it is not as simple as Goff's contention that "*any* issue is stronger than a challenge to the reasonableness of a legal sentence." That an issue may be "stronger" in the abstract does not mean appellate counsel is deficient for not raising an issue unless the decision is the product of inadequate preparation, ignorance of relevant law, or other shortcomings capable of objective evaluation. *See Gonzales*, 151 Idaho at 172, 254 P.3d at 73. Nor does it establish that, but for appellate counsel's decision to not raise a claim, a reasonable probability exists that the defendant would have prevailed on appeal. *See Dunlap*, 159 Idaho at 297, 360 P.3d at 306.

In this case, appellate counsel testified that he evaluated the speedy trial issue Goff claims he should have raised and determined it was not viable based on his reading of the record, *Clark*, and *Barker*. This decision was not the product of inadequate preparation, ignorance of relevant law, or other shortcomings capable of objective evaluation. Or, using the language of *Robbins*, there is no basis for concluding that Goff's appellate attorney "unreasonably *failed to discover* nonfrivolous issues and to file a merits brief raising them." *Robbins*, 528 U.S. at 285 (emphasis added). That Goff disagrees with appellate counsel's reading of *Clark* and disagrees with appellate counsel's evaluation of the merits of the claim does not demonstrate otherwise. By instead focusing on the general lack of success for sentencing claims, Goff skews the standard in a way never intended by the Supreme Court in *Robbins*. The central lesson from *Robbins* is that states must have a procedure to ensure that indigent defendants have "the adequate and effective appellate review that the Fourteenth Amendment requires" and that the two-part test from *Strickland* applies to ineffective assistance of appellate counsel claims. *Robbins*, 528 U.S. at 279, 285. Appointed appellate counsel retains the ability, and indeed the ethical duty, to evaluate potential claims for direct appeal and determine whether to raise them. Those assessments must stand on their own merits and not be undermined by or compared to appellate counsel's separate obligation to comply with Idaho's *Anders* procedure. *See State v. McKenney*, 98 Idaho 551, 568 P.2d 1213 (1977). In *McKenney*, the Idaho Supreme Court held that, "once counsel is appointed to represent an indigent client during appeal on a criminal case, no withdrawal will thereafter be permitted on the basis that the appeal is frivolous or lacks merit." *Id.* at 552, 568 P.2d at 1214. Following this guidance, Goff's appellate counsel evaluated potential issues; determined they lacked merit or were unpreserved; and, because he could not withdraw, raised an excessive sentence claim. That the claim was unsuccessful, even if predictably so, does not demonstrate deficiency related to any other prospective claim.

Finally, even sowing doubt into appellate counsel's decision to forego the speedy trial claim in Goff's direct appeal, he failed to show he was prejudiced as a result. For the reasons noted by the district court, there is not a reasonable probability that the claim would have been successful on appeal. I concur with the decision to affirm the district court's judgment denying post-conviction relief.