

December 18, 2018

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the
Personal Restraint Petition of

JOHN W.A. RUSSELL,

Petitioner.

No. 51504-1-II

UNPUBLISHED OPINION

WORSWICK, P.J. — John Russell seeks relief from personal restraint imposed following his 2015 convictions for first degree assault and second degree assault.¹ He argues that he received ineffective assistance of counsel when his trial counsel did not (1) have the knife used in the assault subjected to forensic examination, (2) investigate Russell’s level of intoxication at the time of the assault, (3) confront testimony that contradicted the physical evidence, (4) provide him with a copy of the discovery, and (5) call character witnesses. To establish ineffective assistance of counsel, Russell must demonstrate that his counsel’s performance fell below an objective standard of reasonableness and that as a result of that deficient performance, the result of his case probably would have been different. *State v. McFarland*, 127 Wn.2d 322, 335-36, 899 P.2d 1251 (1995); *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). We presume strongly that trial counsel’s performance was reasonable. *State v. Grier*, 171 Wn.2d 17, 42, 246 P.3d 1260 (2011).

Russell’s arguments are unavailing. He does not show that any forensic examination of the knife was necessary. His level of intoxication at the time of the assault was investigated by his

¹ We issued the mandate of Russell’s direct appeal on March 16, 2017, making his February 28, 2018 petition timely filed. RCW 10.73.090(3)(b).

No. 51504-1-II

trial counsel, who engaged an expert witness on the issue. His counsel's confrontation of the evidence is a matter of strategy that cannot constitute deficient performance. He does not show how not being provided the discovery prejudiced him. The witnesses he wanted to have called were character witnesses and those witnesses would not have been allowed because his character was not at issue. Russell does not demonstrate that he received ineffective assistance of counsel.

Russell also claims that the State prevented him from calling witnesses. But the record bears no proof that either the State or the trial court prevented Russell from calling witnesses.

Russell presents no grounds for relief from restraint. We dismiss his petition. His request for appointment of counsel is denied.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.



WORSWICK, P.J.

We concur:



MELNICK, J.



SUTTON, J.