

Circuit Court for Worcester County
Case No. C-23-CR-22-000062

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1729

September Term, 2023

JOSIAH JAMIR WILLIAMS

v.

STATE OF MARYLAND

Wells, C.J.,
Albright,
Hotten, Michele, D.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wells, C.J.

Filed: October 11, 2024

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

This case arises from an allegation of sexual assault that A.G.¹ made against appellant Josiah Jamir Williams (“Williams”), both of whom were, at the time, students at Pocomoke High School. The police arrested and charged Williams with Second Degree Rape (Count 1), Third Degree Sex Offense (Count 2), Fourth Degree Sex Offense (Count 3), and Second Degree Assault (Count 4). A jury empaneled in the Circuit Court for Worcester County convicted Williams of Counts 1, 3, and 4, and the court sentenced him to fifteen years imprisonment with all but seven years suspended. Williams filed two Motions for a New Trial, one before and the other after sentencing, both of which the court denied.

Williams filed this timely appeal. He submits two questions for our review, which we have slightly rephrased:

1. Was Williams denied his Sixth Amendment right to effective assistance of counsel?
2. Was Williams denied his Sixth Amendment right to a fair trial and impartial jury?

For the following reasons, we decline to address either of Williams’ claims on direct appeal and affirm the circuit court’s decision.

FACTUAL AND PROCEDURAL BACKGROUND

The core facts of this case are gleaned from the testimony of several witnesses at trial, but chiefly A.G. In early February 2022, Williams and A.G., students at Pocomoke

¹ We use initials for the victims of sexual assault to protect their privacy. Maryland Rule 8-125.

High School, flirted with each other via Snapchat.² During the school day on February 7, 2022, Williams messaged A.G. and asked if she would meet with him. A.G. agreed and the two met in an empty classroom. A.G. testified that they chatted and kissed. A.G. testified that Williams then attempted to put his hands down her pants and she told him to stop. The two continued talking and kissed again. According to A.G., Williams once more tried to put his hands down her pants. A.G. said she was leaving the classroom because A.G. did not want to have sex. Then, according to A.G., Williams grabbed her arm and neck, forced her to a table, and sexually assaulted her while she told him to stop.

A.G. immediately reported the incident to family members and her aunt reported it to the police. The police arrested Williams days later. When Williams was interviewed at the police station, he admitted to having consensual vaginal sex with A.G. but denied having anal sex.³

Ultimately, the State charged Williams with Second Degree Rape (Count 1), Third Degree Sex Offense (Count 2), Fourth Degree Sex Offense (Count 3), and Second Degree Assault (Count 4). The State extended Williams a plea offer to plead guilty to Counts 3 and 4, and recommend a binding cap of 18 months' incarceration. Williams rejected this plea offer in open court.

² “Snapchat” is “the name of a social media service for sending pictures, messages, and videos that are only available to be seen for a limited amount of time[.]” *Snapchat*, CAMBRIDGE DICTIONARY, *archived at* <https://perma.cc/ZF4W-WDUS>.

³ At trial, and in Williams' brief to this Court, Williams maintains that the sexual encounter with A.G. was consensual.

After a jury trial, Williams was convicted of Counts 1, 3, and 4. He filed a Motion for a New Trial, which the court denied. The court sentenced Williams to fifteen years' imprisonment with all but seven years suspended, followed by three years' supervised probation. Williams then filed another Motion for New Trial which the court also denied. Williams timely filed this appeal.⁴

We will provide additional facts in our analysis when necessary.

DISCUSSION

I. We Decline to Address Williams' Claim of Ineffective Assistance of Counsel on Direct Appeal.

A. Parties' Contentions

Williams contends that he was denied his Sixth Amendment right to effective assistance of counsel. Williams raises four grounds as to his trial counsel's deficient and prejudicial performance. *First*, Williams argues that his trial counsel failed to investigate seven potential witnesses who may have possessed information that could have changed the trial outcome.⁵ *Second*, Williams argues that his trial counsel failed to advise Williams of the potential consequences of rejecting the State's plea offer and instead proceeding to trial. *Third*, Williams argues that his trial counsel failed to properly confront and examine multiple witnesses at trial. Specifically, Williams contends that his trial counsel failed to inquire into A.G.'s credibility and her supposed motive to testify falsely, the Pocomoke

⁴ Williams' second motion for new trial was denied after Williams filed this appeal.

⁵ Williams' trial counsel called some of these potential witnesses or cross-examined them at trial, but Williams asserts that his trial counsel did not exercise due diligence and investigate all relevant facts prior to trial and testimony presented at trial.

High School principal’s personal relationship with A.G., and the police’s decision not to subpoena Snapchat records or extract Williams’ cell phone records. *Finally*, Williams alleges that his trial counsel failed to properly investigate and admit certain pieces of favorable evidence. Overall, Williams contends that these four grounds constitute an obviously deficient performance by his trial attorney that prejudiced him, violating his Sixth Amendment right to effective assistance of counsel.

The State contends that we should not review Williams’ claim of ineffective assistance of counsel. The State argues that Williams’ claim should be resolved in a post-conviction proceeding and not on direct appeal as the trial record is not sufficiently developed for us to evaluate whether Williams’ right to effective assistance of counsel was violated. The State further asserts that even if we reach the merits of Williams’ ineffective assistance of counsel claim, Williams cannot prove prejudice due to a lack of support for that allegation in the trial record.

B. Analysis

In *Strickland v. Washington*, the United States Supreme Court established a two-prong test that defendants must satisfy to prove a violation of their Sixth Amendment right to effective assistance of counsel. 466 U.S. 668, 669 (1984); *see also In re Parris W.*, 363 Md. 717, 725 (2001). To succeed on an ineffective assistance of counsel claim under the *Strickland* test, a defendant must show that (1) counsel’s performance was deficient, and (2) the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. *Strickland*, 466 U.S. at 669. To establish deficient performance under the first prong,

the defendant must show that “counsel’s representation fell below an objective standard of reasonableness,” meaning that counsel’s actions or inactions were not supported by a sound trial strategy. *Id.* at 688-89. To establish prejudice, “a defendant must show either: (1) a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different; or (2) that the result of the proceeding was fundamentally unfair or unreliable.” *Bailey v. State*, 464 Md. 685, 703 (2019) (internal citations omitted). “Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim.” *Strickland*, 466 U.S. at 700.

It is well-settled that ineffective assistance of counsel claims are “best tested in post-conviction proceedings,” not on direct appeal. *Mosley v. State*, 378 Md. 548, 572 (2003); *see also Addison v. State*, 191 Md. App. 159, 174 (2010). Post-conviction proceedings pursuant to the Maryland Uniform Post Conviction Procedure Act are not an appeal of the judgment, but rather a collateral attack to address alleged violations that occurred at trial, such as ineffective assistance of counsel. *Mosley*, 378 Md. at 559-60. Post-conviction proceedings are preferred to direct appeals of ineffective assistance of counsel claims “because the trial record rarely reveals why counsel acted or omitted to act.” *Id.* at 560. Otherwise put, the trial record is rarely developed such that an appellate court can “determine intelligently” whether there was deficient performance under the first prong of the *Strickland* test, in that trial counsel’s actions or inactions were not supported by sound trial strategy. *Johnson v. State*, 292 Md. 405, 435 (1982). Unlike a direct appeal, post-conviction proceedings “allow for fact-finding and the introduction of testimony and

evidence directly related to the allegations of counsel’s ineffectiveness,” thereby allowing the post-conviction court to adequately evaluate “whether the attorney’s actions met the applicable standard of competence” under *Strickland. Mosley*, 378 Md. at 560; *Johnson*, 292 Md. at 435.

While the general rule is that “a claim of ineffective assistance of counsel is raised most appropriately in a post-conviction proceeding,” this rule is “not absolute.” *In re Parris W.*, 363 Md. at 726. The Supreme Court of Maryland has permitted review on direct appeal “in the rare instance where the critical facts are undisputed, the record is sufficiently developed, and/or the legal representation is so egregiously ineffective that it is obvious from the trial record that a defendant was denied his Sixth Amendment right to counsel.” *Mosley*, 378 Md. at 564. In those cases, the trial record was “sufficiently developed to clearly reveal ineffective assistance of counsel and that counsel’s performance adversely prejudiced the defendant.” *Id.* at 567. But when the trial record does not so clearly reveal that counsel’s actions constitute unconstitutional ineffective assistance of counsel, we will not “second-guess [trial] counsel’s actions on direct appeal when there is an opportunity [in a post-conviction proceeding] to introduce testimony and evidence directly related to this issue.” *Bailey*, 464 Md. at 705.

We decline to address Williams’ claim of ineffective assistance of counsel on direct appeal. We conclude that the trial record is not sufficiently developed to determine whether Williams’ trial counsel was prejudicially ineffective. Specifically, the trial record does not explain why Williams’ trial counsel allegedly failed to (1) investigate potential witnesses,

(2) advise Williams of the potential consequences of rejecting the State’s plea offer and instead proceeding to trial, (3) properly confront and examine witnesses at trial, or (4) properly investigate and admit favorable evidence. Accordingly, on this appeal Williams cannot show that his trial counsel’s four supposed instances of inaction were not the product of a reasonable trial strategy, as is required under the first prong of the *Strickland* test. *Strickland*, 466 U.S. at 689. Because the trial record “sheds no light on why [Williams’] counsel acted as [they] did, direct review by this Court would primarily involve the perilous process of second-guessing, perhaps resulting in an unnecessary reversal in a case where sound but unapparent reasons existed for counsel’s actions.” *Johnson*, 292 Md. at 435 (internal citations omitted). Therefore, we conclude that a post-conviction proceeding, where each side will have the opportunity to introduce testimony and evidence directly related to counsel’s alleged inaction and the rationale behind those choices, is the appropriate venue to evaluate Williams’ ineffective assistance of counsel claim.

II. We Decline to Address Williams’ Claim of Denial of His Right to a Fair Trial and Impartial Jury.

A. Parties’ Contentions

Williams additionally contends that he was denied his Sixth Amendment right to a fair trial and impartial jury due to issues surrounding the composition and behavior of the jury. Specifically, Williams, a Black man, argues that the jury was not impartial because it did not include any Black people. Williams further asserts that the jury was biased against him because, during trial, multiple jurors behaved in a way that, he claims, demonstrated prejudice against him. He cites such behavior as jurors making facial expressions in the

courtroom and the fact that the jury reached a verdict in one hour even though the trial spanned two days. Williams contends that these violations amounted to a violation of his Sixth Amendment right to a fair trial. He further claims this violation resulted from ineffective assistance of counsel separate from the grounds discussed in section I.B of this opinion. Namely, Williams argues that his trial counsel was deficient and prejudicial by failing to properly screen the venire, leading to an unconstitutionally biased jury and, ultimately, an unfair trial.

The State contends that we should decline to review Williams' claim of a biased jury and unfair trial. *First*, the State asserts that we should not review the merits of Williams' claim because Williams did not make any objections relating to the jury, and therefore, Williams did not preserve his arguments about the jury's composition and behavior. *Additionally*, the State argues that we should not address the merits of Williams' complaint about jury composition because Williams waived any objection by permitting the jury to be seated without objection. *Finally*, Williams' contentions point to observations that are not contained in the record. For example, Williams asserts in his brief to this Court that his parents can provide testimony about their observations of biased juror behavior during trial. Consequently, the State contends that Williams' claims should be resolved in a post-conviction proceeding where a full record may be developed that centers on the jury's behavior and racial composition, and counsel's supposed inaction in countering the jury's alleged bias.

B. Analysis

“Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]” Md. Rule 8-131(a). The purpose of this rule, known as the preservation requirement, is “not to facilitate or to foreclose appellate review of trial error,” but to “avoid error in the first place and thereby [] preclude the very necessity for appellate review,” as well as to “prevent the trial court from being sandbagged by unseen error.” *Robson v. State*, 257 Md. App. 421, 461 (2023); *Jordan v. State*, 246 Md. App. 561, 586 (2020). To preserve an issue for appellate review, a party must “make[] known to the [trial] court the action that the party desires the court to take or the objection to the action of the court.” Md. Rule 4-323(c). This must be done “at the time the ruling or order [by the court] is made or sought.” *Id.* Since Williams did not object to any aspect of jury selection, composition, or behavior during the trial stage, these issues are not preserved for this Court to hear on appeal.⁶

Additionally, “[f]acts outside the record cannot be argued to or considered by the trial court, and thus have no influence on its judgment. Accordingly, an appellate court

⁶ Waiver of jury composition issues only becomes operative if there is an objection to “a voir dire question, where the nature of the objection was directed to the composition of the jury[.]” *State v. Stringfellow*, 425 Md. 461, 465 (2012). Since Williams did not make any objections during jury selection, the State’s contention that Williams’ waived arguments regarding jury composition is not ripe for review. *Id.* (“[A]n overruled objection to a voir dire question, where the nature of the objection was directed to the composition of the jury, is waived when the objecting party accepts thereafter the jury, without qualification.”); *see also Foster v. State*, 304 Md. 439, 451 (1985) (“This Court has repeatedly taken the position that where a party has previously made an objection with regard to a prospective juror or prospective jurors, and thereafter, at the conclusion of the jury selection process, unequivocally states that the jury as selected is acceptable, such party has withdrawn or abandoned his prior objection.”).

must confine its review to evidence actually before the trial court when it reached its decision.” *Cochran v. Griffith Energy Serv., Inc.*, 191 Md. App. 625, 663 (2010).

We decline to address Williams’ claim of denial of the right to a fair trial and impartial jury because Williams did not preserve his arguments regarding the jury’s composition and behavior. He did not object to the venire panel, the voir dire process, or the jury that was seated. There is no evidence in the trial record about the jurors’ behavior or their races. We have no evidence as to Williams’ trial counsel’s strategy during voir dire or anything related to the jury. Further, this Court cannot consider the proffered testimony of Williams’ parents about their observations of supposedly biased juror behavior because such testimony had to be presented to the circuit court. As an appellate court, we do not hear testimony; we only review the trial court record for judge-made error. We note, however, that this testimony, as well as any other relevant evidence, could be heard in a post-conviction proceeding. Therefore, Williams’ claims of a jury bias, and alleged prejudice resulting from trial counsel’s supposed ineffective assistance, are best suited to be heard in a post-conviction proceeding.

THE JUDGMENTS OF THE CIRCUIT COURT FOR WORCESTER COUNTY ARE AFFIRMED. APPELLANT TO PAY THE COSTS.