Circuit Court for Prince George's County
Case No. CT080405X

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2440

September Term, 2023

STATE OF MARYLAND

v.

WILLIE MATTHEW MOORE.

Wells, C.J.,
Arthur,
Sharer, J. Frederick,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Wells, C.J.

Filed: January 6, 2025

Appellant, State of Maryland, appeals a decision from the Circuit Court for Prince George's County to grant appellee's, Matthew Moore, Motion to Re-Open Petition for Post-Conviction Relief and subsequently order a new trial. After a hearing, the circuit court concluded that Moore's trial counsel's performance was deficient. Specifically, the court found Moore's attorney should have done additional research to determine whether the dismissal of the misdemeanor charges against Moore was warranted before proceeding to trial. Instead, Moore took a plea to carjacking and agreed to receive a 25 year without parole sentence as a third time offender under Md. Code. Ann., Crim. Law Art. § 14-101. The court imposed that sentence and recommended that Moore serve the sentence at Patuxent Institute as Moore requested.

The State appeals and presents three questions for our review, which we reduced and rephrased to one:[1]

[1] The State's verbatim questions are:

1. Did the postconviction court commit clear error when it found both (a) that the "only" benefit Moore received under the plea agreement was the nol pros of the remaining counts, and (b) that without the dismissal of the misdemeanor counts Moore "believed . . . that he faced a possible extraordinary sentence," where Moore did not face more than a 70-year potential sentence with the misdemeanor counts, would have faced a 60-year potential sentence without the misdemeanor counts, and the plea agreement provided for a sentence of 25 years?

2. Did the postconviction court err in finding prejudice where there was no reasonable probability that Moore would have rejected the plea offer and

1. Did the post-conviction court err in finding Moore was denied his Sixth Amendment right to effective assistance of counsel because his attorney's performance was deficient?

For the reasons set forth below, we hold counsel's performance did not fall below the *Strickland* standard of reasonableness. Consequently, we conclude Moore was not denied his Sixth Amendment right to effective assistance of counsel. Because we hold counsel's performance was not deficient, we do not review whether Moore's trial was prejudiced. Accordingly, we reverse and vacate the new trial ordered herein.

FACTUAL AND PROCEDURAL BACKGROUND

I. The Facts Underlying Moore's Criminal Charges

On May 11, 2001, Moore approached the victim, X[2], while she was sitting in her car in a parking lot with the window partially down. After asking her questions through the partially open window, Moore reached through the window, and grabbed X by the neck with both hands, and a struggle ensued. Eventually, the car window broke, and Moore was

---

proceeded to trial had the misdemeanor counts been dismissed, given that he understood he faced a 70-year potential sentence with the misdemeanor counts, he would still have faced a 60-year potential sentence without the misdemeanor counts, and the plea offer provided for a sentence of 25 years?

3. Did the postconviction court err in finding that trial counsel performed deficiently by failing to locate and cite collateral dicta in support of the motion to dismiss?

[2] We denote the victim in this case by an initial unrelated to her name. Md. Rule 8-125(a)(2), (b).

able to unlock the driver's door of the vehicle and force his way into the seat. X was able to exit the vehicle, but Moore tackled her, punched her in the face repeatedly, and forced her back into the vehicle. X tried to scream, but Moore threatened to shoot her with a gun if she did not stop. X then convinced Moore to let her drive. X eventually drove towards an occupied vehicle and began screaming for help. The occupants of the other vehicle exited and approached them. Moore then exited the vehicle and fled on foot.

The University of Maryland Police were unable to locate Moore, whose identity was unknown at the time of the incident. However, detectives collected a baseball hat, bloodstains samples taken from the passenger seat, and numerous finger and palm prints lifted from the interior and exterior of X's vehicle. In 2003, the baseball hat was submitted to the Maryland State Police Crime Laboratory for DNA analysis. DNA extracts located on the hat were then entered into a national DNA database for comparison. In 2007, a routine search of the database resulted in a match between the DNA on the baseball hat and Moore, whose DNA was previously uploaded to the database because he was a convicted offender. Later, Moore's saliva, fingerprints, and palm prints were also compared to the DNA and prints found in X's vehicle, which resulted in a match.

On January 30, 2008, a Statement of Charges was filed against Moore in the District Court of Maryland for Prince George's County. On May 4, 2008, a grand jury in the Circuit Court for Prince George's County returned an indictment, charging Moore with two felony counts of kidnapping and carjacking, and four misdemeanor counts of attempted kidnapping, attempted carjacking, second-degree assault, and false imprisonment. On

February 17, 2009, the State filed notice under Maryland Rule 4-245(c)[3] and Md. Code, § 14-101 of the Criminal Law Article[4] of its intent to seek a mandatory minimum sentence of 25 years without parole upon third conviction of a crime of violence since Moore was convicted of violent crimes on two prior occasions.

II. Moore's Motion to Dismiss the Misdemeanor Charges

On February 26, 2009, Moore's trial attorney, Bethany L. Skopp, Esquire, filed a motion to dismiss the misdemeanor charges, arguing they were time barred by the statute of limitations. Moore's trial was set for March 3, 2009. On the day of trial, but before jury selection, the trial court heard pretrial motions, including the defense's motion to dismiss the misdemeanor charges. Skopp argued the misdemeanor charges against Moore should be dismissed because Maryland Code, § 5-106 of the Courts & Judicial Proceedings

[3] Md. Rule 4-245(c) states:

> Required Notice of Mandatory Penalties. When the law prescribes a mandatory sentence because of a specified previous conviction, the State's Attorney shall serve a notice of the alleged prior conviction on the defendant or counsel at least 15 days before sentencing in circuit court or five days before sentencing in District Court. If the State's Attorney fails to give timely notice, the court shall postpone sentencing at least 15 days unless the defendant waives the notice requirement. The notice required under this section shall be substantially in the form approved by the State Court Administrator and posted on the Judiciary website.

[4] The relevant portion of Maryland Code, § 14-101(c)(1) states: "Except as provided in subsection (f) of this section, on conviction for a third time of a crime of violence, a person shall be sentenced to imprisonment for the term allowed by law but not less than 25 years, if the person: (i) has been convicted of a crime of violence on two prior separate occasions."

Article[5] stated misdemeanors were subject to a one-year statute of limitations from the date the offense was committed, which in this case was 2001. Skopp also directed the trial court to *In Re Anthony R.*, 362 Md. 51 (2000), and *Massey v. State*, 320 Md. 605 (1990). The trial court denied the motion, agreeing with the prosecutor that the statute of limitations began to run when Moore's identity was discovered in 2007; therefore Moore was charged within the one-year time limit. The trial court, observing that the police promptly investigated the crime once Moore's identity was discovered, further explained, "I cannot believe with the statute that the legislature for a moment meant to suggest that these charges couldn't be brought against an unknown defendant as long as there was a diligent effort to discover his identity. Those samples were taken promptly. I'll deny that exception."

Skopp immediately requested the court to reconsider and pointed out that the statute directly says the statute of limitations begins when the offense is committed. The trial court then told Skopp that it would re-consider its ruling if case law was found to support her argument:

> THE COURT: Is there any basis, any intellectual honesty that you can suggest that that statute applies when they don't know the identity of the defendant?
>
> [SKOPP]: Yes, I can, because what the courts have looked at cases where -- for example --
>
> THE COURT: Is there a case that says if you don't know his identity -- I, myself, I agree that's what it says, but is there a case that says the statute still

[5] Md. Code § 5-106(a) states: "Except as provided by this section, § 1-303 of the Environment Article, and § 8-1815 of the Natural Resources Article, a prosecution for a misdemeanor shall be instituted within 1 year after the offense was committed."

> applies if you don't know? I mean, somebody could commit any number of crimes. As long as you don't find out who they are, they're scott free.
>
> [SKOPP]: Your Honor, I would like to submit the Massey case, and I'd like, if I could return after a recess or whatever, whenever we take a break, to look up this issue . . . .
>
> THE COURT: Well, I'll revisit it, perhaps, after a break. I'll certainly look through your case you've submitted as well. If I find a case and I looked at the annotation and I see no case in the annotations that says that the statute still applies even though the identity of the defendant, despite reasonable efforts is unknown, if I find such a case, then I'll -- certainly may consider it, but [if] I don't find such a case, then this may be the case that decides the issue.
>
> But, I can't, in my own intellectual honesty, believe that is the intent of the statute. It makes no sense. But during the break if you find -- certainly I'll be happy -- and as I said, I'll read those two cases as well.

The parties then argued other pre-trial motions. Immediately after motions, a panel of prospective jurors were brought into the room. Skopp approached the prosecutor to asked if a plea agreement was still possible. The prosecutor responded affirmatively. The court did not take a break but, instead, moved to a plea hearing.

III. The Plea Agreement

After the prospective jurors were brought into the courtroom, the parties approached the bench, and the prosecutor informed the trial court that Moore decided to accept the State's agreement to plead guilty in exchange for a sentence of 25-years without parole and placement in Patuxent Institution. After this discussion at the bench, Moore, the court, and both attorneys agreed to those terms, and the jury panel was dismissed. The trial court then accepted Moore's guilty plea of one count of carjacking. Significantly, Moore also stated that he understood he was abandoning his motion to dismiss the misdemeanor charges and

appeals related to it. On April 9, 2009, the trial court sentenced Moore to 25 years without the possibility of parole. He was placed in Patuxent Institution in accordance with the plea agreement.

IV. Moore's 2014 Post-Conviction Motion and Hearing

Moore filed his first post-conviction motion for relief in the Circuit Court for Prince George's County ("2014 post-conviction court"), and a hearing was held on March 6, 2014. Moore's 2014 post-conviction hearing is not relevant to this appeal, except that Moore testified to his original understanding of his sentencing exposure and decision to plead guilty at his 2009 trial. Specifically, Moore stated he knew the case against him was strong, he was unsure what a jury might do, and he faced a maximum sentencing exposure of 70 years in prison if he went to trial. Additionally, he testified that he believed the trial judge would likely impose a heavy sentence, the State was not budging on the plea deal, and accepting the plea deal would guarantee a sentence of 25 years without the possibility of parole. The relevant excerpts read as follows:

> [DIRECT EXAMINATION BY POST-CONVICTION COUNSEL]
>
> Q And what kind of things did you discuss during the meetings with [Skopp]?
>
> A: Hum, it was mainly the State wasn't really budging on anything. And at least she could probably get it down to—was twenty-five without parole, so I was weighing that over between the time I saw her and, you know, the time we came to court.
>
> * * * *
>
> Q: So, did you two ever discuss or prepare for actually going to trial in this case?

A: Hum, basically she was just letting me know that she thought that the case was pretty strong against me, so was letting her know the type of offense. I remember, hum, I think it was just pretty much just trying to get the best offer that we could get.

Q: So, you knew going into the day of trial that the State was willing to offer you twenty-five without parole?

A: Yes.

Q: And you just hadn't accepted it yet?

A: Right.

Q: And so can you tell the Court how it came to be that you did accept that plea offer?

A: Hum, on that day when we were sitting at the table I hum --

Q: Sitting at the trial table?

A: Yes. I just -- I just kept hearing that the 70 years that she was hammering on me. I didn't want to go to trial that day because she didn't think it was that much of a defense. So I just -- just went over on to her and just said I think I will take the twenty-five, no parole.

* * * *

Q: Did you understand that the Judge was agreeing to impose the twenty-five without parole, not just that the State was recommending it but that the Judge was actually going to impose that sentence if you entered into it?

A: Well, yes. That's what I thought once I -- when I let her know that I would accept the plea that she had got from the State. Then I thought that's what he was going to give my, yes.

* * * *

[CROSS EXAMINATION BY THE STATE]

Q: Now, at some point Ms. Skopp came to you and said that the State would be willing to give you -- make an offer to you of twenty-five without parole. Am I correct?

A: Right.

Q: And Ms. Skopp informed you that that was basically a good offer.

A: Best she could get.

Q: Because otherwise if you're going to trial you were looking at around very many years. Right?

A: Oh, yes. It was.

Q: Excuse me?

A: We definitely discussed that part.

Q: So definitely twenty-five years without parole sounded a whole lot better than seventy. Didn't it?

A: Yes. And the part I was saying we definitely discussed the seventy years. That was like -- that was like I was hearing that regularly. You know, like, you probably going to get seventy years, you know.

So, we had discussed that other times. Couple of times.

Q: And that was because the State had put on solid evidence against a good amount of solid evidence against -- a good amount of solid evidence against you.

A: From what she was telling me and that she didn't think she could fight it, you know . . . .

* * * *

Q: Okay. And you testified that on the trial date and this jury was getting ready to come in. Right?

A: Um-hum.

Q And you knew it was time that you had to make a decision.

A Yes.

Q And you just made the decision that what you wanted was a jury trial. Right?

A Yes.

Q So, you're sitting there at the table. Were you sitting at the table at that time?

A Um-hum.

Q You decided twenty-five without sounds a whole lot better than seventy. Right?

A Yes.

Q And so, you said to Ms. Skopp, I would like to accept the State's offer. Right?

A Yes. Also to let her know that we didn't even – we didn't know what type of jurors we would pick or anything like that, the type of people that had – was going to decide my fate, you know.

* * * *

Q So, you knew a jury was a toss up. Right?

A Yeah.

Q And based upon the evidence, it could go badly for you.

A Yes.

Q So, twenty-five years without parole you knew that's what it's going to be. Right?

A Um-hum.

Q That's what the offer was. That's what everybody is saying that's what it's going to be?

A Yes.

Q So, you had that definiteness. Right, that it was going to be twenty-five without?

A Right.

Q So, you didn't have to guess.

A I definitely knew by that time, yes.

V. Moore's 2023 Post-Conviction Motion

On July 30, 2019, Moore moved to reopen the post-conviction proceeding in the Circuit Court for Prince George's County, which is the subject of this appeal. In the written motion, Moore claimed Skopp rendered ineffective assistance by failing to conduct research refuting the trial court's assertion that the statute of limitations for misdemeanors beings to run at the time the suspect is identified, rather than at the time the crime was committed.

Moore claimed that if Skopp had conducted research at a recess period, she would have discovered two cases—*Jackson v. State*, 92 Md. App. 304 (1992), and *State v. Stowe*, 376 Md. 436 (2003)—which he asserts contradicted the trial court's claims about the statute of limitations. Further, Moore argued the court would have granted the motion to dismiss, which would have reduced Moore's maximum possible sentencing exposure to 70 years with the possibility of parole.[6]

Moore also claimed in his motion that, at the time of the 2009 trial, he believed he was facing a maximum sentencing exposure of 120 years. This was because felony kidnapping and carjacking each carried a statutory maximum penalty of 30 years (for a

[6] In Moore's motion, he wrote the sentencing exposure was 70 years with the misdemeanors dismissed, but he likely meant 60 because each felony count carries a maximum sentence of 30 years.

total of 60),[7] second degree assault carried ten years maximum penalty, and the misdemeanor false imprisonment charge carried an additional sentence with no statutory maximum. Moore's motion explained how this calculation affected his decision to accept the 2009 plea deal:

> Thus, if convicted of all consummated crimes, Mr. Moore faced 70 years plus any sentence the court wished to impose as long as it could not be deemed cruel and unusual. If he so chose, the judge could impose an additional 50 years for the false imprisonment charge. Facing such a tremendous possible sentence, Mr. Moore chose instead to plead guilty and face a possible maximum sentence of 25 years without parole. However, without the misdemeanor counts which had to be dismissed, Mr. Moore faced 70 years with the possibility of parole. It is Mr. Moore's position that he would not have pled guilty had he not believed, due to trial counsel's error, that he faced a possible extraordinary sentence.

In short, Moore claimed in his written post-conviction motion that he would have gone to trial if he knew his maximum sentence was 70 years without the misdemeanors, rather than the "extraordinary sentence" of 120 years with the misdemeanors.

VI. Moore's 2023 Post-Conviction Hearing

On May 22, 2023, the post-conviction court held a hearing on Moore's motion, which included testimony from Moore and Skopp.

A. Moore's Testimony

Moore testified that, at the 2009 trial, he believed his maximum sentencing exposure

[7] The attempted carjacking and attempted kidnapping charges also carried 30-year maximum sentences. But those charges would merge into the completed crime if Moore was convicted of the felonies, so the 30 years for the two attempt charges would not apply at sentencing.

was 70 years, which differed from the 120 years asserted in his written motion.[8] Moore then stated that if the misdemeanor charges were dismissed, and his maximum sentencing exposure was 60 years, he would not have pled guilty:

> Q. Okay. Now if you had known that the maximum sentence—had Ms. Skopp been able to get the misdemeanors dismissed, that the maximum sentence you would have gotten was 60 years, would you have pled guilty, or would you have gone to trial and taken the chances?
>
> A. With trial taking chance.

Moore's attorney did not ask any further questions. On cross-examination, Moore agreed Skopp told him in 2009 the case against him was very strong, he did not have a strong defense, and he was subject to a mandatory minimum penalty of 25 years if convicted at trial.

B. Skopp's Testimony

Skopp testified about her thoughts and reasoning at the 2009 trial during multiple directs, crosses, re-directs, and re-crosses.

Skopp described her efforts to provide Moore as strong of a defense as possible at trial but believed his defense case was ultimately weak. She consulted forensic experts from her agency to attack the State's DNA and palm print evidence. She also planned to attack the credibility of the complaining witnesses. However, Skopp stated, "I did not think the defense was extremely strong. It would have been trying to poke holes in the State's

[8] The transcript reflects Moore saying "seven" years, but the State's Statement of Facts in its brief, which Moore adopted, advises this was a mistranscription. Moore actually said "seventy."

evidence to raise reasonable doubt." She also would have tried to argue that Moore's actions only fulfilled the actions of attempted kidnapping, not the completed kidnapping.

Skopp described her preparation for the motion to dismiss the misdemeanor charges. She researched the issues through Westlaw and usually consulted colleagues on legal issues but did not remember if she did so for this motion. In her motion, she cited two cases, *In Re Anthony R.* and *Massey*, but the court ultimately did not agree with her argument. She was not aware of the *Jackson* and *Stowe*, cases at the time. She never conducted further research because the plea deal came together before a recess occurred. Skopp said she would have likely brought *Jackson* and *Stowe* to the court's attention if she found them. However, Skopp expressed doubt that the cases would have been persuasive to the court:

> [PROSECUTOR]: So would you have considered the Jackson case binding authority on the issue that you were presenting?
>
> [SKOPP]: In reading it, it mentioned the statute of limitations argument in passing and then focused on the whether it was appropriate to argue that on motion for judgment of acquittal and then whether it was appropriate for the court to grant and then reverse course. So at the time, I certainly might have thrown up any case law that I thought might get me some traction with Judge Northrop on that argument. But I obviously did not have that on hand, and had I read it, I'm not sure -- I guess it wouldn't have hurt it -- hurt to bring it to the court's attention even though the issue seems to be more on the court's action in granting a motion and then reversing.

Additionally, Skopp agreed that the cases she cited, which the trial court rejected, also "said it was a given that cases past the statute of limitations had to be dismissed[.]"

Skopp believed the prosecution's case was strong and the court would be heavy handed in sentencing. Skopp agreed the State had sufficient evidence to support the felony counts of carjacking and kidnapping. She also had "extensive discussions" with Moore

about this "being a very serious case." She explained to him the "complaining witness seem[ed] to . . . come across as very credible" and urged him to "consider that along with his record in terms of what's likely to happen at trial here and what's likely to happen in sentencing afterwards if he were convicted at trial."

Regarding sentencing, Skopp stated, "I was very concerned what any judge would do in sentencing if [Moore] was convicted of any of the significant counts he had, since there were a number that carried high statutory penalties . . . I maintain that if he were convicted[,] would probably be very heavy-handed in sentencing."

Skopp explained why she believed that Moore's maximum sentencing exposure at trial with the misdemeanors was 70 years, not 120 years. She believed attempted carjacking and false imprisonment would have merged into carjacking and kidnapping. So, the only remaining counts at sentencing would have been felony carjacking (30 years maximum), felony false imprisonment (30 years maximum), and second degree assault (10 years maximum), for a total maximum of 70 years. She agreed it was possible the prosecution could have attempted to argue false imprisonment, which has no maximum sentence, was a separate incident from the other charges and therefore would not merge at sentencing if the prosecution proved it was a separate incident. However, Skopp explained, "I was thinking confidently false imprisonment was going to merge." She believed that if the State intended to argue the false imprisonment charge was a second event, it would have at least been required to submit jury instructions explaining the separate event finding. The State "never mentioned anything about believing that there was a separate false imprisonment

from the facts supporting the kidnapping" and did not submit jury instructions to that effect. She always told Moore that his maximum sentence if he lost at trial would be 70 years and did not recall ever telling him 120 years.

Skopp also explained how the plea deal came about, and how the misdemeanor charges affected it. She recalled the plea deal was "very, very last minute and pretty unexpected." The "jury panel was either at the door or in the courtroom[,]" and she "went back to the [Assistant] [S]tate's [A]ttorney and ask[ed] if there was still a plea open." She thought "the plea had gone up a little in terms of what we were offered before[,]" although she might have "remember[ed] that incorrectly." At the 2023 hearing, Skopp was asked, "if you had taken the opportunity to re-argue the motion, is there a possibility then that you would have risked having the plea offer withdrawn?" Skopp replied:

> Possibly. Part of the reason I was surprised that it came together for a plea is because I did not expect the State to tell me that there was an offer open on the trial date. It had been rejected, and the State – I cannot recall if he put a firm deadline, but as of the trial date there was no offer open as we walked in was my understanding. And I reopened the discussion, the negotiations.

Skopp believed Moore's goal in the plea agreement was "getting the minimum sentence possible so that he wouldn't be left before a judge who could impose some very serious time if he had been convicted of the major counts." She explained to Moore that the plea deal's "big benefit was to give him a release date that he knew rather than an amount that effectively could have been a life sentence for him. So it was about minimizing the time that he would be serving." She also did not think dismissal of the misdemeanors would have changed the plea deal:

> THE COURT: If those charges had been previously dismissed, what would you have attempted to negotiate in exchange for a guilty plea to the felonies?
>
> [SKOPP]: Had the misdemeanors been dismissed?
>
> THE COURT: Yes.
>
> [SKOPP]: I think we would have been essentially, in my mind, the same position we were in, that the State and I were both considering carjacking, kidnapping. I don't recall any discussion with the State or thinking that the State was eager to try to obtain consecutive sentences for the misdemeanors as well.
>
> THE COURT: So you wouldn't have done anything differently if those were the only charges you had.
>
> [SKOPP]: I don't believe so. I think that's why the figure 70 comes up everywhere because that was my focus is what I thought he was -- the true exposure was.

VII. 2023 Post-Conviction Court's Ruling

On October 24, 2023, the post-conviction court ruled that it was in the interests of justice to reopen Moore's post-conviction case and filed an order granting a new trial. In doing so, the court summarized its agreement with Moore's assertions:

> [Moore] argues that trial counsel should have conducted further research to support her argument that four misdemeanor counts should have been dismissed. [Moore] asserts that had she done so, counsel would have discovered Jackson v. State, 92 Md. App. 304 (1992), which would have been a strong response to the trial judge's claim that there was no case where the statute of limitations would apply when the reasons for the delayed charging was because the defendant's identity was unknown. This is what occurred in Jackson. [Moore] asserts that this is important because Mr. Moore's agreement to plead guilty in exchange for a possible sentence of 25 years without parole, was influenced by the possible sentence he could have received if convicted of all charges, including those that had to be dismissed for lack of jurisdiction. [Moore] contends that he would have not pled guilty had he not believed, due to trial counsel's error, that he faced a possible extraordinary sentence.

In the next short paragraph, under a "conclusion" heading, the post-conviction court explained its reasoning for agreeing with Moore's claims:

> This Court agrees with the contentions put forth by [Moore]. The only "benefit of the bargain" that [Moore] received by pleading guilty was the *nol pros* of the remaining counts. If the majority of those remaining counts had been dismissed, [Moore] would have been in a position of improved leverage and could have bargained for a better deal. As such, prior counsel's failure to adequately and thoroughly litigate the "misdemeanors issue" fell below the requisite standard of care and adversely effected [Moore]'s bargaining power and the outcome of the case. Therefore, this Court grants [Moore]'s request for a new trial.
>
> Afterwards, the State timely appealed. We will supply additional facts if necessary.

STANDARD OF REVIEW

In *State v. Syed*, the Supreme Court of Maryland succinctly stated:

> Our review of a post-conviction court's findings regarding ineffective assistance of counsel is a mixed question of law and fact. The factual findings of the post-conviction court are reviewed for clear error. The legal conclusions, however, are reviewed de novo. The appellate court exercises "its own independent analysis" as to the reasonableness, and prejudice therein, of counsel's conduct.

463 Md. 60, 73 (2019) (citations omitted) (cleaned up). We give "due regard to the trial court's ability to assess the credibility of witnesses." *Washington v. State*, 191 Md. App. 48, 78–79 (2010). But, the "ultimate legal ruling as to 'whether the defendant's Sixth Amendments rights were violated' is reviewed without deference." *Newton v. State*, 455 Md. 341, 351–52 (2017).

DISCUSSION

I. Trial Counsel's Failure to Search for Additional Caselaw was Not Deficient Performance

A. Parties' Contentions

The State asserts that Skopp's actions did not rise to deficient performance. She provided reasonable representation by identifying the statute of limitations issue, filing a motion to dismiss the charges, and supporting the motion with case law. There was no evidence or finding by the post-conviction court that she "did not research the motion, consult with other colleagues about the motion, or otherwise spend appropriate time and effort in preparation for the motion." Aside from Skopp's preparation, the State purports there was no evidence that *Jackson* was widely known or cited in support of statute of limitations arguments like those made by Skopp. Further, the State argues *Jackson* was only persuasive authority and does not contain strong or relevant support for Moore's statute of limitations argument.

Moore contends the post-conviction court correctly found Skopp's performance was deficient because she "abandoned the motions argument in favor of a bench conference at which the State indicated a plea offer had been accepted." In addition to the post-conviction court's finding of deficient performance, Moore believes Skopp's failure to cite the *Jackson* and *Stowe* cases provides another independent basis to find her performance fell below the standard of care. Moore argues these actions were deficient because *Jackson* and *Stowe* provided a "significant possibility" that she would have won the motion to dismiss and decrease the maximum sentence Moore faced at trial.

B. Analysis

A defendant asserting an ineffective assistance of counsel claim must prove two things. "First, the defendant must show that counsel's performance was deficient." *Strickland v. Washington*, 466 U.S. 668, 687 (1984). "Second, the defendant must show that the deficient performance prejudiced the defense." *Id.* In this appeal, we focus on the first prong: deficient performance. We review the post-conviction court's ruling that Skopp's actions constituted deficient performance *de novo*.

To prove deficient performance, the defendant must show "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* The standard for assessing an attorney's allegedly deficient performance "is that of reasonably effective assistance," where "the defendant must show that counsel's representation fell below an objective standard of reasonableness." *Id.* at 687–88. The court assumes "a strong presumption that counsel's conduct falls within the range of reasonable professional assistance[.]" *Id.* at 689. Defendants alleging deficient performance "must also show that counsel's actions were not the result of trial strategy. A strategic trial decision is one that is founded upon adequate investigation and preparation." *Syed*, 463 Md. at 75 (citations and quotations omitted).

When reviewing an attorney's performance, courts should "eliminate the distorting effects of hindsight," "evaluate the conduct from counsel's perspective at the time," and "judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." *Strickland*, 466 U.S. at 689–90; *see also*

Harrington v. Richter, 562 U.S. 86, 105 (2011) ("Unlike a later reviewing court, the attorney observed the relevant proceedings, knew of materials outside the record, and interacted with the client, with opposing counsel, and with the judge.").

As the State points out, the post-conviction court did not reference the *Strickland* standard. From our review, it appears the post-conviction court made its findings only on the prejudice prong. The post-conviction court identified Skopp's alleged deficient performance when it re-iterated and agreed with Moore's assertion that "trial counsel should have conducted further research to support her argument that four misdemeanor counts should have been dismissed," and stated in its conclusion, "prior counsel's failure to adequately and thoroughly litigate the 'misdemeanors issue' fell below the requisite standard of care." However, the post-conviction court did not examine Skopp's specific actions at the time and explain why she should have conducted further research. Instead, under the "conclusion" section, the post-conviction court offered two reasons to support violation of both *Strickland* prongs: (1) Moore's only "benefit of the bargain" was *nol pros* of the misdemeanors, and (2) Moore would have "been in a position of improved leverage and could have bargained for a better deal" if the misdemeanor charges were dismissed. Likewise, Moore's post-conviction motion and brief insist Skopp's performance was deficient because she would have won the motion if she conducted research instead of pursuing a plea deal. Both the post-conviction court and Moore's reasoning involves the possible outcome of a different course of action, and therefore weigh only on *Strickland*'s prejudicial effect prong.

When reviewing the deficient performance prong, courts must conduct "[a] fair assessment of attorney performance" by making "every effort . . . to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." *Strickland*, 466 U.S. at 689. The post-conviction court's reasoning failed to address the strategic decisions Skopp was weighing at the time and explain why her choice to pursue a plea deal with the State, instead of conducting additional research, objectively fell below the highly deferential *Strickland* standard. There is ample evidence in the record to consider Skopp's rationale for her decision at the time and whether that rationale was reasonable. We identified in the record, and summarize below, four factors that informed Skopp's decision to pursue the plea deal rather than wait to conduct research on the motion to dismiss.

First, Skopp and Moore believed the State's case was strong, Moore had a weak defense, and the court was likely to hand down a heavy sentence. At the 2014 post-conviction hearing, when asked about trial preparation, Moore said "basically [Skopp] was just letting me know that she thought that the case was pretty strong against me . . . I think it was just pretty much trying to get the best offer that we could get." When asked if the State put on solid evidence against him, Moore stated, "[f]rom what she was telling me and that she didn't think she could fight it . . . ." Skopp explained during the post-conviction hearing that she prepared a trial strategy, but "did not think the defense was extremely strong," as it mostly consisted of "pok[ing] holes in the State's evidence to raise reasonable doubt." In contrast, the State had DNA evidence, palm print evidence, and witnesses, which

Skopp believed would fulfill the elements of the felony charges and appear credible to the jury. She also believed, and informed Moore, that the presiding judge (or any other judge) would likely hand down a lengthy sentence given the nature of the charges.

Second, Skopp and Moore believed 25 years was the lowest deal the State would offer, even if the misdemeanor counts were dismissed. Moore agreed multiple times at the 2014 hearing that he knew the State was willing to offer 25 years without parole going into the day of trial. Moore stated at the 2014 hearing, "the State wasn't really budging on anything. And at least she could probably get it down to -- was twenty-five without parole . . . ." Moore was asked the question, "Ms. Skopp informed you that that was basically a good offer[,]" and he replied, "Best she could get."

When Skopp was asked what she would have attempted to negotiate if the misdemeanors were dismissed, she replied they would have been in "essentially . . . the same position." This was because she and the State "were both considering carjacking, kidnapping," and she did not think "the State was eager to try to obtain consecutive sentences for the misdemeanors as well." For these reasons, when asked if she would have done anything differently if the misdemeanor charges were dropped, she stated, "I don't believe so."

On this point, we recognize the post-conviction court found that Moore would have been in "a position of improved leverage and could have bargained for a better deal" if the misdemeanor charges were dismissed. This finding does not go toward Skopp's belief at the time of the plea deal, which is what we review for the deficient performance prong.

The post-conviction court did not make any findings about whether Skopp or Moore, when accepting the plea for 25 years, believed the State would have offered a better plea deal with the misdemeanors dropped. To the extent that the court did make such findings, they are clearly erroneous. Moore did not allege a better plea deal was possible in his post-conviction motions or hearings. Nothing in the record suggests that Skopp or Moore thought a better plea deal was possible with the misdemeanors dismissed. Moore made a single statement during the post-conviction hearing—for the first and only time—that he would not have accepted the plea deal if his sentencing exposure at trial was 60 years due to dismissal of the misdemeanors. However, his statement did not express a belief that the 25-year offer would have improved if the misdemeanors were dismissed. Therefore, it is uncontroverted that Skopp and Moore believed the State's best offer would be 25 years without the possibility of parole.

Third, Skopp testified she believed the State would rescind the plea offer if she waited for a recess to research further case law. She described how she asked the State about the plea deal at the very last minute—literally as the jury venire was walking into the courtroom. She was surprised the State even kept the offer open at that time because it was the day of trial, and Moore already rejected a prior offer.

Fourth, Skopp had no reason to believe she would have discovered additional case law to support her statute of limitations argument. She explained how she already researched the issue on Westlaw prior to trial and cited two cases she believed supported the position that the statute of limitations began to run when the offense was committed.

Skopp's request for additional time to research the issue suggests she likely believed there was some possibility additional case law existed to support her motion, but it was certainly no guarantee.

In his brief to us, Moore argues that if Skopp had found *Jackson v. State*, 92 Md. App. 304 (1992) and *State v. Stowe*, 376 Md. 436 (2003), both cases would have supported his argument that the statute of limitations applied to the misdemeanor charges here and should have been dismissed. This argument is wholly unavailing. *Jackson*, which concerned a sexual assault allegation, chiefly addressing a method to challenge to the admission of DNA evidence was ultimately disfavored by *Armstead v. State*, 342 Md. 38 (1996). Nowhere does *Jackson* address the issue for which Skopp needed support, namely, when does the statute of limitations begin to run in a situation where a criminal assailant is not identified until years later. Similarly, *Stowe*, although dealing with statute of limitations questions and an unknown assailant, still does not address this critical issue.

After reviewing these four factors Skopp was considering at the time, we believe her decision to pursue a plea deal negotiation without further researching the statute of limitations argument was objectively reasonable. Moore's chances of prevailing at trial were extremely low given Skopp's assessment that the State's scientific evidence and credible witnesses were strong, and the defense theory to defend against the felony charges was weak. So, it was reasonable for Skopp to believe that it was in her client's best interests to take a plea deal, which guaranteed him 25 years instead of a high likelihood of being sentenced to 70—effectively a life sentence since Moore was 43 years old at the time of

sentencing. It was also reasonable for her to believe the plea deal may not have been on the table if she waited for a recess to conduct further research. It was the day of trial, the jury panel was walking in, and she was surprised the State even entertained the idea of a plea deal at that point. Further, choosing to wait for recess to conduct research was not guaranteed to produce helpful case law, and success on the motion to dismiss was not going to change the State's offer anyway.

Case law supports the proposition that an attorney's decision at trial is reasonable if it was a strategic decision based on an informed assessment and unreasonable if there was no reason for the decision.[9] Many of these cases reviewed an attorney's decision not to investigate factual evidence or witnesses. *See, e.g.*, *Richter*, 562 U.S. at 108 (explaining that defense counsel's decision to not analyze potentially helpful blood samples could be reasonable because the outcome of the analysis may have also refuted counsel's defense theory, invited the prosecution to produce its own evidence on the blood's origin and composition, and carried "a serious risk that expert evidence could destroy [defendant]'s

[9] We recognize that deficient performance allegations involving plea deals typically stem from counsel's misinformation or failure to inform the defendant about the guilty plea's consequences or collateral effects. *See, e.g.*, *State v. Sanmartin Prado*, 448 Md. 664, 666–67 (2016) (holding that defense counsel's slightly misleading explanation of the defendant's deportation risk if he pled guilty was not deficient); *Yoswick v. State*, 347 Md. 228 (1997) (holding the defendant's decision to take a plea deal based on counsel's erroneous advice about his likelihood of parole did not prejudice him). In Moore's case, the trial court ruled the misdemeanors were not time barred by the statute of limitations, so Skopp's advice to Moore that he likely faced a maximum of 70 years at trial was correct. Therefore, these cases are not helpful because Moore's deficient performance claim is that Attorney Skopp chose not to conduct additional research, not that she misinformed him of the plea deal's consequences.

case"); *Syed*, 463 Md. at 83 (failing to investigate alibi witness was deficient where "no reasonable evaluation of the advantages or disadvantages" of alibi witness's testimony could be conducted without first contacting the alibi witness) (citation omitted); *Bowers v. State*, 320 Md. 416, 428–29 (1990) (finding deficient performance where defense counsel did not appear at post-conviction hearings to explain their reasoning for not analyzing hair at the scene or examining a witness that provided the only evidence supporting defendant's case). Although Moore complains Skopp failed to investigate law, rather than facts, the principle that a strategic decision based on an informed assessment is reasonable still applies.

In *Harris v. State*, the Supreme Court of Maryland applied the informed assessment principle to a similar ineffective assistance of counsel claim involving a defense attorney's advice to plead guilty. 303 Md. 685 (1985). In that case, Harris's defense attorney advised him to plead guilty unconditionally to first degree murder because it was the best way to avoid the death penalty. *Id.* at 708–09. However, the defense attorney's advice proved to be faulty, as Harris, after pleading guilty unconditionally, was still sentenced to death. *Id.* at 690. In holding the defense attorney's advice was not deficient performance, the Court examined the reasoning behind the defense counsel's decision at the time. The decision involved assessing and weighing several factors, including: the fact that the State would not offer a plea bargain; the State's evidence was "pretty impressive" and "overwhelming"; Harris admitted to defense counsel that he was the "triggerman"; defense counsel "had misgivings" about the jury and sentencing judge in an Eastern Shore court; a guilty plea

would result in sentencing in front of a Baltimore County judge whom counsel knew to have never imposed the death sentence; and, counsel assessed Harris's "forthrightness, his youth and the remorse factor" would be brought out in sentencing. *Id.* at 705–710. Additionally, when Harris pled guilty, he knew the State sought the death penalty as a sentence and defense counsel never guaranteed him a life sentence. *Id.* at 708. The Court found defense counsel's performance was not deficient because he made an "informed assessment" of the situation and "made all significant decisions regarding the guilty plea in the exercise of reasonable professional judgment." *Id.* at 710.

Like the decision by the attorney in *Harris*, Skopp's decision to pursue the plea deal was also an "informed assessment" made with "reasonable professional judgment" based on the strength of the State's case, lack of a strong defense theory, uncertainty of finding helpful case law during a recess, and the time pressure of a plea deal possibly being taken off the table. Indeed, defense counsel's advice to Harris was far riskier, as there was no guarantee he would avoid the death penalty by pleading guilty. Moore's plea deal, on the other hand, guaranteed him 25 years. Waiting for a recess to conduct research could have resulted in the plea deal being taken off the table. *See Richter*, 562 U.S. at 108 ("An attorney need not pursue an investigation that would be fruitless, much less one that might be harmful to the defense."). Given Skopp's informed assessment of Moore's case, we find her actions were reasonable and did not constitute deficient performance or ineffective assistance of counsel.

We hold the post-conviction court erred as a matter of law in deciding that Skopp's actions constituted ineffective assistance of counsel. Because the first *Strickland* prong was not satisfied, we decline to discuss whether the alleged deficiency prejudiced Moore. *See Strickland*, 466 U.S. at 697 ("[T]here is no reason for a court deciding an ineffective assistance claim to . . . address both components of the inquiry if the defendant makes an insufficient showing on one."). As such, we reverse the post-conviction court's ruling and remand for further consistent proceedings.

THE JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY IS REVERSED AND THE NEW TRIAL IS VACATED. APPELLEE TO PAY THE COSTS.