

BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

In re:

Claim of Robert Ornelas

TIRC Claim No. 2011.022-O

CASE DISPOSITION

Pursuant to 775 ILCS 40/45(c) and 2 Ill. Adm. Code 3500.385(c), it is the decision of the Commission that there is not sufficient evidence of torture to conclude that the Claim is credible, and therefore it does not merit judicial review. This decision is based upon the Findings of Fact and Conclusions set forth below, as well as the supporting record attached hereto.

Findings of Fact

1. Claimant Robert Ornelas ("RO") alleges that, while in custody in 1990 at the Illinois State Police ("ISP") headquarters in Joliet, Area 2 Detectives John Yucaitis and Steven Brownfield, who had been called by the ISP, squeezed RO's testicles "cupped" his ears, kicked him in the shins, and slapped and punched him.
2. RO signed a statement reciting that he shot the victims in self-defense.
3. RO was represented at trial by attorney Phillip Mullane, who was on the Murder Task Force of the Public Defender's Office. Mullane volunteered to take RO's case because he had known RO and his family since childhood because both families lived in the same neighborhood. (Exhibit A at 14)
4. In 1999 RO filed a post-conviction petition raising the same claims he makes before TIRC. An extensive evidentiary hearing was held and the judge entered an Order denying the petition, a copy of which is attached as Exhibit A. Among other matters the judge found:
 - a. The room at the ISP station where RO was held is directly across from the front desk, and there is a window and the blinds are always left open.
 - b. While at the ISP, RO was in the custody of ISP agent Peter Hwang. Hwang stayed with RO at all times because RO was Hwang's responsibility; RO was never alone with Yucaitis or Brownfield. As Hwang testified, RO was never abused in any way at the ISP station.
 - c. As Mullane testified, RO never told him any of the allegations contained in his post-conviction petition or his TIRC Claim.

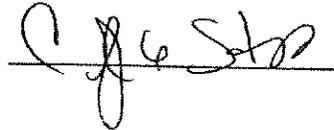
DOROTHY J. ...
CLERK OF THE COURT
CRIMINAL JUSTICE
13 JUL 26 10:19
FILED

5. There is no form of corroboration of RO's Claim.

Conclusions

1. Despite being given numerous opportunities to do so, RO has not presented the Commission with any significant evidence to contradict the findings of the judge contained in Exhibit A.
2. Mullane's testimony is particularly damaging to RO's Claim because Mullane would be expected to be biased in favor of RO, not against him.
3. The fact that the statement alleges that the shootings were justified as self-defense reduces the likelihood that it was coerced because it is not a confession.

DATED: July 26, 2013

A handwritten signature in black ink, appearing to read "Cheryl Starks", written over a horizontal line.

Cheryl Starks
Chair
Illinois Torture Inquiry and
Relief Commission

EXHIBIT A:

Order dated June 3, 2010 in People v. Ornelas, 90 CR 24789

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS,)

Plaintiff-Respondent)

v.)

ROBERT ORNELAS,)

Defendant-Petitioner.)

Post-Conviction
90 CR 24789

FILED
JUN 08 2010
DOROTHY BROWN
CLERK OF CIRCUIT COURT

ORDER

In this proceeding, Robert Ornelas, seeks post-conviction relief from the judgment of conviction entered against him on May 23, 1996. On that date, following a bench trial, petitioner was found guilty of first degree murder in violation of section 9-1 of the Illinois Criminal Code. *Ill. Rev. Stat.* (1990), Ch. 38, par. 9-1(A)(1). Petitioner was subsequently sentenced to natural life in prison for murder. As grounds for post-conviction relief, petitioner claims that trial and appellate counsel were ineffective.

An evidentiary hearing was convened by this court with testimony and exhibits received over the course of several days. The matter was taken under advisement and the court's ruling follows.

BACKGROUND

Although the evidence has been recounted in the order of the appellate court affirming petitioner's conviction and sentence, a recapitulation of the relevant facts is necessary in light of petitioner's claims.

The instant prosecution stemmed from the murder of Joy Mosqueda and Robert Cheeks. Frankfort Police Officer Robert Piscia testified that on November 15, 1990, at approximately 7:30 a.m., he spoke to four men standing around the parking lot of the White Hen at LaGrange Road and Route 30. Illinois State Trooper Kim Hoffman-Davis testified that at approximately 8:20 a.m., she was at a gas station near Routes 30 and 45 in Tinley Park, Illinois, when a citizen informed her that a fight was in progress at the White Hen.

Trooper Hoffman-Davis went to the White Hen, where she saw four men standing in the parking lot. Trooper Hoffman-Davis made a radio call regarding the reported fight. Trooper Hoffman-Davis testified that she believed that she noted that she did not see an ongoing fight. Trooper Hoffman-Davis asked the men for identification; three of the men had identification, but petitioner did not. Trooper Hoffman-Davis asked petitioner his name; he first said his name was Ornelas, then said he was named Rudy Ramos.

Approximately two or three minutes later, Illinois State Trooper Charles Arceneux arrived on the scene. Trooper Arceneux testified that the four men would just stare and appeared incoherent when posed with a question. The men did not appear normal; based on his experience, Trooper Arceneux assumed some drug other than alcohol was at work, because there was no alcohol smell.

Trooper Hoffman-Davis asked the men to empty their pockets. The men produced a pair of brass knuckles, 21 hits of LSD and a vial of PCP. However, none of these items were produced by petitioner.

At this point, according to Trooper Hoffman-Davis, the Frankfort Police arrived on the scene. Officer Piscia testified that he had returned to the scene in response to a radio call. Officer Piscia stated that another Frankfort Police car appeared on the scene to transport the men to the police station, because the Frankfort cars -- unlike the State Police cars -- had safety cages. Officer Piscia stated that the emotions of the four men would vary from excited to lethargic.

Officer Piscia transported two of the men to the police station in his car. One of the men claimed to be a devil, then claimed to be Jesus Christ and forgave Officer Piscia for his sins. Officer Piscia did not recall which of the men made these claims. Trooper Hoffman-Davis testified that after arriving at the police station, petitioner was screaming in his cell, where he had fashioned a cross on the door. According to Trooper Hoffman-Davis, petitioner claimed he was Jesus Christ, but also identified himself as Joe Montana. Trooper Hoffman-Davis testified that the Frankfort Police summoned paramedics to the police station because the men apparently ingested drugs; although the police believed one of the drugs was LSD, they did not know what the vial of liquid contained at that time.

Peter Hwang testified that he was a Special Agent for the Illinois State Police, Division of Criminal Investigations. On November 15, 1990, Special Agent Hwang went to the Frankfort Police station regarding a narcotics investigation. After speaking with Trooper Hoffman-Davis, Special Agent Hwang spoke to the individuals at the police station. Special Agent Hwang spoke to William Luedtke, after obtaining a written waiver of *Miranda* rights. According to Special Agent Hwang, Luedtke appeared to be under the influence of "something," but also understood

everything Special Agent Hwang said. Luedtke told Special Agent Hwang that petitioner's name was Bobby Ornelas, not "Rudy Ramos."

Luedtke also told Special Agent Hwang that petitioner had been involved in a double homicide on the south side of Chicago two nights earlier. Luedtke stated that petitioner had spoken of killing two people with a shotgun near a party to which petitioner had been denied admittance.

Special Agent Hwang telephoned the Chicago Police Department, Area 2 Violent Crimes. Special Agent Hwang was informed that the Chicago Police were looking for Robert Ornelas in connection with the investigation of a double homicide. Special Agent Hwang was also informed that Area 2 detectives would be sent.

At approximately 11 to 11:30 a.m., Special Agent Hwang spoke to petitioner, who was handcuffed to the wall of an interview room. Petitioner confirmed that he was also named Ornelas. In Special Agent Hwang's opinion, petitioner appeared "a little confused" and under the influence of narcotics at the time. Special Agent Hwang told petitioner that he would take petitioner to the Illinois State Police station in Joliet and that the Chicago Police Department was coming to talk to him.

Special Agent Hwang then transported petitioner to the Illinois State Police District 5 headquarters in Romeoville. Two Chicago Police Detectives arrived at approximately 3 p.m. Special Agent Hwang testified that when the detectives spoke with petitioner at approximately 3 p.m., he claimed he had been with a woman named Dawn in Chicago Heights on the night in question, but could not remember the exact address.

After the detectives spoke with petitioner, they accompanied Special Agent Hwang to the Will County Jail, where the police obtained a written waiver of *Miranda* rights and a written

statement from Luedtke. Special Agent Hwang stated that Luedtke was not under medical care at the time and appeared to be fine. When the police again questioned petitioner after speaking with Luedtke, he gave a statement admitting the offense, explaining that he was a member of the Vice Lords and that the victims were members of the King Cobras. Petitioner claimed he shot at the automobile twice with a shotgun in self-defense.

The police later returned to District 5 headquarters at approximately 8 a.m. Chicago Police Detective Steven Brownfield, who was involved in the investigation of the double homicide and the questioning of petitioner, testified that petitioner was orally notified of his *Miranda* rights. Detective Brownfield testified that petitioner admitted to the double murder, at which time he was arrested and charged with the offense.

Scott Byron testified that on November 11, 1990, he attended a party near 104th and Calhoun. Between 11 and 11:30 p.m., Byron heard what sounded like a gunshot or a gun backfiring. Byron admitted that in 1991, he had been convicted of burglary to an automobile and sentenced to probation.

Chicago Police Officer John Boitch testified that at approximately midnight on the night in question, he received a call reporting a vehicle theft. While responding to this call, he received another call reporting persons possibly shot in a car, approximately one and one-half blocks from the first location. Upon arriving at the scene approximately two minutes later, Officer Boitch observed an automobile with a shattered window leaning against a fence. The steering column was peeled; there were no keys in the car.

Officer Boitch observed two bodies in the car, later identified as Joy Mosqueda and Robert Checks; one had been shot in the face, the other in the neck. The car's transmission appeared to be set to drive. Officer Boitch also saw two spent shotgun shells on the ground. Dr.

Mitra Kalelkar, a forensic pathologist who had been employed by the Cook County Medical Examiner's Office, testified her post-mortem examination of the bodies showed that Mosqueda died from a shotgun wound to the face and Cheeks died of multiple shotgun wounds.

Chicago Police Detective James Boylan testified that he was assigned to investigate the double homicide. Detective Boylan testified that he spoke with Dion Castillo, who attended the aforementioned party near 104th and Calhoun. According to Detective Boylan, Castillo stated that petitioner came to the door of the party, but was not admitted. Detective Boylan testified that Castillo had told him that petitioner had a gun that he fired before he left, at approximately 11:45 p.m. Castillo testified that she had not seen petitioner on the day at issue. Castillo thought she had told Detective Boylan that she had not been at the party at the time these events supposedly occurred and that she was relaying hearsay to the detective.

William Luedtke testified that petitioner came to his house at approximately 11:30 p.m. on November 11, 1990. Luedtke stated that petitioner seemed nervous and edgy. The next day, petitioner told Luedtke that he was wanted for a double homicide he committed in Chicago. According to Luedtke, petitioner said that he was under the influence of LSD the previous night and "blew off a round" in the backyard after he was denied admittance to the party. Luedtke testified that petitioner had said that while he was walking home, "there were two guys in a car, and they were looking for trouble, and he proceeded to shoot them both" with a sawed-off shotgun. According to Luedtke, petitioner stated that there was a look of fear on the victims' faces before he shot them.

Detective Mike Gerhardstein testified that in November 1990, he was on a leave of absence and was serving as an Assistant State's Attorney. Detective Gerhardstein took a lengthier

written statement from petitioner on November 15, 1990. Detective Gerhardstein read the statement into the record.

In the statement, petitioner admitted firing his 12-gauge shotgun in a backyard after being denied entrance to the party near 104th and Calhoun. Later, as petitioner walked down an alley between Bensley and Calhoun, defendant saw Jay Mosqueda and "a black guy" in an automobile. Defendant stated that Mosqueda used to beat petitioner when they were both young. Petitioner knew that Mosqueda was a member of the King Cobras, whereas he was a Vice Lord. Petitioner thought that Mosqueda and Checks were going to run over petitioner in their automobile. Petitioner and Mosqueda yelled at each other, though petitioner could not remember what was said. Petitioner fired his shotgun through the passenger side window, hitting Mosqueda in the face. Checks said something; petitioner fired at him also. Petitioner then ran, destroyed the shotgun and walked to Whiting, Indiana to hide with friends.

It was stipulated that at approximately 12:05 a.m. on November 11, 1990, Roy Medrano called 911 to report that his car was stolen by two offenders that Medrano thought to be armed. It was stipulated that police evidence technicians found no guns or knives in the automobile or on the victims. The parties also stipulated to the prior criminal records of Mosqueda and Checks.

PROCEDURAL HISTORY

A direct appeal was taken to the Illinois Appellate Court, First Judicial District, wherein petitioner contended that (1) the trial court erred in denying the motion to quash his arrest and suppress his statements; and (2) he was not proven guilty beyond a reasonable doubt. On April 17, 1998, the court affirmed petitioner's conviction and sentence. *People v. Ornelas*, 295 Ill. App. 3d 1037, 693 N.E.2d 1247 (1st Dist. 1998). On October 6, 1998, the Illinois Supreme Court denied petitioner leave to appeal. *People v. Ornelas*, 179 Ill. 2d 606, 705 N.E.2d 446 (1998).

On April 5, 1999, petitioner filed his first petition for post-conviction relief. On August 15, 2003, petitioner sought to amend the petition, alleging that trial counsel was ineffective for failing to call witnesses present evidence which could have substantiated his abuse allegations against Detectives Yucaitis and Brownfield. He also claims appellate counsel was ineffective for failing to argue this issue on appeal. On December 21, 2004, the State filed a motion to dismiss which was denied so that the court could assess the credibility of several witnesses at an evidentiary hearing.

ANALYSIS

With this background and procedural history in mind, and having the benefit of the evidence and contentions advanced at the evidentiary hearing, the court will now address petitioner's claims. Petitioner believes that his trial attorney was ineffective. In examining claims of ineffective assistance of counsel, this court follows the two-pronged test of *Strickland v. Washington*, 466 U.S. 668, 687, 80 L. Ed. 2d 674, 693, 104 S. Ct. 2052, 2064 (1984). Under this standard, petitioner must show that counsel's representation fell below an objective standard of reasonableness, and that because of this deficiency, there is a reasonable probability that counsel's performance was prejudicial to the defense. *People v. Hickey*, 204 Ill. 2d 585, 613, 792 N.E.2d 232, 251 (2001). "Prejudice exists when 'there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" *People v. Erickson*, 183 Ill. 2d 213, 224, 700 N.E.2d 1027, 1032 (1998) (citations omitted). A petitioner's failure to make the requisite showing of either deficient performance or sufficient prejudice defeats a claim of ineffectiveness. *People v. Morgan*, 187 Ill. 2d 500, 529-30, 719 N.E.2d 681, 698 (1999).

Significantly, effective assistance of counsel in a constitutional sense means competent, not perfect, representation. *People v. Easley*, 192 Ill. 2d 307, 344, 736 N.E.2d 975, 999 (2000). Notably, courts indulge in the strong presumption that counsel's performance fell within a wide range of reasonable professional assistance. *Strickland*, 466 U.S. at 690, 80 L. Ed. 2d at 695, 104 S. Ct. at 2066; *People v. Edwards*, 195 Ill. 2d 142, 163, 745 N.E.2d 1212, 1223 (2001). Moreover, "the fact that another attorney might have pursued a different strategy is not a factor in the competency determination." *People v. Palmer*, 162 Ill. 2d 465, 476, 643 N.E.2d 797, 802 (1994) (citing *People v. Hillenbrand*, 121 Ill. 2d 537, 548, 521 N.E.2d 900, 904 (1988)).

Further, counsel's strategic decisions will not be second-guessed. Indeed, to ruminate over the wisdom of counsel's advice is precisely the kind of retrospection proscribed by *Strickland* and its progeny. See *Strickland*, 466 U.S. at 689, 80 L. Ed. 2d at 694, 104 S. Ct. at 2065 ("[a] fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight"); see also *People v. Fuller*, 205 Ill. 2d 308, 331, 793 N.E.2d 526, 542 (2002) (issues of trial strategy must be viewed, not in hindsight, but from the time of counsel's conduct, and with great deference accorded counsel's decisions).

A court need not consider whether counsel's performance was deficient prior to examining the prejudice suffered by the defendant as a result of the alleged deficiencies. *Strickland*, 466 U.S. at 697, 104 S.Ct. at 2069. Where ineffectiveness can be disposed of on the ground that the defendant did not suffer sufficient prejudice, the court need not determine whether counsel's performance constituted less than reasonably effective assistance. *People v. Flores*, 153 Ill.2d 264, 283-284, 606 N.E. 2d 1078, 1087 (1992).

Petitioner maintains that while he did in fact make the statement admitting that he shot and killed Mosqueda and Cheeks in self-defense, its contents are untrue and a byproduct of

coercion by Detectives Yucaitis and Brownfield. He believes trial counsel was ineffective for failing to call witnesses and present evidence which could have substantiated these claims of abuse.

During the evidentiary hearing on this matter, petitioner's attorney, Phillip Mullane, was called to testify on behalf of the State. Mullane testified that the evidence supported his defense strategy. The petitioner was arrested, along with three other men in Frankfort, Illinois, under the influence of various drugs. Tr. at 43, December 3, 2008. Mullane chose to pursue a motion to quash arrest prior to pursuing a separate motion to suppress statements. *Id.* He believed there was no probable cause to arrest petitioner and moreover, that by pursuing the motion to quash first, the State would provide information which would be helpful if he had to litigate a motion to suppress. Tr. at 42-44, December 3, 2008. Notably, each of petitioner's co-defendant's was successful in having their arrests quashed for lack of probable cause. *Id.*

When the motion to quash was unsuccessful, Mullane filed a motion to suppress petitioner's statement. He determined that the strongest argument for granting a motion to suppress was that it was involuntary based on the fact that petitioner was under the influence of PCP and could not waive *Miranda*. Tr. at 44, December 3, 2008. Mullane noted that there was ample evidence to support this argument. *Id.* He was in possession of the report of the Emergency Medical Technician who examined petitioner at the Frankfort Police Station and, the observations of the State Trooper and the Frankfort Police.¹ Additionally, petitioner admitted that he was under the influence of PCP at the time of his arrest. Tr. at 29, December 3, 2008.

On the other hand, Mullane testified there was little evidence to support an argument that petitioner's statement was coerced. When he asked petitioner why he gave a statement to the

¹ Petitioner identified himself to the police as Jesus Christ, Satan, and Joe Montana. He forgave police officers for their sins and marked the inside of his cell with a cross. He was also screaming wildly inside his cell. Tr. at 25, December 3, 2008.

police, petitioner shrugged. Tr. at 28, December 3, 2008. Knowing the history of abuse and coercive investigation tactics that were rumored to take place in Area 2, Mullane questioned petitioner regarding the circumstances surrounding his statement. Petitioner denied having a bag placed over his head, a cattle prod on him, a firecracker blown up or being hit with a telephone book. Tr. at 31, December 3, 2008. He also denied having a typewriter cover placed over his head or any gun usage by detectives. Tr. at 32, December 3, 2008. Petitioner did tell Mullane that he was swatted to the back of the head by one of the detectives. *Id.* Upon further inquiry, petitioner acknowledged that it was because he was sleeping and the detective swatted him to wake him up. Tr. at 34, December 3, 2008. Mullane testified that petitioner never told him that Detective Brownfield identified himself as an Assistant State's Attorney, that he was slapped across the face, boxed on his ears, had his feet stomped on, kicked in the shins, punched in the jaw, punched in the stomach, karate chopped, choked, had his hair pulled, his testicles squeezed, or his mouth slammed into a table. Tr. at 34-37, December 3, 2008. Mullane further testified that there were no medical reports indicating that petitioner was injured. Tr. at 23, December 3, 2008.

Petitioner also testified at the evidentiary hearing. He stated that he was transported to District 5 by Special Agent Hwang, who told him "if you did it that's self-defense. This way you can get out early." Tr. at 99, August 25, 2008. He further testified that once he arrived at District 5, he was placed in an interview room alone with Detectives Brownfield and Yucaitis. Tr. at 102, August 25, 2008. Petitioner immediately asked for an attorney and invoked his 5th Amendment privilege. *Id.* Yucaitis began hitting him with the back of his hand and boxing his ears. Tr. at 104, August 25, 2008. They threatened him with the death penalty and yelled obscenities. Tr. at 105, August 25, 2008. They told him to say it was self-defense. Tr. at 107,

August 25, 2008. Yucaitis and Brownfield left the room and Hwang came back in, trying to convince petitioner to give a statement claiming self-defense. Tr. at 109, August 25, 2008. Yucaitis and Brownfield returned and Hwang left. The abuse continued until petitioner agreed to give a statement. Tr. at 110, August 25, 2008. He initially gave an alibi statement, which Hwang wrote down. *Id.* Yucaitis and Brownfield "gave a little eye look to Hwang to leave." Tr. at 112, August 25, 2008. The abuse resumed and petitioner's testicles were grabbed. Tr. at 113, August 25, 2008. Yucaitis and Brownfield left and did not return for quite a few hours. Tr. at 117, August 25, 2008. Hwang was not present when they returned and petitioner agreed to give a statement. Tr. at 119, August 25, 2008. Yucaitis and Brownfield continued to abuse petitioner and threatened to kill him. Tr. at 120, August 25, 2008. Hwang re-entered the room and took petitioner's statement which claimed he shot the victims in self-defense. Tr. at 122, August 25, 2008. Petitioner gave the statement so that Yucaitis and Brownfield would stop beating him. Tr. at 124, August 25, 2008. Petitioner was transported to Area 2 and was told by Yucaitis and Brownfield to give the State's Attorney the statement. Tr. at 132, August 25, 2008. Petitioner was in tremendous pain and his tooth was chipped from having his mouth hit against a desk. *Id.* He believed he had to provide the statement or the abuse would continue. *Id.* ASA Gerhardstein already had a statement written out which petitioner signed. Tr. at 135, August 25, 2008.

Petitioner told Mullane about this abuse and that his statement was a result of coercion. Tr. at 148, August 25, 2008. Mullane told petitioner that he wasn't going to have him testify at the motion to suppress and was going to present evidence that petitioner was under the influence when the statement was made. Tr. at 151, August 25, 2008. Petitioner insisted that he be able to testify during pre-trial hearings. Tr. at 155, August 25, 2008. Petitioner informed Mullane that

Steve Rymus could corroborate his claims of abuse. Tr. at 157, August 25, 2008. Petitioner also informed Mullane he wanted to testify at trial but Mullane told him his testimony was unnecessary. Tr. at 161, August 25, 2008.

In sum, petitioner's recollection of the facts regarding his conversations with his attorney and the circumstances surrounding his confession is not credible since it is not corroborated by other witnesses or evidence. Despite petitioner's claim that Yucaitis and Brownfield abused him at District 5, Special Agent Hwang testified that because petitioner was in the custody of the Illinois State Police, he never left him alone with either detective. Tr. at 24, September 10, 2008. Moreover, it was state police procedure to conduct interviews in a room with a window which was monitored by a trooper. Tr. at 26, September 10, 2008. He further stated that he did not know the details of the case and never told petitioner to say it was self-defense. Tr. at 55, September 10, 2008. He only told petitioner that he was being transported regarding a double homicide on the east side of Chicago and that Chicago Police wanted to talk to him. *Id.* According to petitioner, all claimed abuse occurred while he was at District 5. Hwang stated he never saw any of petitioner's claimed abuse take place. He testified that petitioner appeared normal and uninjured when he last saw him as he got into the police vehicle to be transported to Area 2.

Similarly, former ASA Gerhardstein contradicted petitioner's claims, testifying that when he took his statement, it was not pre-written but was written as petitioner spoke and then re-written for petitioner to sign. Tr. at 101, September 10, 2008. Included in the statement are details clearly provided by petitioner including where he graduated high school¹ from and the fact that he walked to Whiting, IN. Both of these facts were not contained in the police report.

Simply put, although petitioner testified that he told his attorney that he was physically abused by Detectives Yucaitis and Brownfield, Mullane's recitation of the facts at the evidentiary hearing was more credible. It is very conceivable that someone with a personal connection to a defendant² would have strong memories of the facts surrounding their case, even 18 years later. Mullane conceded that petitioner told him that he was hit twice in the back of the head so that he would wake up but also remembered that petitioner denied any other abuse. Because very little evidence existed which sustained an argument that petitioner was physically and mentally abused, it was not unreasonable for petitioner's attorney to focus more of his argument on the fact that his statements should be suppressed based on the fact that petitioner was under the influence of drugs when he made them.

Indeed, although petitioner argues that counsel was ineffective for failing to call him to testify on his own behalf, Mullane's explanation for not doing so is perfectly reasonable. As noted, Mullane testified that his strategy was to argue that petitioner was under the influence of various drugs at the time of his arrest and during subsequent statement which was therefore, involuntary and unreliable. Mullane acknowledged that petitioner was willing to testify at both the pre-trial suppression hearing and at trial itself but that he didn't ask him to do so for numerous reasons.

During the suppression hearing he was not called because Mullane thought petitioner wouldn't be likely to stay on point while testifying and might say too much. Tr. at 49, December 3, 2008. He also wanted him to be a clean witness in case he testified at trial. Finally, Mullane reasonably determined that any argument that petitioner was intoxicated while giving his

² Mullane testified that he has known petitioner since he was a baby. He grew up in a house two doors away from his family and their brothers are best friends. Tr. at 20, December 3, 2008.

statement would be undercut by any specific chronology in his testimony. Tr. at 48, December 3, 2008.

Further, Mullane advised petitioner not to testify at trial because the statement that was being used against him claimed self-defense. Mullane thought the statement would lead to a favorable outcome and petitioner would only be leaving himself open to attack if he testified. Tr. at 62, December 3, 2008. Mullane told petitioner that it was his decision ultimately but advised him against testifying. *Id.* Petitioner did not state that he wished to testify regarding self-defense or coercion, despite his claim to the contrary. Tr. at 63, December 3, 2008.

Furthermore, Mullane was not ineffective for failing to present evidence of other cases of coercion at Area 2 by calling witnesses such as Steve and Mary Rymus. It is difficult to believe petitioner's claim that he told Mullane to call either as a witness since Rymus testified that he never told petitioner that he was abused by Yucaitis or Brownfield. Tr. at 62, August 25, 2008. As noted, Mullane defended petitioner zealously and with a reasonable strategy. This fact was echoed by petitioner who stated that his attorney fought for him, to the best of his ability. Tr. at 277, August 25, 2008.

Finally, petitioner appears to believe that counsel should have called witnesses from the Goldstein Report such as Ronald Wise and Lavert Jones. However, based on petitioner's answers to counsel's questions regarding his treatment by Yucaitis and Brownfield, counsel had no reason to present such evidence. Counsel knew of the Goldstein Report and knew the type of abuse it showed was occurring at Area 2. Based on petitioner's account, he determined that such abuse was not a factor in the instant case. Petitioner has failed to demonstrate ineffective assistance.

Petitioner's final claim is that his appellate attorney was ineffective for failing to raise these issues on appeal. To succeed on a claim of ineffective assistance of appellate counsel, petitioner must show that the failure to raise a particular issue was objectively unreasonable and that his appeal was prejudiced by the omission. *People v. Williams*, 209 Ill. 2d 227, 243, 807 N.E.2d 448, 458 (2004). "Appellate counsel is not obligated to brief every conceivable issue on appeal, and it is not incompetence of counsel to refrain from raising issues which, in his or her judgment, are without merit, unless counsel's appraisal of the merits is patently wrong." *People v. Easley*, 192 Ill. 2d 307, 329, 736 N.E.2d 975, 991 (2000). Accordingly, petitioner has not suffered prejudice from appellate counsel's decision not to raise certain issues on appeal unless such issues were meritorious. *Easley*, 192 Ill. 2d at 329, 736 N.E.2d at 991.

Here, the court declines to deem "patently erroneous" appellate counsel's assessment of the record and decision not to raise those issues now asserted by petitioner. As noted, each issue raised by petitioner is completely without merit. Consequently, petitioner has failed to show that appellate counsel acted unreasonably or that his conviction or sentence would have been reversed had counsel raised the issues included herein. "A petitioner's failure to make the requisite showing of *either* deficient performance or sufficient prejudice defeats an ineffectiveness claim." *People v. Palmer*, 162 Ill. 2d 465, 475-76, 643 N.E.2d 797 (1994) (emphasis added) (citations omitted).

CONCLUSION

Based upon the testimony at the evidentiary hearing, the court finds that the petitioner has failed to demonstrate by his requisite burden that he was denied the effective assistance of trial or appellate counsel. Accordingly, the petition for post-conviction relief is hereby dismissed.

ENTERED: _____

N.R. Ford

Judge Nicholas R. Ford
Circuit Court of Cook County
Criminal Division

DATED: _____

6/8/10

