
State of Minnesota,
Plaintiff,
vs.
Stephen Carl Allwine,
Defendant.

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER DENYING
DEFENDANT’S SECOND REQUEST
FOR RECONSIDERATION OF ORDER
DENYING DEFENDANT’S SECOND
PETITION FOR POSTCONVICTION
RELIEF**

Court File No. 82-CR-17-242

The above-entitled matter before the Douglas B. Meslow, Judge of District Court, in chambers on September 25, 2020, on Defendant’s Second Motion for Reconsideration of this Court’s September 21, 2020, Findings of Fact, Conclusions of Law and Order Denying Defendant’s Second Petition for Postconviction Relief. Defendant is represented by Christa J. Groshek, Esq. The State is represented by Nicholas A. Hydukovich, Assistant Washington County Attorney.

FINDINGS OF FACT

1. On September 21, 2020, the Court issued Findings of Fact, Conclusions of Law and Order Denying Petitioner (Defendant)’s Second Petition for Postconviction Relief (“Postconviction Order”).

2. One of the grounds raised for postconviction relief was a claim for ineffective assistance of trial counsel based, in part, on failure to hire experts to rebut and testify against the State’s experts.

3. The Court concluded in its Postconviction Order that the decision of trial counsel regarding which experts he retained is protected trial strategy and not ineffective assistance of counsel.

4. On September 25, 2020, Defendant filed a motion to set aside the Court’s September 21, 2020, Order. The Court considered Defendant’s motion a motion for reconsideration. On October 16, 2020, the Court issued an Order denying Defendant’s motion for reconsideration of the Court’s September 21, 2020, Order.

5. On November 9, 2020, Defendant filed a Second Motion to Reconsider the Court’s September 21, 2020, Order denying his Second Petition for Postconviction Relief. Defendant contends that good cause exists to grant him a hearing on his Petition and attaches a

Report from Dr. Jonathan Arden dated November 9, 2020. Dr. Arden opines that the trial testimony of the Medical Examiner, Dr. Mills, regarding the time of death occurring between 3:00 to 3:15 p.m. could not be determined with that much precision and was, therefore, misleading to the jury. Dr. Arden also opines that the trial evidence does not definitively determine whether the manner of death of Amy Allwine was homicide or suicide and the evidence does not reasonably exclude that she died when Defendant was out of the house picking up and eating dinner with his son. Dr. Arden concludes that defense counsel should have consulted with a forensic pathologist regarding the interpretation of the gunshot wound and the death scene.

6. As the Court found in its Order denying Defendant's Petition to Postconviction Relief, defense counsel did retain an expert to analyze gunshot residue and ballistics evidence. Defense counsel chose not to hire a medical examiner and/or forensic pathologist because of the type of defense presented to the jury, which was that Allwine was not present when Amy died. "What evidence to present to the jury, including which witnesses to call, represents an attorney's decision regarding trial tactics and lies within the proper discretion of trial counsel." *State v. Doppler*, 590 N.W.2d 627, 633 (Minn. 1999). Thus, the Court concluded that defense counsel's decisions regarding which experts to hire is protected trial strategy and is not ineffective assistance of counsel.

CONCLUSIONS OF LAW

1. "Although the rules of criminal procedure do not specifically authorize motions for reconsideration of **omnibus** rulings, the district court has the inherent authority to consider such a motion." *State v. Papadakis*, 643 N.W.2d 349, 356-57 (Minn. App. 2002)(emphasis added).

2. Minnesota General Rule of Practice 115.11 states in relevant part: "Motions to reconsider are prohibited except by express permission of the court, which will be granted only upon a showing of compelling circumstances." The Advisory Committee Comment to the Rule, citing *Sullivan v. Spot Weld, Inc.*, 560 N.W.2d 712 (Minn. Ct. App. 1997), indicates that courts are likely to exercise their power to reconsider "only where intervening legal developments have occurred...or where the earlier decision is palpably wrong in some respect."

3. The Court ruled in the Postconviction Order that trial counsel was not ineffective for failing to hire certain experts. Thus, even though Defendant produced a report from an expert that differed from what was presented at trial, he is not entitled to relief. Accordingly, no intervening legal developments have occurred in this matter and no new facts exist which merit reconsideration of the Court's Order denying postconviction relief.

4. Because Defendant has not presented any new facts or law to show that intervening legal developments have occurred or that the Court's decision was palpably wrong in some respect, Defendant's request is denied.

ORDER

1. Defendant's Second Request for Reconsideration of the September 21, 2020 Order is **DENIED**.

2. The court administrator shall serve a copy of this Order on counsel of record.

BY THE COURT:

Dated: _____

Douglas B. Meslow
Judge of District Court

MINNESOTA
JUDICIAL
BRANCH