

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
July 25, 2023 Session

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KAREN R. HOWELL v. STATE OF TENNESSEE

Appeal from the Criminal Court for Greene County
No. 22CR292 Alex E. Pearson, Judge

No. E2022-01480-CCA-R3-PC

After the Petitioner, Karen R. Howell, pled guilty to three counts of first degree felony murder and one count of attempted first degree murder, the trial court sentenced her to serve three consecutive sentences of life without the possibility of parole plus twenty-five years. Subsequently, she filed a petition under the Post-Conviction Fingerprint Analysis Act of 2021 seeking an analysis of the original murder weapons. The post-conviction court summarily dismissed the petition, finding there was no reasonable probability that a fingerprint analysis would result in a more favorable sentence. Upon review, we respectfully affirm the judgment of the post-conviction court.

Tenn. R. App. P. 3 Appeal as of Right;
Judgment of the Criminal Court Affirmed

TOM GREENHOLTZ, J., delivered the opinion of the court, in which JOHN W. CAMPBELL, SR., and KYLE A. HIXSON, JJ., joined.

James G. Thomas and Nathan C. Sanders, Nashville, Tennessee, and William H. Milliken, Washington, D.C., for the appellant, Karen R. Howell.

Jonathan Skrmetti, Attorney General and Reporter; Edwin Alan Groves, Jr., Assistant Attorney General; Dan E. Armstrong, District Attorney General; and Cecil Mills, Jr., and Ritchie Collins, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

A. FACTUAL AND PROCEDURAL HISTORY OF THE CASE

On April 6, 1997, the Petitioner and her five co-defendants murdered Vidar Lillelid, his wife Delfina, and their daughter, Tabitha. They also attempted to murder the couple's

son, Peter. The crimes were committed near a rest stop in Greene County, Tennessee. *See State v. Howell*, 34 S.W.3d 484, 487 (Tenn. Crim. App. 2000) (*Howell I*).

In a later proceeding, our supreme court summarized the essential factual background. Because that summary “may be helpful in determining what facts and evidence were presented at trial,” *Powers v. State*, 343 S.W.3d 36, 56 (Tenn. 2011), we include it here:

The petitioner, Karen Howell, pleaded guilty to three counts of felony murder, one count of attempted first degree murder, two counts each of especially aggravated kidnapping and aggravated kidnapping, and one count of theft of property valued between \$1,000.00 and \$10,000.00. These convictions resulted from Howell’s participation in the events that concluded in the shooting deaths of Vidar and Delfina Lillelid and their six-year-old daughter, Tabitha, and injury to the Lillelids’ two-year-old son, Peter.

On April 6, 1997, Howell and her co-defendants, Natasha Cornett, Crystal Sturgall, Joseph Risner, Dean Mullins, and Jason Bryant, planned a trip from their homes in Pikeville, Kentucky, to New Orleans, Louisiana. At the time, Howell was seventeen years old; Bryant was fourteen years old; and each of the remaining co-defendants was at least eighteen years old. Prior to leaving Kentucky in Risner’s vehicle, Howell and her co-defendants secured a nine millimeter handgun, a .25 caliber handgun, and cash. While en route, they discussed the possibility of stealing a vehicle due to the poor condition of Risner’s vehicle.

At a rest stop on Interstate 81 near Greeneville, Tennessee, Mr. Lillelid, a Jehovah’s Witness, approached Howell and her co-defendants at a picnic table and began discussing his religious views. At some point, Risner displayed one of the firearms and said, “I hate to do you this way, but we are going to have to take you with us for your van.” Risner directed the Lillelid family to their van even though Mr. Lillelid offered the group his keys and wallet in exchange for allowing the family to remain at the rest area.

Mr. Lillelid drove the van, and Risner, who was still armed, sat in the passenger seat. Howell, Bryant, and Cornett also rode in the van with the Lillelids. Mullins and Sturgall followed in Risner’s vehicle. Mrs. Lillelid began singing in an attempt to console the crying children, and Bryant ordered her to stop. Risner subsequently directed Mr. Lillelid to a secluded road and ordered him to stop the van. Once outside the van, all four members of the Lillelid family were shot multiple times. Bryant claimed that Risner and Mullins were the shooters, but Howell and her remaining co-defendants

maintained that Bryant was the shooter. As Risner drove Howell and her co-defendants from the scene, the van struck one or more of the victims.

Howell and her co-defendants were apprehended in Arizona after failing to cross the border into Mexico. At the time of their arrests, Howell and several of her co-defendants had personal items belonging to the Lillelids in their possession.

The State offered Howell and her co-defendants a “package plea offer” whereby the State would not seek the death penalty against the four adult co-defendants if Howell and all of her co-defendants agreed to enter guilty pleas to the offenses. The plea offer provided for concurrent sentences of twenty-five years for each conviction of especially aggravated kidnapping, twelve years for each aggravated kidnapping conviction, and four years for the theft conviction. The trial court would determine the sentences for the felony murder and attempted first degree murder convictions.

Howell and her co-defendants accepted the State’s offer.

Howell v. State, 185 S.W.3d 319, 324-25 (Tenn. 2006) (*Howell II*).

The trial court held a joint sentencing hearing for the Petitioner and her co-defendants on February 20, 1998. The principal issue at the Petitioner’s sentencing hearing was whether she would receive a sentence of either life imprisonment or life imprisonment without the possibility of parole.

The trial court found that several mitigating circumstances applied to the Petitioner. For example, the trial court found the Petitioner “had no significant record of prior criminal activity”; that she had been “abused and neglected as a child”; that she had an “IQ of 78”; that she “subordinate[d herself] to the needs of others in a group”; and that she had “shown remorse.” *Howell I*, 34 S.W.3d at 497; *see* Tenn. Code Ann. § 39-13-204(j)(1), (j)(9). In fact, our supreme court later recognized that “the trial court applied more mitigating factors to [the Petitioner] than to any of her co-defendants.” *Howell II*, 185 S.W.3d at 337.

Nevertheless, the trial court found that the mitigating circumstances did not lessen the Petitioner’s sentence. The trial court found that the following aggravating circumstances applied to each defendant with respect to each of the murders:

- (1) the murder was committed for the purpose of avoiding, interfering with, or preventing arrest or prosecution, Tenn. Code Ann. § 39-13-204(i)(6); and

- (2) the defendants committed “mass murder,” Tenn. Code Ann. § 39-13-204(i)(12).

Howell I, 34 S.W.3d at 490. In addition, the trial court found that the murders of Delfina and Tabitha Lillelid were “especially heinous, atrocious, or cruel[.]” *See* Tenn. Code Ann. § 39-13-204(i)(5). The trial court reasoned that

for a long time before this occurred, [the Petitioner] had been doing drugs and [participating in things of an] occult nature, and the occult mark continued on this case throughout the events that transpired. Its signature is throughout this case. [She] participated in everything in Kentucky. [The Petitioner] helped steal guns and money. [The Petitioner] helped initiate the plans for the trip with Ms. Cornett. [The Petitioner was] at the picnic table at the rest area with the Lillelids when they were kidnapped, when they were crying. [The Petitioner was] outside the van watching the Lillelids be murdered. [The Petitioner] did nothing to stop [the murders], when a weapon was available. [The Petitioner] deliberately and knowingly participated in every aspect of the killings and the things that led to them, including the getaway and cover up.

Howell I, 34 S.W.3d at 497.

After balancing the aggravating and mitigating circumstances, the trial court sentenced the Petitioner to serve a life sentence without the possibility of parole for each first degree murder conviction and twenty-five years for the attempted murder conviction. The trial court also aligned the sentences to be served consecutively.

On direct appeal, this Court held that the “mass murder” aggravating circumstance did not apply to the Petitioner’s case because “the statute requires that ‘the defendant’ commit mass murder,” and “there was no proof that [the Petitioner] fired any shots[.]” *Id.* at 506. However, because at least one other aggravating circumstance was properly applied, this Court affirmed the Petitioner’s sentences. *Id.* at 506-07.

B. PETITION FOR FINGERPRINT ANALYSIS

Since the resolution of her direct appeal, the Petitioner has unsuccessfully sought relief in multiple state and federal post-conviction proceedings. On July 1, 2022, the Petitioner filed the instant petition seeking a fingerprint analysis of the original murder weapons pursuant to the Post-Conviction Fingerprint Analysis Act of 2021 (“Fingerprint Analysis Act” or “Act”). The Petitioner alleged that “a reasonable probability exists that

analysis of the evidence will produce results that would have rendered Petitioner's sentence more favorable."

1. Parties' Arguments

More specifically, the Petitioner asserted that fingerprint analysis of the weapons "could confirm that Bryant, and Bryant alone, killed the victims." She argued that the results would refute "the trial court's contention that there were multiple shooters[.]" From these premises, the Petitioner alleged that her sentence would have been impacted in two ways.

First, the Petitioner asserted that because the sole shooter, Mr. Bryant, was ineligible for the death penalty, the State would have been unable to "use the threat of the death penalty as leverage" when negotiating "a package plea deal." She argued, therefore, that she likely would not have entered into the original plea agreement that permitted a possible life sentence without the possibility of parole "had it been clear that none of the defendants actually eligible for the death penalty [had] fired a gun." She explained that she "had nothing to lose" by going to trial because her sentences "could not possibly have been worse if [she had] refused the deal."

Second, the Petitioner argued "it was reasonably likely" that the trial court would have imposed the more favorable sentence of life imprisonment if it were clear she "had not touched the murder weapons." She argued "[t]here was considerable confusion during the sentencing proceedings concerning who actually pulled the trigger, to the point where the sentencing court found that [the Petitioner] had committed, quote, 'mass murder[.]'" Consequently, she argued "had it been clear that this weren't the case, the sentencing court might have decided that [the Petitioner] merited a less punitive sentence given her comparatively lesser role in the offenses."

The post-conviction court held a hearing on August 30, 2022. No proof or testimony was introduced at this hearing, though the court heard arguments from counsel. The Petitioner's arguments were substantially the same as those outlined in her original petition and the memorandum filed in support.

In response, the State first argued that Tennessee Code Annotated section 40-30-405(4) specifically requires a certification that the "application for analysis is made for the purpose of demonstrating innocence[.]" Because the Petitioner was not asserting her innocence of the crimes, the State asserted that she could not satisfy all of the statutory conditions for relief.

The State next argued that fingerprint analysis of the weapons was immaterial. The State asserted that the presence or absence of fingerprints on the weapons did not “make any difference” because each defendant “was convicted and was sentenced under criminal responsibility [for] the act of another.” After the hearing, the post-conviction court took the matter under advisement.

2. Post-Conviction Court’s Order and Appeal

In a written order entered on September 26, 2022, the post-conviction court denied the Petitioner’s request for relief. First, the court found that even if the weapons showed only Mr. Bryant’s fingerprints, this proof “would not eliminate the possibility that other defendants handled or used the firearm during the commission of the murders.”

Second, the post-conviction court found that the evidence would not exonerate the Petitioner or “even establish a potential defense.” Because the Petitioner was prosecuted for felony murder, the identity of the “actual shooter or shooters” was “significantly less critical for the prosecution when considered in light of the remaining evidence.”

Third, noting that the trial court found the Petitioner to have been a “relatively minor participant,” the court observed that the Petitioner was not sentenced under any belief that she was the shooter:

This one detail in and of itself undermines the entire argument of [the Petitioner] without taking into consideration other factors. The sentencing court found it appropriate to order consecutive life sentences for [the Petitioner] in spite of the fact the court found several mitigating factors; therefore, we are not left to wonder what would have occurred had the sentencing court known that her fingerprints were not on the gun because the sentencing court already went further than that and found she was a relatively minor participant.

The post-conviction court then turned to the State’s argument that section 40-30-405(4) required the Petitioner to show that she was actually innocent. The post-conviction court acknowledged the possibility of a conflict in requiring a showing of actual innocence when the claim was only that a more favorable sentence would have been imposed. Nevertheless, the court found that the argument was immaterial because the Petitioner “failed to demonstrate a reasonable probability of a more favorable outcome[,] let alone establish anything approaching innocence.”

The Petitioner filed a timely notice of appeal on October 20, 2022. In this appeal, she argues that the post-conviction court erred by misconstruing her claim requesting post-

conviction relief and by misapplying the Fingerprint Analysis Act by requiring her to allege her innocence. The State argues that the post-conviction court correctly determined that fingerprint analysis would not have resulted in a more favorable sentence and that it did not require the Petitioner to demonstrate her innocence. We agree with the State.

STANDARD OF APPELLATE REVIEW

Our supreme court has recognized that ‘the first question for a reviewing court on any issue is ‘what is the appropriate standard of review?’” *State v. Enix*, 653 S.W.3d 692, 698 (Tenn. 2022). The Petitioner challenges the denial of her petition for fingerprint analysis under Tennessee Code Annotated section 40-30-405. “[B]ecause a trial court maintains the discretion to order testing under Section 405, this Court reviews the matter under an abuse of discretion standard and thus will not reverse the trial court’s decision unless it is unsupported by substantial evidence.” *Smith v. State*, No. M2021-01339-CCA-R3-PD, 2022 WL 854438, at *14 (Tenn. Crim. App. Mar. 23, 2022), *perm. app. denied* (Tenn. Apr. 6, 2022); *Barnes v. State*, No. M2022-00367-CCA-R3-PC, 2022 WL 4592092, at *6 (Tenn. Crim. App. Sept. 30, 2022) (“The post-conviction court’s determination of whether to grant a petition for post-conviction fingerprint analysis is reviewed for abuse of discretion.”), *no perm. app. filed*.

ANALYSIS

The Fingerprint Analysis Act provides that a person convicted of and sentenced for first degree murder, among other offenses, may file a petition

requesting the performance of fingerprint analysis of any evidence that is in the possession or control of the prosecution, law enforcement, laboratory, or court, and that is related to the investigation or prosecution that resulted in a judgment of conviction and that may contain fingerprint evidence.

Tenn. Code Ann. § 40-30-403(a), (b)(3)(A). The purpose of the Fingerprint Analysis Act is to allow a petitioner to have fingerprints “analyzed and compared for identification purposes, including, but not limited to, latent print comparisons and searches in fingerprint databases.” *Id.* § 40-30-402. Importantly, the Act contains no statutory time limit, and it permits a petitioner to request analysis “at any time.” *Id.* § 40-30-403(a).

We have previously observed that “the language of the Fingerprint [Analysis] Act mirrors, for the most part, the wording of the Post-Conviction DNA Analysis Act of 2001.” *Smith*, 2022 WL 854438, at *13. As such, because the two statutes are similar in structure and language, this Court has recognized that interpretations of the earlier DNA Analysis

Act are persuasive authority for interpretations of the Act. *See, e.g., Barnes*, 2022 WL 4592092, at *6; *Smith*, 2022 WL 854438, at *13.

Like the DNA Analysis Act, the Fingerprint Analysis Act provides circumstances in which the court must order an analysis, *see* Tenn. Code Ann. § 40-30-404, and others in which it has the discretion to do so, *see id.* § 40-30-405. Regardless, under either the mandatory or the discretionary analysis provisions, a petitioner must satisfy all statutory elements before fingerprint analysis may be ordered. *Barnes*, 2022 WL 4592092, at *6 (“[W]e observe that under both the mandatory and discretionary provisions, the petitioner must satisfy all four requirements before fingerprint analysis will be ordered by the court.”).

In this case, the Petitioner sought to invoke only the post-conviction court’s discretionary authority to order fingerprint analysis. In relevant part, a court has the discretion to order fingerprint analysis if it makes the following four findings:

- (1) A reasonable probability exists that analysis of the evidence will produce fingerprint results that would have rendered the petitioner’s verdict or sentence more favorable if the results had been available at the proceeding leading to the judgment of conviction;
- (2) The evidence is still in existence and in such a condition that fingerprint analysis may be conducted;¹
- (3) The evidence was not previously subjected to fingerprint analysis, was not subjected to the analysis that is now requested which could resolve an issue not resolved by previous analysis, or was previously subjected to analysis and the person making the motion under this part requests analysis that uses a new method or technology that is substantially more probative than the prior analysis; and

¹ During oral argument on appeal, the Court and the parties discussed at length the threshold issue of whether the weapons still exist in a condition where fingerprint analysis could be conducted. This issue was apparently not disputed by the parties below, and, consequently, the post-conviction court made no finding on this point. Of course, where evidence does not exist in a testable condition, a petition for analysis will not state a claim for relief irrespective of the other factors. *See, e.g., Allen v. State*, No. E2022-00373-CCA-R3-PC, 2022 WL 16780005, at *5 (Tenn. Crim. App. Nov. 8, 2022) (recognizing, in the context of the Post-Conviction DNA Analysis Act of 2001, that “a post-conviction court is not required to make findings under all subsections of Code section 40-30-304 because a petitioner’s failure ‘to establish any single requirement may result in a dismissal of the petition.’” (citation omitted)), *perm. app. denied* (Tenn. Mar. 9, 2023).

- (4) The application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice.

Tenn. Code Ann. § 40-35-405.

As to the first element, “[t]he definition of ‘reasonable probability’ has been well-established in other contexts, and is traditionally articulated as ‘a probability sufficient to undermine confidence in the outcome’ of the prosecution.” *Johnson v. State*, No. M2021-01420-CCA-R3-PC, 2022 WL 2251333, at *5 (Tenn. Crim. App. June 23, 2022) (quoting *Powers*, 343 S.W.3d at 54), *perm. app. denied* (Tenn. Oct. 19, 2022). In analyzing a claim for relief, a post-conviction court must presume that the results of the proposed fingerprint analysis will be “favorable” to the Petitioner. *Cf. Powers*, 343 S.W.3d at 55 n.28.

A. DEMONSTRATING INNOCENCE

As a threshold issue, the Petitioner argues that the post-conviction court applied the incorrect standard and denied her petition because she did not allege that fingerprint analysis would demonstrate her actual innocence of the crimes alleged. She further argues that “[a] requirement that all petitions demonstrate a reasonable probability of actual innocence is incompatible with the plain text of the statute.” After all, she says, the statute allows for relief when a petitioner shows a “reasonable probability” that analysis would have led to a more favorable sentence. We respectfully disagree that the court applied an incorrect standard.

In its order, the post-conviction court noted that Tennessee Code Annotated section 40-30-405 contains a potential internal inconsistency. Specifically, section (1) permits relief when “[a] reasonable probability exists that analysis of the evidence will produce fingerprint results that would have rendered the petitioner’s verdict or sentence more favorable.” Meanwhile, section (4) requires the same petitioner to show that “[t]he application for analysis is made for the purpose of demonstrating innocence.”

Nevertheless, despite this potential inconsistency, the post-conviction court did not require the Petitioner to allege that she sought fingerprint analysis to demonstrate her innocence. Instead, the court clearly stated that any statutory contradiction was “not important for the purposes of this hearing” because the Petitioner failed to “demonstrate a reasonable probability of a more favorable outcome.” The Petitioner’s argument, respectfully, is without merit.

B. MORE FAVORABLE SENTENCE

Turning to the merits of the issues presented, the Petitioner asserts that a “favorable” result would show that Mr. Bryant was the sole shooter because only his fingerprints were on the murder weapons. The Petitioner contends that not only would this evidence have impacted the State’s plea offer, but it also would have impacted the sentences imposed by the trial court. We take each of these arguments in turn.

1. Impact on the State’s Plea Offer

The Petitioner first asserts that underlying the State’s “package plea” deal was its theory that each co-defendant was involved in the murders, either directly or as part of the ritualistic motivation for the killing. The Petitioner argues that this theory of “a common scheme or plan would be substantially compromised” with evidence that only Mr. Bryant’s fingerprints were on the weapons. The State’s “leverage to coerce each defendant to agree to the package plea deal” would then be undermined.

Respectfully, we find no merit to the Petitioner’s argument. Even assuming that Mr. Bryant’s status as the sole shooter removed the State’s leverage for a package plea deal, this fact does not alone translate into a reasonable probability of a more favorable sentence. For example, if the package plea deal were not available, it is entirely possible that the district attorney would simply have tried the case against the Petitioner. In fact, the petition does not allege that the district attorney would have made *any* individual plea offer to the Petitioner if a package deal were off the table.

Moreover, even if one assumes that *some* plea offer would have been made to the Petitioner, she does not allege what the terms of that offer would have been. For example, there is no allegation that the district attorney would have offered a plea involving a life sentence or a conviction offense that carried a sentence of less than life without the possibility of parole. There is also no allegation that the agreement would have prohibited possible consecutive life sentences.

Perhaps because an alternative plea offer and its possible terms are speculative, the Petitioner does not allege that she would have accepted any alternative agreement rather than go to trial. For example, she does not allege that she would have accepted a plea offer proposing that she serve what she requests here: three consecutive life terms. And perhaps most importantly, she does not allege that the trial court itself would have accepted any agreement that required or allowed for a more favorable sentence, particularly given all of the circumstances of the case.

Ultimately, the Petitioner's argument is based on pure conjecture and speculation. She has not shown *any* probability of a more favorable sentence arising from a fingerprint analysis, much less a reasonable probability of that result. As such, we affirm the post-conviction court's denial of relief on this ground.

2. Trial Court's Sentencing Consideration

The Petitioner next argues that the fingerprint evidence would have influenced the trial court at her sentencing hearing because the evidence would have shown that Mr. Bryant was the sole shooter. She asserts that the trial court believed that she was involved in the actual shooting, as evidenced by the court's application of the "mass murder" aggravating circumstance. As such, she concludes that with the mitigating evidence available in her case, a reasonable probability exists that the trial court would have reduced her sentence if it had been aware that only Mr. Bryant handled the weapons.

Respectfully, we find no merit to this argument. Notably, our review of the record reveals that the trial court did not believe the Petitioner was one of the people who fired shots at members of the Lillelid family. On the contrary, in discussing the (j)(5) mitigating circumstance, the trial court specifically found that the Petitioner was an accomplice in a murder committed by another person. *See Howell I*, 34 S.W.3d at 497 ("While the trial court also found that [the Petitioner] 'was an accomplice in [a] murder committed by another person,' Tenn. Code Ann. § 39-13-204(j)(5), it determined that this mitigating circumstance, which requires relatively minor participation in the crime, was not applicable because 'no part in this horrible crime can be minor.'"). Further, when discussing the facts of her individual case, the court specifically noted that the Petitioner "[was] outside the van *watching the Lillelids be murdered*. [She] did nothing to stop, when a weapon was available." With these findings, it is clear that the trial court believed that the Petitioner was not an actual shooter, and nothing in the trial court's erroneous application of the "mass murder" aggravating circumstance equated to a finding that the Petitioner was a shooter with Mr. Bryant.

Although the Petitioner further argues that the trial court would balance the fingerprint evidence with her mitigation proof, the trial court previously considered the mitigation proof that she now offers as part of this appeal. For example, the trial court previously found that the Petitioner had no significant criminal history; that she was "borderline" intellectually disabled with an "IQ of 78"; and that she had "shown remorse." The trial court also specifically identified that she was "abused and neglected as a child" and "subordinate[d herself] to the needs of others in a group[.]" Nevertheless, the trial court balanced this mitigating evidence with its finding that the Petitioner's role in the crimes was extensive, stating:

You participated in everything in Kentucky. You helped steal guns and money. You helped initiate the plans for the trip with Ms. Cornett. You were at the picnic table at the rest area with the Lillelids when they were kidnapped, when they were crying. You were outside the van watching the Lillelids be murdered. You did nothing to stop [the murders], when a weapon was available. You deliberately and knowingly participated in every aspect of the killings and the things that led to them, including the getaway and the cover up.

We agree with the post-conviction court that “[t]he extensive sentencing hearings conducted in this case took into consideration all the relevant sentencing considerations” and that “nothing of substance would be changed regardless of what the fingerprint analysis showed.”

Because the trial court did not believe that the Petitioner was one of the shooters, and because it considered the other mitigation proof in the case, the Petitioner has not shown *any* probability that she would have received a more favorable sentence with fingerprint evidence from the murder weapons. We affirm the post-conviction court’s denial of relief under the Fingerprint Analysis Act on this ground.

CONCLUSION

In summary, we hold that the post-conviction court acted within its discretion in summarily denying the Petitioner’s request for fingerprint analysis. As such, we respectfully affirm the judgment of the post-conviction court.

TOM GREENHOLTZ, JUDGE