MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

DAVID WAYNE HYSLOP, Petitioner, vs. STATE OF MONTANA, Respondent.	Cause No. CDV-15-041(B) **ORDER DENYING POSTCONVICTION RELIEF**

The Court held a hearing on David Hyslop's Petition for Postconviction Relief on March 19, 2024. Petitioner David Hyslop (Hyslop) was present, in custody. He was represented by Abigail Matthews. Chief Deputy Cascade County Attorney Kory Larsen represented the State. Neither party called witnesses. At the previous hearing on this Petition, Hyslop's criminal defense lawyers, Vincent Van der Hagen and Lawrence LaFountain, testified. They also filed affidavits (Docs. 29 and 30).

This Petition was originally heard on November 18, 2016, and Hyslop represented himself. The Court denied the relief sought. (Doc. 34). Hyslop appealed. (Doc. 38). For reasons not clear to the Court, the parties entered a Stipulation and Joint Motion to Remand, which the Supreme Court granted. (Doc.

46). The Supreme Court ordered the Office of the Public Defender to appoint counsel, which it did, repeatedly. (Docs. 46, 52, 110, 122, and 137). The Court repeatedly attempted to set a hearing with *seriatim* counsel, and this hearing was finally set. (Docs. 78, 96, 104, 107, 108, 115, 116, 124, 126, 128, 129, 131, 132, 134, 142, and 152).

ISSUES RAISED

Hyslop originally asserted seven reasons he believes he is entitled to relief. All were framed as ineffective assistance of counsel:

1) That his lawyers did not offer adequate text message evidence for impeachment;
2) That his lawyers did not present a defense of coercion, pressured him not to testify, and conceded absence of mistake or accident;
3) That his lawyers did not seek an independent medical evaluation or differential diagnosis of the victim's injuries;
4) That his lawyers failed to challenge evidence of other crimes, wrongs, or acts;
5) That his lawyers failed to properly challenge venue;
6) That his lawyers did not call some witnesses he requested at sentencing; and

7) That his lawyers provided ineffective assistance on appeal by failing to challenge the first six assignments of error above.

Hyslop, through counsel, pointed to the First Amendment to Petition (Doc. 60), filed by one of his previous post-conviction lawyers, Brian Smith, which identified 9 issues (Hyslop alluded to 10 issues during argument), many of which overlap with the originally identified issues. These issues also focus on a claim of ineffective assistance of counsel:

1) Failure of his trial lawyers to impeach or provide meaningful adversarial testing;

2) Failure to move to suppress his statement to law enforcement, contending that he was coerced;

3) Refusal of his trial lawyers to allow Hyslop to testify;

4) Concession by his lawyers in argument that the victim's death was not a mistake or accident;

5) Failure of his lawyers to consult a medical expert;

6) Failure of his lawyers to challenge other crimes, wrongs, or acts evidence;

7) Failure of his lawyers to support a motion to change venue;

8) Failure of his lawyers to call defense witnesses at sentencing; and

9) Failure of his appellate lawyers to raise the above issues on appeal.

Hyslop's Amendment to Petition also argues that the State failed to produce discovery based on testimony of Mr. LaFountain in the November posttrial relief hearing that, "the State refused to turn over the evidence it had gathered in regarding the methamphetamine investigation it was carrying out in regard to the residence…"

The State responded to the Amendment to Petition on August 8, 2019. (Doc. 85). It attached, *inter alia,* the transcript from the November 2018 hearing and its original response. Hyslop's counsel, Ms. Matthews, asked the Court to consider all issues contained in the original and amended Petitions, but focused on "three in particular because I think those are the ones that had the greatest impact on the outcome of the trial": (1) failure to move to suppress Hyslop's interrogation statements; (2) trial counsel's concession that the injuries were not accidental during argument; and (3) failure of trial counsel to hire an independent medical expert.

Counsel for Hyslop agreed that most of the remaining issues (beyond the three she focused on in oral argument) were record based. As to issues 1-4 and 8, the State argues that Hyslop did not meet the requirements set out in *Strickland v. Washington,* 466 US 668 (1984), in that he failed to show that his trial "counsel's performance fell short of the range of competence required of attorneys in criminal case and (2) that his counsel's deficient performance was prejudicial to his case." See, *State v. Hendricks,* 2003 MT 223, ¶6, 317 Mont. 177, 75 P. 3d 1268.

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LAW

Post-conviction relief is a legislatively created special, statutory collateral remedy. §§46-21-101-203, MCA. It is not a constitutional remedy. *Dillard v. State*, 2006 MT 328, ¶13, 335 Mont. 87, 153 P.3d 575. Post-conviction relief is intended for non-record based issues relating to a conviction or sentence, including claims of ineffective assistance of counsel.

Post-conviction relief is not a substitute for a direct appeal. *Hardin v. State*, 2006 MT 272, ¶16, 334 Mont. 204, 146 P.3d 746; *State v. Hanson*, 1999 MT 226, 296 Mont. 82, 988 P.2d 299. Likewise, it is not a remedy for issues that were not properly preserved for direct appeal. *State v. Gorder*, 243 Mont. 333, 792 P.2d 370 (1990). Post-conviction relief is not allowed for claims which could reasonably have been raised on direct appeal. §46-21-105(2), MCA.

A petitioner for post-conviction relief has the burden to "show by a preponderance of evidence that the facts justify relief." *State v. Peck*, 263 Mont. 1, 3, 865 P.2d 304, 305 (1993). To meet this burden, the Petitioner is required to "identify all facts supporting the grounds for relief set forth in the petition and have attached affidavits, records, or other evidence establishing the existence of those facts." Section 46-21-104(1)(c); *State v. Wright*, 2001 MT 282, P 31, 307 Mont. 349, 42 P.3d 753. Conclusory allegations are not enough. *Wright*, ¶ 31.

The *Strickland v. Washington* two-pronged test is used to review claims of ineffective assistance of counsel. 466 US 668 (1984). To meet the requirements of *Strickland*, a petitioner must show that "counsel's performance fell short of the range of competence required of attorneys in criminal cases and that his counsel's deficient performance was prejudicial to his case." *State v. Godfrey*, 2009 MT 60, 349 Mont. 335, 203 P.3d 834; *State v. Hendricks*, 2003 MT 223, P 6, 317 Mont. 177, 75 P.3d 1268. (emphasis added).

As to first prong, showing counsel's performance fell short of competent, Hyslop has a "strong presumption" to surmount: that his trial counsel's actions constituted trial strategy and were within the broad scope of reasonable professional conduct. *Godfrey*, ¶ 14; *Hendricks*, ¶ 7. He also has a heavy burden under the second prong: to prove prejudice by showing that, but for his lawyers' errors, there is a reasonable probability that the result would have been different. *State v. Wright*, 2021 MT 239, ¶9, 405 Mont. 383, 495 P.3d 435.

Hyslop's heavy burden must be met with more than mere conclusory allegations. *Herman v. State*, 2006 MT 7, 330 Mont. 267, 127 P.3d 422; *State v. Peck*, 263 Mont. 1, 865 P.2d 304 (1993); *Ellenberg v. Chase*, 2004 MT 66, ¶16, 320 Mont. 315, 87 P.3d 473.

When a petitioner has had an opportunity for a direct appeal, grounds for relief that were or could reasonably have been raised on direct appeal may not be raised in

post-conviction proceedings. §46-21-105(2), MCA. If a claim is not record-based – for example, many claims of ineffective assistance of counsel---is an exception. *State v. Herrman*, 2003 MT 149, ¶33, 316 Mont. 198, 70 P.3d 738; *State v. Roedel*, 2007 MT 291, ¶38, 339 Mont. 481, 171 P.3d 694.

Petitions must meet the pleading requirements of §46-21-104(1) and (2), MCA. A petition may be dismissed *sua sponte* for failure to meet those requirements. *Merman v. State*, 2006 Mont. 7, 330 Mont. 267, 127 P.3d 422; *State v. Finley*, 2002 MT 288, 312 Mont. 493, 59 P.3d 1132; *State v. Sullivan*, 285 Mont. 235, 948 P.2d 215 (1997); *State v. Hanson*, 1999 MT 226, ¶22-24, 296 Mont. 82, 988 P.2d 299.

Post-conviction relief petitions are barred if they are not filed within one year of the date that the conviction becomes final. §46-21-102(1), (2), MCA. A conviction becomes final if: the time for appeal to the Montana Supreme Court expires; if an appeal was taken, the time for petitioning the U.S. Supreme Court for review expires; and, if review is sought in the U.S. Supreme Court, on the date that the Court issues its final order in the case. §46-21-102(1), MCA.

Hyslop appealed his criminal conviction to the Montana Supreme Court. The Montana Supreme Court issued its decision on October 15, 2013. His conviction became final when the time for appealing to the U.S. Supreme Court expired, 90 days from the date the Montana Supreme Court's opinion was issued. The

conviction became final on January 13, 2014. Sup. Ct. R. 13. His original Petition for Post-conviction Relief was filed three days late, but the State did not object, so the Court considers the Petition on its substance.

ANALYSIS

There is a strong presumption that counsel's conduct falls within the wide range of reasonable professional conduct. *Strickland* at 688-89. "The defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" *Strickland* at 689 (citation omitted). The allegations about conduct of trial counsel are reviewed to determine whether "the identified acts or omissions were outside the wide range of professionally competent assistance." *Strickland* at 690. Counsel's conduct must be reviewed in the context of all of the facts. *Strickland* at 688.

When an ineffective assistance of counsel claim is based on facts in the record, it should be raised on direct appeal. *State v. Fields*, 2002 MT 84, ¶31, 309 Mont. 300, 46 P.3d 612. However, the record on appeal must adequately document why counsel acted or failed to act. *State v. Harris*, 2001 MT 231, ¶21, 306 Mont. 525, 36 P.3d 372. "[A] record which is silent about the reasons for the attorney's actions or omissions seldom provides sufficient evidence to rebut" the strong presumption that counsel's conduct falls within the wide range of reasonable professional conduct. *State v. Sartain*, 2010 MT 213, ¶ 30, 357 Mont. 483, 241 P.3d 1032 (citation

omitted). Ineffective assistance of counsel claims are appropriate for review on direct appeal, however, when "no plausible justification" exists for the actions or omissions of defense counsel. *State v. Wright*, 2021 MT 239, ¶ 10, 405 Mont. 383, 495 P.3d 435 (citation omitted).

The record on appeal does not contain any direct evidence of why Hyslop's counsel made the challenged statements. However, the record does reflect the context of the statements, which is that Hyslop's counsel knew that arguing that the injuries were accidental would not be credible, and in the end would harm Hyslop's position. They chose, instead, to point to other reasonable defendants who may have caused the injuries. Mr. Van der Hagen's testimony and the argument itself reflects this strategy. Moreover, counsel was not admitting that Hyslop caused the injuries. Rather, he was suggesting that someone else intentionally caused them. There is, in the record, a plausible justification for counsel's conduct under these circumstances.

Under these circumstances, Hyslop's counsels' conduct fell within the reasonable range of professional conduct required and that the first element of the *Strickland* test was not satisfied. Similarly, Hyslop was not prejudiced by counsels' conduct. Although Hyslop was convicted of deliberate homicide, his lawyers exercised better than reasonable professional conduct to consistently point to others who were equally likely to have committed the homicide, thus raising reasonable doubt.

The second prong of *Strickland* test requires that Hyslop show a reasonable probability that, but for counsel's unprofessional conduct, the result would have been different. *Strickland* at 694. This prong focuses on whether counsel's performance renders the trial result unreliable or fundamentally unfair. Id. at 696, 104 S. Ct. at 2069. The question is whether the trial was fundamentally fair. Id.

The Court has already concluded that the first prong was not met. However, in considering the circumstances of the entire case, the Court is satisfied that the trial result was neither unreliable nor fundamentally unfair.

1. Trial Counsels' Decision Not to File a Motion to Suppress Hyslop's Interview with Law Enforcement.

The State argues that the record does not support the assertion that Hyslop was coerced to talk to law enforcement, and that his statement was not knowingly or freely given, and, further, that this is a record-based claim. Hyslop relies on *State v. Eskew*, 2017 MT 36, 386 Mont. 324, 390 P.3d 129. He asserts that the law enforcement officers who questioned him used the same interrogation techniques criticized in *Eskew*, such as creating a sense of urgency, telling him that he needed to provide information so that doctors could treat the victim, and by challenging him that he was "not giving us the whole story. This isn't really what happened."

The Court has reviewed the transcript of Hyslop's interview (attached as Exhibit "4" to the State's brief at Doc. 85). The officers who interviewed him read him his *Miranda* rights before beginning the interview and he unequivocally waived

those rights. Hyslop has offered no evidence that officers deliberately misrepresented the situation to him, or that he lacked the sophistication to understand the significance of talking to officers. Moreover, throughout the interview, he continued to insist that he had not harmed the child, and any injuries must have been accidentally caused. There is no evidence of coercion in the transcript.

To show that Hyslop's trial counsel were ineffective in not moving to suppress his statement, he must show that the motion was arguably meritorious. *State v. Adkins*, 2009 MT 71, ¶ 25, 349 Mont. 444, 204 P. 3d 1 (citations omitted). Failure to make nonmeritorious motions, or those which would not have been likely to change the outcome, is not ineffective assistance of counsel. *Riggs v. State*, 2011 MT 239, ¶ 11, 362 Mont. 90, 265 P. 3d 600 (citations omitted).

Unlike the Defendant in *Eskew*, Hyslop never confessed during his interview. Further, there were tactical reasons to allow the statement to be admitted, as explained by attorneys LaFountain and Van Der Hagen in their affidavits and testimony. Hyslop's jail conversations with his brother, Kendall, were admitted and contained similar statements. The statements about the fatal injuries having possibly been caused accidentally were consistent with his defense, and allowed an argument that Hyslop loved the victim and would not have harmed her. By not challenging admission of the statement, Hyslop did not have to testify and endure likely withering cross-examination.

In the interview, Hyslop did offer varying stories about how the baby might have been injured, from falling down the stairs on the previous day to eating a bad hot dog, to Hyslop dropping her on the floor when he put her in bed. In addition, testimony was admitted that Hyslop alone was with the child during critical times relating to the injury, and that his demeanor changed shortly after the time the injuries must have been inflicted.

The medical evidence was that the injuries could not have been accidental. This was a problem for Hyslop regardless of whether the interview was admitted. It is true that some of the questions posed to Hyslop were in the same vein as those criticized in *Eskew*, but Hyslop, in contrast to *Eskew*, did not confess. Moreover, *Eskew* had not been decided at the time Hyslop's lawyers were making decisions about legal strategy and appropriate motions. They cannot be charged with anticipating opinions from the Montana Supreme Court which do not exist.

To prevail under *Strickland* and consistent Montana cases, Hyslop needs to show both ineffective assistance and prejudice. *Strickland* at 689. He has not done that. His lawyers exercised better than reasonable professional conduct and failed to show a reasonable probability that, but for counsel's conduct, the result would have been different. Hyslop must show, under Strickland, that his lawyers made errors so serious that they were not functioning as the counsel guaranteed by the Sixth Amendment, and that their performance prejudiced the defense. *Oliphant v.*

State, 2023 MT 43, ¶37, 411 Mont. 250, 525 P. 3d 1214 (citations omitted). The Court presumes that counsel were effective. Id., ¶38. Hyslop's burden to show his lawyers were ineffective is "heavy." Id. The Court finds and concludes that he did not meet that burden.

2. Trial Counsel's Concession During Closing that the Fatal Injuries Were Not Accidental.

In his closing argument, one of Hyslop's lawyers, Mr. Van der Hagen, began by saying, "…let's talk about what the truth is here because the truth is not that the defense is saying it as an accident that killed this young lady. No, that's not what we're saying. We're not saying that at all. But in order to figure out what happened to her……I ask you to do one thing initially. Ask yourself this question: Who had motive and who had opportunity?..." TR, 1858. Later, he again states, "The injuries that killed Toby were not an accident…we're not here pointing the finger at one particular person saying to you we can prove…that this person did it." TR 1875.

Hyslop's counsel did not admit guilt for Hyslop. Rather, he was pointing, as the defense had throughout the trial, at the possibility that Hyslop's brother, Kendall, a friend, Janetta Placey, or the child's mother, Kristy Perez, had caused the fatal injuries. He strenuously argued that the State could not, and did not, meet its burden of showing that Hyslop was the person who caused the injuries. Van der Hagen testified that his decision was because of his determination that to argue on one hand that the injuries were accidental, but to also confront the State's case throughout the

trial on the identity of the person who caused the injuries, would have stretched any credibility the defense had, and would have harmed Hyslop's position.

The record on appeal does not contain any direct evidence of why Hyslop's counsel made the challenged statements. However, the record does reflect the context of the statements, which is that Hyslop's counsel knew that arguing that the injuries were accidental would not be credible, and in the end would harm Hyslop's position. They chose, instead, to point to other reasonable defendants who may have caused the injuries. Mr. Van der Hagen's testimony and his argument at trial reflects this strategy. Moreover, he did not admit that Hyslop caused the injuries. Rather, he was suggesting that someone else intentionally caused them. There is, in the record, a plausible justification for counsel's conduct under these circumstances.

To prevail under *Strickland* and consistent Montana cases, Hyslop needs to show both ineffective assistance and prejudice. *Strickland* at 689. He has not done that. Hyslop's counsel made difficult tactical decisions throughout the trial, attempting to navigate many minefields in Hyslop's best interests. The representation was far from ineffective and not remotely prejudicial. Hyslop did not meet his burden.

3. Trial Counsel's Decision not to Hire an Independent Medical Expert.

Hyslop argues that his lawyers' decision not to hire an independent medical expert was ineffective assistance of counsel. Hyslop argued at the March 19, 2024,

hearing that not hiring an expert with an "opposing view" or to have someone "independently review the entire record" was ineffective assistance.

However, Hyslop's lawyers testified during the previous hearing that they did consult with Dr. Tom Bennett. Hyslop described Bennett as a forensic pathologist whose "professional shortcomings are well known." The Court has some familiarity with Dr. Bennett, and some challenges to his credibility historically, but the record is devoid of any evidence that he is unqualified or incompetent as a forensic pathologist in this case, or that his review in this case was deficient or based on improper considerations. Lawyers LaFountain and Van der Hagen attested that they consulted on the facts of this case with Dr. Bennett, who told them that the State's experts were credible.

Hyslop presents no evidence that any other qualified expert would assess the injuries to the deceased child differently than did the experts called by the State, or that any other qualified expert would come to a different conclusion about the cause of her injuries. The Court is aware, from decades of practice before taking the bench, and from eight years on the bench presiding over contested proceedings, that it is relatively easy to hire a person calling him or herself an "expert" but far more difficult to find a *bona fide* expert who can withstand cross-examination. The danger in calling a fringe or unqualified expert is that cross-examination of such an

expert can decimate the Defendant's case, and call into question other positions and arguments he makes.

To prevail on an assertion of ineffective assistance of counsel for failing to present expert testimony, Hyslop "must do more than merely speculate that such an expert exists or that the expert would testify persuasively to an alternative diagnosis." *Oliphant*, ¶ 41. Hyslop's counsel obviously came to the same conclusion as to the medical issues in this case following consultation with Dr. Bennett: there is no genuine or good faith basis for challenging the medical conclusions reached by the State's expert. Thus, their tactical decision not to attempt to hire another expert to testify to an unsupported contrary opinion was effective assistance, not ineffective assistance.

The Court thoroughly reviewed the Petition for Post-conviction Relief and the Amended Petition and carefully considered the testimony and argument presented at both hearings. The Court finds that Hyslop's counsel was not ineffective as to the three issues on which Hyslop's counsel asked the Court to focus as set forth above.

As to other issues:

Whether Hyslop's lawyers provided ineffective assistance by not offering text message evidence for impeachment.

The testimony and affidavits of Mr. LaFountain and Mr. Van der Hagen were part of their trial strategy and those decisions were within the bounds of reasonable professional conduct under *Strickland. Godfrey*, ¶ 14; *Hendricks*, ¶ 7. The *Strickland*

Court cautioned courts to "eliminate the distorting effects of hindsight…" *Strickland* at 689. It is clear to the Court that attorneys Van der Hagen and LaFountain were reasonable considering all of the circumstances.

Lawyers Van der Hagen and LaFountain testified at the first hearing (and filed affidavits) about their trial strategy of attempting to implicate other persons in the house at the time the injuries were inflicted, and concluded, based on careful and thoughtful review of the medical evidence, and their experience-based opinion that challenging whether child abuse or physical violence caused the injuries would not be credible. They testified that their tactical goal was to raise the question of whether other persons in the house caused the injuries in order to obtain an acquittal.

Attorney LaFountain specifically testified about the evidence that Kendall Hyslop (Hyslop's brother) had caused the injuries, and the strategic efforts counsel employed to prove the defense theory that the State had charged the wrong person. Because of this and other tactical considerations, a decision was made not to offer the text messages on this point because they were cumulative. Further, a tape-recorded conversation between Hyslop and his grandmother from jail revealed defense strategy to point to his brother, thus narrowing the number of persons the defense could credibly offer as alternate suspects.

Whether Hyslop's lawyers provided ineffective assistance by not presenting a defense of coercion, pressuring him not to testify, and conceding absence of mistake or accident.

Hyslop's assertion on this point was analyzed above. Hyslop's counsel's performance was within the bounds of reasonable professional conduct under *Strickland.* Their actions constituted trial strategy and were within the broad scope of reasonable professional conduct. *Godfrey*, ¶ 14; *Hendricks*, ¶ 7.

Further, as Mr. LaFountain's affidavit and testimony showed, Hyslop himself affected this decision by revealing trial strategy in a jailhouse phone call, which then disclosed it to the prosecution. Hyslop's lawyers then had to make other strategic decisions in order to protect him at trial. LaFountain and Van der Hagen testified that they did not coerce Hyslop into not testifying. The Court found their testimony to be credible.

Finally, both of Hyslop's lawyers testified that any attempt to show mistake or accident would be inconsistent with the "overwhelming" medical evidence that the injuries sustained by the victim could not have been a result of anything but child abuse. This strategic decision was well within the bounds of reasonable professional conduct. Hyslop did not meet his burden under *Strickland* and *Godfrey*.

Whether Hyslop's lawyers provided ineffective assistance by not seeking an independent medical evaluation or differential diagnosis of the victim's injuries.

This issue was analyzed above. Mr. LaFountain testified that he discussed the case in detail with forensic pathologist Dr. Bennett, who advised him that the State's forensic pathologist was credible and would do a good job.

Moreover, the evidence of physical abuse was "overwhelming," and attempts to prove the victim's injuries came from some other cause would have harmed Hyslop's defense, not helped it. Finally, because of the child victim's long history in her short life of unusual and severe injuries, the lawyers were reasonably concerned about the credibility of offering another medical causation expert to contradict the overwhelming medical causation evidence.

Lawyers LaFountain's and Van der Hagen's decision making was within the bounds of reasonable professional conduct under *Strickland* and *Godfrey*.

Whether Hyslop's lawyers provided ineffective assistance by not challenging evidence of other crimes, wrongs, or acts.

Hyslop's claim is procedurally barred in that it could have been raised on direct appeal. §46-21-105(2), MCA. Moreover, Hyslop's lawyers' decision-making on this point was part of their trial strategy and was within the bounds of reasonable professional conduct under *Strickland* and *Godfrey*.

Whether Hyslop's lawyers provided ineffective assistance by not challenging venue.

This issue is record-based and could have been raised on direct appeal. §46-21-105(2), MCA. Further, the record reflects that Hyslop's lawyers did raise the issue of venue before trial. TR, 25, Pre-Trial Motions Hearing, March 28, 2012. Hyslop's lawyers' representation on this issue was within the bounds of reasonable professional conduct under *Strickland*.

Whether Hyslop's lawyers provided ineffective assistance by not calling some witnesses Hyslop requested at sentencing.

Hyslop's lawyers' representation was within the bounds of reasonable professional conduct under *Strickland* and *Godfrey*. Attorney LaFountain testified that he reasonably believed that sentencing would be based on trial testimony. He testified at some length about his extensive experience with sentencing for similar crimes in this District, that bringing additional witnesses to testify would harm, and not help, Hyslop. At that point, he reasonably believed that the goal was a possibility of parole. His affidavit, which he ratified in his testimony, reflected that the Court had already received witness letters from the witnesses Hyslop wanted his lawyers to call.

Whether Hyslop's lawyers provided ineffective assistance by not challenging the first six assignments of error above on appeal.

The Court has concluded that the assignments of error items 1-6 were the result of sound tactical decision-making, in Hyslop's best interests. Choosing not to appeal on those bases was within the bounds of reasonable professional conduct under *Strickland.* Moreover, Hyslop provided no evidence to support this assertion. His conclusory allegations are not enough. *See, State v. Wright.*

ORDER

Hyslop has not proved that he is entitled to relief. His claims are either procedurally barred in that they could have been raised on direct appeal, are mere

conclusory allegations not supported by any facts or evidence or were the subject of competent representation by experienced trial counsel making tactical decisions in Hyslop's best interests.

IT IS HEREBY ORDERED that:

David Hyslop's Petition for Post-conviction Relief is DENIED.

ELECTRONICALLY SIGNED AND DATED BELOW

cc: Abigail Matthews
David Hyslop, c/o counsel
CA/Kory Larsen

Electronically Signed By:
Hon. Judge Elizabeth Best
Tue, Mar 26 2024 02:52:47 PM