

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2015-016

FEBRUARY TERM, 2016

In re Nikolay Gergov	}	APPEALED FROM:
	}	
	}	Superior Court, Rutland Unit,
	}	Civil Division
	}	
	}	DOCKET NO. 387-5-12 Rdcv
		Trial Judge: Cortland Corsones

In the above-entitled cause, the Clerk will enter:

Petitioner appeals from the trial court’s denial of his petition for post-conviction relief (PCR), based on a claim of ineffective assistance of counsel. He argues that the evidence does not support the court’s findings and conclusions.

We affirm based on the trial court decision below, which is attached to this decision. Essentially, petitioner seeks to relitigate this case through his brief on appeal. The trial court did not ignore petitioner’s evidence. It considered petitioner’s evidence and found it unpersuasive. It addressed and rejected petitioner’s arguments. The fact that petitioner disagrees with the court’s conclusions does not demonstrate error. See, e.g., Meyncke v. Meyncke, 2009 VT 84, ¶ 15, 186 Vt. 571 (explaining that arguments which amount to nothing more than disagreement with court’s reasoning and conclusion do not make out case for abuse of discretion). We do not restate all of the court’s findings set forth above. We have considered all of petitioner’s arguments and find them without merit. As the trial court recognized, “[j]udicial scrutiny of counsel’s performance must be highly deferential.” Strickland v. Washington, 466 U.S. 668, 689 (1984). Given the difficulty in assessing counsel’s performance in hindsight, “[a] court must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy.” Id. (quotation omitted). Petitioner failed to overcome that presumption here.

The court explained why counsel’s strategy on the timing and methods of discovery was reasonable under the circumstances. It explained why, under all of the circumstances, it was not unreasonable for counsel not to have deposed the victim and her mother, and why counsel’s failure to review the videotape of petitioner’s police-station interview was not unreasonable. See id. (“In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel’s judgments.”). The trial court found that counsel tried to have the State reduce the charge, and it is self-evident that the State refused to do so. The court’s findings support its conclusion that counsel’s strategy of first challenging the confession and seeking to reach a plea agreement desired by his client was within the range of acceptable strategies. As the U.S. Supreme Court has emphasized, “[t]he benchmark for judging any claim of ineffectiveness must be whether

counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Id.* at 686. Applying this principle here, the court's findings demonstrate that trial counsel "play[ed] the role necessary to ensure that" the process was fair. We find no basis to disturb the court's decision.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice