



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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December 20, 2019

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Ms. Victoria Johnson
Assistant Attorney General
202 North Ninth Street
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Re: *Christopher Emmet Darman v. Harold Clarke*, Case No. CL-2019-8234

Dear Counsel:

The procedural history of this case is well-documented in the pleadings of both parties and need not be repeated in this letter. Suffice it to say that Darman argues now, as he essentially did in his motion to reconsider¹, that his defense lawyer was ineffective because he: (1) did not introduce evidence that Darman suffered a traumatic childhood; (2) did not introduce evidence that Darman suffered from diminished capacity to appreciate the severity of the victim's condition; and (3) did not review and rebut comparable cases relied on by the Commonwealth.

As a matter of law, I find that trial counsel's performance was not deficient. Darman suffered no prejudice because of any alleged deficiency.

The controlling case for ineffective assistance of counsel claims is *Strickland v. Washington*, 466 U.S. 668 (1984). *Strickland* establishes a two-part test: first, it must be shown that trial counsel's performance was deficient, and second, it must be shown that the defendant was prejudiced as a result.

¹ This Court denied Darman's motion to reconsider.

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Darman first asserts that trial counsel's performance was deficient because he did not submit evidence of Darman's dysfunctional childhood. However, on the motion to reconsider, this evidence was brought to this Court's attention. This Court did not find that evidence sufficiently persuasive to warrant a reconsideration of the sentence. In other words, while the Court still had the jurisdiction to accept the evidence of a dysfunctional childhood, the Court declined to do so, inherently finding that the evidence was not persuasive. Thus, the first prong of the *Strickland* test has not been met.

Closely associated with Darman's assertion that counsel failed to submit evidence of his dysfunctional childhood is the assertion that trial counsel failed to submit evidence of Darman's diminished capacity. This diminished capacity, according to Darman, is why he failed to summon help for his friend. This evidence was submitted in the motion to reconsider. The Court did not find it persuasive. Thus, the second prong of the *Strickland* test has not been satisfied.

Darman's assertion that trial counsel failed to prepare for and rebut evidence of the comparable cases, which also was submitted in the motion to reconsider, lacks merit. Darman's petition points out, at length, that his sentence was 1000 percent above the guidelines, whereas the average enhancement of the comparable cases is between 278 and 315 percent.

The percentage analysis relied upon by Darman misses the salient point—his sentence, other than only one of the comparable cases, was, in actual time to be served, less than the comparable cases. In some instances, notably *Schmidt*, Darman's sentence is substantially less than the comparable defendants received.

This petition essentially is a reiteration of the matters raised in the motion to reconsider. The Court was persuaded neither by the arguments raised in the motion to reconsider nor by the arguments raised in this petition.

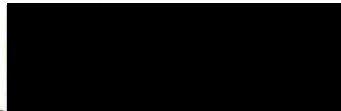
This Court finds that trial counsel's performance was not deficient, therefore, as a matter of law, Darman was not prejudiced.

I find that the allegations raised in the petition can be determined based on the recorded matters and no hearing is required. Va. Code §8.01-654(B)(4).

The petition is denied.

The Attorney General shall prepare and circulate an Order reflecting the findings of this Opinion.

Sincerely,



Robert J. Smith
Judge, Fairfax Circuit Court

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