

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE  
Assigned on Briefs February 14, 2023

FILED

03/02/2023

Clerk of the  
Appellate Courts

**JOSE LEMANUEL HALL v. STATE OF TENNESSEE**

**Appeal from the Criminal Court for Davidson County  
No. 2012-D-3088 Angelita Blackshear Dalton, Judge**

---

**No. M2021-01556-CCA-R3-PC**

---

The petitioner, Jose Lemmanuel Hall, appeals the denial of his post-conviction petition, arguing the post-conviction court erred in finding he received the effective assistance of counsel at trial and on appeal. After our review of the record, briefs, and applicable law, we affirm the denial of the petition.

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

J. ROSS DYER, J., delivered the opinion of the court, in which CAMILLE R. MCMULLEN and TOM GREENHOLTZ, JJ., joined.

Kyle D. Parks, Nashville, Tennessee, for the appellant, Jose Lemmanuel Hall.

Jonathan Skrmetti, Attorney General and Reporter; Benjamin A. Ball, Senior Assistant Attorney General; Glenn Funk, District Attorney General; and Janice Norman, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

***Facts and Procedural History***

On direct appeal, this Court summarized the facts surrounding the petitioner's convictions for first-degree murder and especially aggravated robbery, as follows:

The convictions against the [petitioner] arose from the robbery and murder of the victim, Jeremy Green. The [petitioner] and co-defendant Victor Johnson were indicted for one count of felony murder, one count of premeditated murder, and one count of especially aggravated robbery.

Additionally, co-defendant Maurice Hegman was indicted on the charge of especially aggravated robbery in the same indictment.

...

[On January 29, 2011, Jalisha] Gleaves [] drove to the [victim's] apartment complex and parked her car. She knocked on the victim's door, and the door pushed open. Upon entering the apartment, Ms. Gleaves witnessed the victim lying on the floor. She tried to roll the victim over, but when she observed blood, she stopped her attempts to aid the victim and called 911. However, she did not recall the actual address of the victim's apartment to give to police. While still on the phone with 911, she returned to the Mapco for assistance. No one there was aware of the address, but, upon exiting the store, a police officer on patrol arrived. Ms. Gleaves approached him, and the two returned to the apartment.

Upon re-entering the apartment, Ms. Gleaves noted that several of the victim's belongings, including an Xbox, a computer, audio equipment used in recording, and several plastic totes were missing. Demarco Keeler, a childhood friend of the victim, also verified that the Xbox 360, laptop computer, a microphone, and a music conversion box were missing from the apartment. Keeler informed the police that the victim's laptop user name was "Jay Dot."

...

Detective Chad High was the lead detective in the victim's murder investigation. He responded to the murder scene and discovered that "it was obvious things were missing." He entered the serial numbers from the empty boxes found in the apartment into a system which allowed him to monitor if the items were ever pawned. The system would flag the item with the pawn shop when the transaction was made, and police would be alerted.

In the "early part of 2011," Lachrisha Poynter drove the [petitioner] and co-defendant Hegman to a pawn shop. Ms. Poynter did not go inside the pawn shop with the two men. Victoria Holt, an employee of a shop then named "Household Pawn," identified a pawn ticket where the [petitioner] had come in and pawned an Xbox at the store on February 21, 2011. His driver's license was recorded before the transaction was completed. Another employee of a different pawn shop also reported that the [petitioner] pawned

a laptop computer in that store on the same day. Videos were made of the transaction.

...

The investigation led police to speak with Mr. Hegman, who was eventually indicted along with co-defendant Johnson and the [petitioner], although only for especially aggravated robbery. The three were admitted members of the "5 Deuce Hoover Crips." Mr. Hegman noted that he had grown up with the victim in the "projects" and that he had even helped him move into his current apartment where the murder occurred. The two often played Xbox together, and Mr. Hegman related that the victim's user name was "Jay.Green." According to Mr. Hegman, he and his two co-defendants, along with two men named Antonio and Dominique, went to the victim's apartment around 11:00 p.m. or 12 a.m. on January 29-30, 2011, to "do music." According to Mr. Hegman, there was no discussion of a robbery occurring before they went to the apartment. He acknowledged a call was made to inform the victim that they were coming over.

When the group arrived, Antonio and Dominique elected to remain in the car, but the other three proceeded to the door of the victim's apartment. However, Mr. Hegman was not present at the door when it was actually opened, as he had returned to the car to find a CD for Antonio. When he did return to the doorway of the victim's apartment, it was open, and he saw co-defendant Johnson and the victim fighting. At the time, the [petitioner] was just standing there. Co-defendant Johnson told Mr. Hegman to take a blue tote from the apartment, and Mr. Hegman complied. As he picked up the tote, Mr. Hegman observed the [petitioner] "reaching" towards the victim. He opined that the fighting might have been because the victim was wearing red, the color worn by a rival gang, although he did not know for certain.

Mr. Hegman returned to the car with the tote and waited. He observed co-defendant Johnson exit the apartment and walk to a nearby dumpster before returning to the car. Mr. Hegman began to drive away without the [petitioner], but the [petitioner] managed to exit the apartment and return to the car before they left. Mr. Hegman stated there was no discussion of the events that had occurred in the apartment while they were in the car. At that point, Mr. Hegman drove Antonio and Dominique to their home, and the remaining three then drove to a friend's home in LaVergne. Mr. Hegman left the blue tote he had taken at this address. Mr. Hegman also acknowledged that he had Ms. Poyner take him and the [petitioner] to some

pawn shops at a later date. He also acknowledged that, following his arrest, he did not initially tell police the entire story. He also stated that he was not aware that the victim had been killed until he was informed so by the detectives.

Detective Chad Gish was a digital forensics detective who worked in the Metro Nashville Police Department. He analyzed the laptop recovered by police which had been pawned by the [petitioner]. He discovered that the laptop had an operating system which had been installed on January 31, 2011, just two days after the victim's murder. Further analysis revealed that the previous operating system had utilized a user name of "Jay dot." Additionally, a user name of "JeremyGreen" appeared under the old operating systems installation folder.

Based upon the above information gathered, the [petitioner] was arrested and charged with felony murder, first[-]degree premeditated murder, and especially aggravated robbery. While the [petitioner] was in jail, Detective High monitored the [petitioner's] letters and phone calls that he received at the jail. Several of the communications were encoded in "gang" terminology and script, which made interpreting the messages difficult. Apparently, when the [petitioner] was first incarcerated, he blamed co-defendant Johnson for speaking with the police and getting them caught. However, as time progressed, he realized it was co-defendant Hegman who had actually given the police a statement. One of the letters stated, "they ain't got s\*\*t on me or cuzz [Mr. Hegman] all they got is pictures of me cuzz and lady in pawn shops pawning shit . . . Baby tell cuzz that I'm putting everything on lil deuce [co-defendant Johnson]." In a separate letter, the [petitioner] wrote, "f\*\*k lil deuce, if he wouldn't have use that phone none of this would have happened." However, after receiving discovery, the [petitioner] became aware that it was Mr. Hegman talking and sent a letter of apology to co-defendant Johnson. In the letter, he noted that he had forwarded the information to other gang members that Mr. Hegman was a snitch, an extreme violation of gang code. He later wrote a letter to his girlfriend seemingly questioning why Mr. Hegman was still alive.

Following the severance of the defendants' cases the [petitioner] proceeded to trial. All of the above information was testified to in the jury's presence. Additionally, Ronald Jones provided testimony. He was incarcerated with the [petitioner] in March 2012. Mr. Jones testified that the [petitioner] gave the following version of events regarding the robbery and murder of the victim:

[He] told me that him and his Big Homie named Reese and another dude had went over there. They had been over there making raps, but this particular day they went over there to rob him and when they runned over there and knocked on the door, he, when dude opened up the door they rushed him and went in the apartment and once they got him in the apartment they wrestled with him and he said he put a choke hold on him and choked him out.

Mr. Jones also offered that the [petitioner] had admitted taking “clothing and some electronics” from the apartment. According to Mr. Jones, the [petitioner] said that he learned how to do the choke hold and to hide evidence in a forensics class he took at the University of Tennessee.

The [petitioner] also acknowledged his gang membership to Mr. Jones. In fact, the [petitioner] told Mr. Jones that he got his “status” after committing the murder of the victim. Mr. Jones contacted the district attorney after the [petitioner] told him this information. Mr. Jones did acknowledge multiple prior convictions ranging from 1993 to 2011. He also acknowledged that, as part of a plea agreement, he received a lesser release eligibility date in exchange for his testimony.

Additionally, at trial, Mr. Hegman admitted on cross-examination that he had prior convictions for facilitation of aggravated robbery and a conviction as a felon in possession of a weapon. He acknowledged that he was not aware of what started the “tussling” between co-defendant Johnson and the victim, and it was possible that the victim actually started the fray. Mr. Hegman agreed that the [petitioner] could have been reaching for the victim in order to assist co-defendant Johnson. He stated he simply did not know the particulars of what occurred. Moreover, Mr. Hegman made clear that part of the incentive to speak with the police was that he would avoid being charged with murder. He readily acknowledged his gang membership and admitted that he was the [petitioner’s] “big homie,” a sort of mentor who outranks you and determines any increase in rank to be awarded.

...

After hearing all the evidence presented, the jury convicted the [petitioner] as charged in the indictment. The trial court merged the murder counts and set the case for sentencing. Following a hearing, the [petitioner]

was sentenced to life imprisonment for the murder and to twenty years for the robbery conviction. The court ordered that the sentences be served concurrently for an effective sentence of life imprisonment.

*State v. Jose Lemanuel Hall, Jr.*, No. M2013-02090-CCA-R3-CD, 2014 WL 4384318, at \*1-6 (Tenn. Crim. App. Sept. 5, 2014), *perm. app. denied* (Tenn. Jan. 16, 2015).

Following the denial of his direct appeal, the petitioner filed a timely pro se petition for post-conviction relief. After the appointment of counsel, the petitioner filed an amended petition for post-conviction relief, arguing, in part, trial counsel was ineffective for failing to thoroughly investigate evidence to impeach the testimony of Mr. Jones and Mr. Hegman. An evidentiary hearing was held on October 4, 2019.

At the post-conviction hearing, trial counsel testified that he represented the petitioner during both his trial and direct appeal. Trial counsel could not recall whether he visited the petitioner at the jail, but he did recall meeting with the petitioner at each of his court dates. Additionally, trial counsel requested funds to hire an investigator for the petitioner's case and stated that the investigator visited the petitioner multiple times at the jail. Trial counsel also testified the prosecutor had an open file discovery process, and he recalled meeting with her to go through her file.

When trial counsel discovered that Mr. Jones was going to testify at trial, he asked the petitioner about Mr. Jones's statement. The petitioner claimed Mr. Jones learned the details in his statement when the petitioner let Mr. Jones view the petitioner's discovery while they were in jail together. However, trial counsel made a strategic decision to advise the petitioner not to testify regarding Mr. Jones's assertions because he did not want to subject the petitioner to cross-examination. Instead, trial counsel highlighted the short distance between Mr. Jones's jail cell and the telephone the petitioner used to speak to his girlfriend and family. Trial counsel also knew that he needed to attack Mr. Jones's credibility. Because Mr. Jones had an extensive criminal record which could have classified him as a "double career offender," trial counsel "made as much hay as [he] could with that."

Regarding Mr. Hegman's testimony, trial counsel testified that they had "more advance notice" than with Mr. Jones. However, Mr. Hegman's attorney would not allow trial counsel or his investigator to speak with Mr. Hegman prior to trial. Therefore, trial counsel's strategy was to discredit Mr. Hegman with his prior criminal record and by insinuating that Mr. Hegman was "trying to ease his load" by testifying for the State. Although the State had not promised Mr. Hegman anything for his testimony, trial counsel was able to get Mr. Hegman to admit that he hoped to get some consideration in exchange for his testimony.

During cross-examination, trial counsel agreed that, in addition to Mr. Jones and Mr. Hegman's testimony, the evidence in this case also consisted of incriminating jail phone calls and letters from the petitioner to his girlfriend and co-defendants.

After its review of the evidence presented, the post-conviction court denied relief. On January 19, 2022, this Court granted the petitioner's motion to late-file his notice of appeal.

### *Analysis*

On appeal, the petitioner argues the current standard adopted in *Strickland*<sup>1</sup> "places an impossible burden on any petitioner to show prejudice." The petitioner also argues trial counsel was ineffective for failing to investigate and impeach the testimony of Mr. Jones and Mr. Hegman. The State contends that this Court does not have the authority to revisit *Strickland* and that the post-conviction court properly denied the petition.

The petitioner bears the burden of proving his post-conviction factual allegations by clear and convincing evidence. Tenn. Code Ann. § 40-30-110(f). The findings of fact established at a post-conviction evidentiary hearing are conclusive on appeal unless the evidence preponderates against them. *Tidwell v. State*, 922 S.W.2d 497, 500 (Tenn. 1996). This Court will not reweigh or reevaluate evidence of purely factual issues. *Henley v. State*, 960 S.W.2d 572, 578 (Tenn. 1997). However, appellate review of a trial court's application of the law to the facts is *de novo*, with no presumption of correctness. *See Ruff v. State*, 978 S.W.2d 95, 96 (Tenn. 1998). The issue of ineffective assistance of counsel presents mixed questions of fact and law. *Fields v. State*, 40 S.W.3d 450, 458 (Tenn. 2001). Thus, this Court reviews the petitioner's post-conviction allegations *de novo*, affording a presumption of correctness only to the post-conviction court's findings of fact. *Id.*; *Burns v. State*, 6 S.W.3d 453, 461 (Tenn. 1999).

To establish a claim of ineffective assistance of counsel, the petitioner must show both that counsel's performance was deficient and that counsel's deficient performance prejudiced the outcome of the proceedings. *Strickland*, 466 U.S. at 687; *State v. Taylor*, 968 S.W.2d 900, 905 (Tenn. Crim. App. 1997) (noting that the standard for determining ineffective assistance of counsel applied in federal cases is also applied in Tennessee). The *Strickland* standard is a two-prong test:

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that

---

<sup>1</sup> *Strickland v. Washington*, 466 U.S. 668 (1984).

counsel was not functioning as the “counsel” guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel’s errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

466 U.S. at 687. In order for a post-conviction petitioner to succeed, both prongs of the *Strickland* test must be satisfied. *Id.* Thus, courts are not required to even “address both components of the inquiry if the defendant makes an insufficient showing on one.” *Id.*; see also *Goad v. State*, 938 S.W.2d 363, 370 (Tenn. 1996) (stating that “a failure to prove either deficiency or prejudice provides a sufficient basis to deny relief on the ineffective assistance claim”).

A petitioner proves a deficiency by showing “counsel’s acts or omissions were so serious as to fall below an objective standard of reasonableness under prevailing professional norms.” *Goad*, 938 S.W.2d at 369 (citing *Strickland*, 466 U.S. at 688; *Baxter v. Rose*, 523 S.W.2d 930, 936 (Tenn. 1975)). The prejudice prong of the *Strickland* test is satisfied when the petitioner shows there is a reasonable probability, or “a probability sufficient to undermine confidence in the outcome,” that “but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Strickland*, 466 U.S. at 694. However, “[b]ecause of the difficulties inherent in making the evaluation, 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.* at 689 (quoting *Michel v. Louisiana*, 350 U.S. 91, 101 (1955)).

## **I. Burden of Proving Prejudice Under *Strickland*<sup>2</sup>**

The petitioner argues the standard adopted in *Strickland* requiring the petitioner to prove prejudice places an impossible burden on the petitioner. Specifically, the petitioner contends that placing the burden of proving prejudice on the petitioner is inappropriate because it reverses the usual presumption that a defendant is innocent until proven guilty and shifts the burden of proving harmless error from the State to the defendant. However, this Court is not at liberty to overrule the United States Supreme Court or the Tennessee Supreme Court, and therefore, this issue is without merit. See *State v. Harton*, 108 S.W.3d 253, 260 (Tenn. Crim. App. 2002).

## **II. Failure to Investigate and Impeach Witnesses**

---

<sup>2</sup> For the sake of clarity, we have reordered and renumbered the issues from the order they appeared in the petitioner’s brief.

The petitioner argues trial counsel was ineffective for failing to thoroughly investigate Mr. Hegman and Mr. Jones prior to trial in order to impeach their testimony. Specifically, the petitioner argues trial counsel failed to investigate the contents of the witnesses' statements and relied on their prior criminal records to discredit them. The State contends the post-conviction court properly found that trial counsel was not ineffective for failing to investigate and impeach the witnesses' testimony.

At the evidentiary hearing, trial counsel testified that he was unable to speak with either Mr. Hegman or Mr. Jones about their statements prior to trial. Therefore, trial counsel's strategy regarding Mr. Hegman's testimony was to persuade the jury that Mr. Hegman was lying to lessen his charges, and in fact, trial counsel was able to get Mr. Hegman to admit that he hoped to get some consideration from the State as a result of testifying against the petitioner. Trial counsel also used Mr. Hegman's prior criminal convictions to discredit his testimony.

Regarding Mr. Jones's testimony, trial counsel testified that he learned of Mr. Jones's statement shortly before trial. Although the petitioner disputed Mr. Jones's account of how he learned the details of the petitioner's case, trial counsel made a strategic decision to advise the petitioner not to testify and dispute Mr. Jones's assertions because it would subject the petitioner to cross-examination. Instead, trial counsel attempted to highlight the short distance between Mr. Jones's jail cell and the telephone the petitioner used to speak with his girlfriend and family about his case. Trial counsel also discussed Mr. Jones's extensive criminal history.

Implicit in the post-conviction court's order denying relief is an accreditation of trial counsel's testimony, and nothing in the record preponderates against the post-conviction court's factual findings. *See Tidwell*, 922 S.W.2d at 500. The fact that a trial strategy or tactic failed or was detrimental to the defense does not, alone, support a claim for ineffective assistance of counsel. *Cooper v. State*, 847 S.W.2d 521, 528 (Tenn. Crim. App. 1992). Deference is given to sound tactical decisions made after adequate preparation for the case. *Id.* Furthermore, although the petitioner argues trial counsel should have obtained "actual impeaching evidence . . . through thorough investigation," the petitioner failed to present any such evidence at the post-conviction hearing and, therefore, cannot establish prejudice. *See Black v. State*, 794 S.W.2d 752, 757-58 (Tenn. Crim. App. 1990). The petitioner is not entitled to relief on this issue.

### ***Conclusion***

Based upon the foregoing authorities and reasoning, we affirm the post-conviction court's judgment denying the petitioner post-conviction relief.

---

J. ROSS DYER, JUDGE