

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs April 8, 2026

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DEMETRICE LIVINGSTON v. STATE OF TENNESSEE

Appeal from the Circuit Court for Dyer County
No. 19-CR-312 Mark L. Hayes, Judge

No. W2025-00807-CCA-R3-PC

The Petitioner, Demetrice Livingston, appeals the denial of his petition for post-conviction relief from his second degree murder conviction. On appeal, the Petitioner argues that the post-conviction court erred in denying his petition after concluding that trial counsel provided effective assistance of counsel. After review, we affirm the judgment of the post-conviction court.

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

CAMILLE R. MCMULLEN, J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER, P.J., and JOHN W. CAMPBELL, SR., J., joined.

Bryan R. Huffman, Covington, Tennessee (on appeal); Jason R. Creasy, Dyersburg, Tennessee (at trial), for the appellant, Demetrice Livingston.

Jonathan Skrmetti, Attorney General and Reporter; Park Huff, Assistant Attorney General; Danny Goodman, Jr., District Attorney General; and Lance Webb, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

On June 10, 2019, the Petitioner fatally shot the victim, Demarko Robinson, in a drive-by shooting. The Petitioner was developed as the only suspect in this crime and was later indicted for first degree premeditated murder. Jordyn Bell, the Petitioner’s girlfriend at the time, was indicted for being an accessory after the fact.

The facts underlying the Petitioner’s conviction are outlined in detail in this court’s opinion from the Petitioner’s direct appeal. State v. Livingston, No. W2022-01474-CCA-R3-CD, 2023 WL 5146833, at *1 (Tenn. Crim. App. Aug. 10, 2023),

perm. app. denied (Tenn. Jan. 11, 2024). As relevant to the specific issues raised in this post-conviction appeal, Taylor Kennedy testified that on the day of the offense she, the Petitioner, and Codefendant Bell were riding around in the vehicle shared by the Petitioner and Bell. Codefendant Bell was driving, Kennedy was in the front passenger seat, and the Petitioner was in the backseat. The Petitioner directed Codefendant Bell to drive to the “east side” toward the railroad tracks. Kennedy said she was lying down, attempting to sleep, when “shots went off[,]” which made her jump up. Kennedy remembered going over the railroad tracks and then hearing the Petitioner tell Codefendant Bell “to drive and go.” The Petitioner then instructed Codefendant Bell to drive somewhere twenty-five minutes away so that he could get rid of the gun. The Petitioner wrapped the gun in a grey shirt and buried it. Kennedy said the Petitioner later burned the clothing he had worn during the shooting and changed into another set of clothes, which she assumed he had brought with him.

On cross-examination, Kennedy stated that she heard two or three gunshots and saw the Petitioner “hanging out the window” of the car with a gun, so she assumed the Petitioner had fired these shots. She agreed that several individuals were outside a home at the time the shots were fired. Kennedy did not know if anyone of these people fired at their vehicle, and she did not know who initiated the gunfire at the scene.

After waiving her Fifth Amendment right not to testify, Codefendant Jordyn Bell identified the Petitioner as her ex-boyfriend and admitted that she had been charged as an accessory after the fact in the victim’s murder. She explained that on the day of the incident, she drove, Kennedy rode in the front passenger seat, and the Petitioner was in the backseat. The Petitioner directed her to turn left onto Liberty Street, where she saw a group of people standing in the yard in front of a residence. The Petitioner asked her if someone called “T-something” was out there, but she did not know who the Petitioner was talking about. As she drove past this house, she heard a gunshot, and then heard the Petitioner say, “S[---]t! It jammed. Go! Go! Go! They’re shooting!” As she drove away, Codefendant Bell heard more gunshots. She did not believe she heard these gunshots before the Petitioner said his gun jammed.

Codefendant Bell said the Petitioner directed her to drive to a field “in the middle of nowhere” so he could burn his clothes. The Petitioner then told her to take him to another location, where he exited the car. When the Petitioner returned, he told her “55 steps. That’s where that’s at.” At the time, she knew the Petitioner was talking about his gun.

Codefendant Bell stated that the night of the shooting, they slept in a field. The next day, they drove to St. Louis, Missouri, where they spent the night at a truck stop. They visited with the Defendant's brother, who lived in St. Louis, but they did not spend the night with him, and they returned to Tennessee the next day. After making a couple of stops, she dropped off the Petitioner and Kennedy in a field.

Codefendant Bell then went to an interview with the police, who had been repeatedly calling her. She admitted she did not initially tell the police the truth about what happened because she was scared, but she eventually gave a truthful statement to police after she was arrested that was consistent with her trial testimony.

On cross-examination, Codefendant Bell admitted she gave three different statements to the police denying that the Petitioner had a gun or shot anyone. She asserted that she had not been promised anything in exchange for her trial testimony. However, she admitted that she initially had been charged with first degree murder and that this charge was reduced to accessory after the fact after she provided a statement implicating the Petitioner. She conceded that she heard several gunshots, "more than just a couple." Nevertheless, she was certain that the gunshots she heard occurred after the Petitioner announced that his gun jammed. She acknowledged that there were bullet holes in her vehicle after the shooting. She also said that she did not know how many people had been shooting that night.

Lieutenant Jim Joyner testified that he did not know how many people were present at the time of the shooting. He was familiar with four of the individuals reportedly present and acknowledged that all four were likely convicted felons. Lieutenant Joyner said that four shell casings were found at the scene and that a fifth shell casing was found inside Codefendant Bell's car. No weapons were recovered from the scene.

Detective Chris Clements testified that several surveillance videos depicted a Toyota Sequia SUV traveling west from the crime scene one minute after the victim's 9:54 p.m. shooting. On cross-examination, he said he saw this SUV later that day and believed, though he was not certain, that there were bullet holes in this vehicle and that officers recovered a bullet or bullet fragment from inside this vehicle.

Sergeant Logan Abbot testified that he collected four shell casings from the scene. Three of these casings were found in the road close to the victim's body, and one casing was found after the victim's body was moved.

John Lewoczko, a retired firearms examiner and an expert in the field of firearm identification, testified that he examined the four shell casings submitted from the shooting scene and the one shell casing recovered from Codefendant Bell's vehicle. He stated that two of these shell casings had been fired in the same gun and that the three other shell casings had been fired from the same gun, but he was unable to conclude that all five shell casings had been fired in the same gun.

On cross-examination, Lewoczko acknowledged the possibility that two different firearms were involved in the incident.

On redirect examination, Lewoczko said he was able to conclusively determine that one of the shell casings recovered from the shooting scene and the only shell casing recovered from Codefendant Bell's vehicle had both been fired from the same gun.

Sergeant Todd Thayer testified that Codefendant Bell gave the police permission to search her vehicle, which resulted in officers finding a live 9 mm round in the backseat, a spent 9mm casing in the cargo area behind the backseat, and a fired bullet fragment in the cargo area.

On cross-examination, Sergeant Thayer acknowledged that Codefendant Bell gave three different accounts before she ultimately provided the fourth version of events that was consistent with her trial testimony. He also acknowledged that the bullet fragment found inside her vehicle indicated that someone, at some point in time, had fired a bullet at her vehicle.

Dr. Marco Ross, the medical examiner, testified that the victim sustained a gunshot wound to his abdomen and a gunshot wound to his forearm. He was unable to determine if these wounds were caused by two bullets or by a single bullet that entered and exited the victim's forearm before continuing through the victim's abdomen.

The Defendant elected not to testify and rested his case without presenting any evidence.

Based in large part upon the aforementioned evidence, the jury convicted the Petitioner of the lesser included offense of second degree murder. The trial court imposed a sentence of twenty years in confinement for this conviction, ordering this sentence served consecutively to a two-year sentence the Petitioner received for violating his probation.

The Petitioner timely filed a direct appeal, arguing: (1) the evidence was insufficient to sustain his conviction; (2) the trial court imposed an excessive sentence; and (3) the State made an improper closing argument. This court remanded the case for the trial court to enter an amended judgment imposing a concurrent sentence in this case but otherwise affirmed the judgments of the trial court, and the supreme court denied discretionary review.

Thereafter, the Petitioner filed a timely petition for post-conviction relief, alleging, in pertinent part, that he was denied effective assistance of counsel because trial counsel failed to subpoena and question all individuals who fired shots at the crime scene and because trial counsel failed to adequately communicate with him about his case.

At the post-conviction hearing, the Petitioner's trial counsel testified that he was appointed to represent the Petitioner after his previous attorney died. Trial counsel stated that he received prior counsel's entire file and then met with the Petitioner. During this meeting, the Petitioner acknowledged that he had received the discovery packet from prior counsel and that prior counsel had communicated the State's plea offer to him.

Trial counsel said he did not apply for funds to hire an investigator in the Petitioner's case. Regarding his investigation of potential witnesses, trial counsel stated that he spoke to Taylor Kennedy one time over the phone but did not meet with her in person. He then talked to the Petitioner about what Kennedy's anticipated testimony would be. He also spoke with Codefendant Bell's attorney but did not speak to Bell directly. He noted that when he asked Codefendant Bell's attorney whether Bell had been promised a plea deal from the State, her attorney provided an "evasive answer." He acknowledged that he did not ask for permission to speak directly to Codefendant Bell.

Trial counsel said he knew Bell had previously worked for the Dyersburg 9-1-1 dispatch but that this knowledge did not affect his trial decisions because there were "two witnesses" who stated that the Petitioner had gone down a road and fired shots and that shots were fired in return at the Petitioner's car. He did not believe

Bell's previous employment as a 9-1-1 dispatcher was relevant and instead "focused more on the fact that there were five convicted felons supposedly holding handguns at the time of the incident." When asked if he talked to any of the people present at the crime scene, trial counsel replied that he "attempted to talk to some of the folks[.]" but most of them would not talk to him. He stated that the investigation showed that there were at least two firearms involved in the incident because of the "shell casings[.]" "eyewitness testimony[.]" and "bullet holes in [the Petitioner's] vehicle[.]" Trial counsel noted that several individuals at the scene were convicted felons who would not want to admit that they had a gun, which would result in them being charged with felon in possession of a firearm. Trial counsel said he did not subpoena any of these individuals because convicted felons did not usually agree to testify. He said he reviewed the police report of the incident and talked to one of the investigating officers.

Trial counsel noted that he was able to obtain a self-defense instruction at trial because the Petitioner's car had "bullet holes" and there was proof that at least two weapons had been fired at the scene. In light of this proof, he planned to assert a self-defense theory prior to trial. He noted that although the Petitioner's girlfriend testified she thought the Petitioner fired his gun first, she was ambiguous about whether someone had pointed a gun at the Petitioner before the Petitioner fired. Trial counsel stated he had "a lengthy discussion" with the Petitioner about not introducing proof that certain individuals shot at the Petitioner "two or three times in the thirty days prior to this [incident]" because he believed this evidence would "show premeditation" on the Petitioner's part. He asserted that he met with the Petitioner "probably three" times to prepare for trial, wherein he discussed the evidence and the possible defense theories with the Petitioner. Trial counsel admitted he did not put on any proof at trial, explaining that he "didn't have any witnesses that [he] wanted to put on" and "wasn't going to have [the Petitioner] to testify." He stated that he discussed the risks and benefits of having the Petitioner testify, and the Petitioner ultimately decided that he did not want to testify.

On cross-examination, trial counsel asserted that although the Petitioner was originally charged with first degree premeditated murder, he was found guilty at trial of second degree murder. He agreed that the Petitioner's first attorney had received an offer for the Petitioner to enter a guilty plea to second degree murder with a sentence of eighteen years.

Trial counsel stated that he did not call the other alleged shooters to testify because "no one could ever say who the specific shooter was," only that there was another weapon fired at the scene. Although he knew of four or five other people

who were there, none of these individuals were going to admit they were the shooter because they were all convicted felons who could not legally possess a firearm. He said he decided not to call these individuals as a trial strategy because they were “allegedly in a rival gang” and were unlikely to provide helpful testimony for the Petitioner.

Trial counsel stated that none of the State’s witnesses could verify that “it was not friendly fire” that killed the victim. He added that the forensic evidence failed to definitively show where the shot came from that killed the victim. He said he found it more helpful to “argue against those empty chairs” of the convicted felons rather than have the convicted felons testify at trial. Trial counsel stated that his trial strategy was “to show that someone else, at least one other person, was at the scene firing shots because there were bullet holes that went into [the Petitioner’s] vehicle” and there were shell casings on the scene establishing that “there w[ere] at least two weapons.” He agreed that this trial strategy allowed him to argue that it could have been someone else’s shot that actually killed the victim. Trial counsel asserted that “at no point in time” did he “ever assert that [the Petitioner] ever held a firearm or possessed a firearm”; instead, he argued that “if a shot came from [the Petitioner’s] vehicle, it could have been in direct response to someone else pointing a weapon and shooting at” the Petitioner’s vehicle. He stated that he did not emphasize that the Petitioner held or possessed a gun because the Petitioner “would’ve been engaging in criminal conduct[,]” and trial counsel would have been unable to obtain the “better jury instruction for self-defense,” which he received in the Petitioner’s case.

The Petitioner testified on his own behalf. He admitted that trial counsel provided him with all the discovery in his case and that trial counsel informed him about the witnesses who testified at trial and about the physical evidence that was introduced at trial. The Petitioner also admitted that trial counsel did not neglect to call a witness at trial requested by him.

The Petitioner stated that trial counsel never told him how many people he talked to about his case. He asserted that trial counsel never had the shell casing found in Codefendant Bell’s car fingerprinted. He said that if he had known about the State’s offer of eighteen years, he “[p]robably” would have taken it. When asked why he believed trial counsel was ineffective for failing to investigate or call individuals who were on the scene, the Petitioner only stated his complaint that trial counsel failed to subpoena these individuals for trial.

On cross-examination, the Petitioner admitted that trial counsel discussed his sentence exposure of 51 years if he proceeded to trial and was convicted of first degree premeditated murder. He acknowledged that as a result of trial counsel's efforts, he actually received a sentence of twenty years with a release eligibility of eighty-five percent. The Petitioner asserted that even though trial counsel had Codefendant Bell admit that she had given three inconsistent statements prior to her testimony at trial and that she was currently charged with being an accessory after the fact rather than with first degree murder, he denied that trial counsel's efforts had any effect on the jury's verdict. While acknowledging that trial counsel got Mr. Lewoczko to admit that he could not state that all five shell casings came from the same gun, the Petitioner nevertheless claimed trial counsel's strategy was not reasonable. He maintained that trial counsel's efforts should have resulted in a complete acquittal for him.

The Petitioner admitted that trial counsel did not prevent him from testifying at trial and that he could have testified that he never fired a gun and that the State's witnesses were lying.

After this hearing, the post-conviction court entered a written order denying post-conviction relief. Regarding the Petitioner's claim that trial counsel failed to subpoena and examine all the persons who fired shots at the crime scene, the post-conviction court held the following:

[Trial] counsel could not responsibly blindly subpoena and examine or cross-examine witnesses before the jury whose testimony he had no knowledge of or who m[ight] testify adversely to the petitioner. In this case, the risk of damage to the petitioner's defense and the risk of assisting the [S]tate with supplying an element of the indicted charge was high. Trial counsel wisely avoid that risk. A first-degree murder trial before a jury is not the time to conduct discovery."

Regarding the Petitioner's claim that trial counsel failed to communicate with him about his case and failed to prepare his case, the post-conviction court held that the Petitioner "had not demonstrated by clear and convincing evidence that counsel's performance on this issue fell below the required standard or that the outcome of the case would have been different." Finally, the post-conviction court made the following findings of fact and conclusions of law:

The petitioner was represented at trial by experienced trial counsel who performed in compliance with high standards of criminal defense trial work. Counsel was appointed about two years into the case and was presented with a very difficult set of facts. None of the matters alleged in the petition regarding trial counsel's performance would likely have resulted in a better outcome at trial and, in some instances, the complaints now lodged by the petitioner in hindsight may well have been disastrous for the petitioner at his trial.

It is from this order that the Petitioner now appeals.

ANALYSIS

The Petitioner argues the post-conviction court erred in denying his petition for relief. Specifically, he claims trial counsel provided ineffective assistance (1) by failing to investigate and present available witnesses and (2) by failing to adequately communicate with him and prepare his case. The State responds that the post-conviction court properly denied his ineffective assistance of counsel claim because trial counsel acted strategically in not calling certain witnesses at trial and because trial counsel discussed the key issues with the Petitioner. Alternatively, the State argues the Petitioner failed to establish a reasonable probability that the outcome of trial would have been different but for trial court's alleged errors. We will address each issue in turn.

Post-conviction relief is only warranted when a petitioner establishes that his or her conviction or sentence is void or voidable because of an abridgement of a constitutional right. Tenn. Code Ann. § 40-30-103. A post-conviction petitioner has the burden of proving the factual allegations by clear and convincing evidence. *Id.* § 40-30-110(f); *see* Tenn. Sup. Ct. R. 28, § 8(D)(1); *Nesbit v. State*, 452 S.W.3d 779, 786 (Tenn. 2014). Evidence is considered clear and convincing when there is no serious or substantial doubt about the accuracy of the conclusions drawn from it. *Lane v. State*, 316 S.W.3d 555, 562 (Tenn. 2010); *Grindstaff v. State*, 297 S.W.3d 208, 216 (Tenn. 2009); *Hicks v. State*, 983 S.W.2d 240, 245 (Tenn. Crim. App. 1998).

A claim for post-conviction relief based on alleged ineffective assistance of counsel presents a mixed question of law and fact. Mobley v. State, 397 S.W.3d 70, 80 (Tenn. 2013) (citing Calvert v. State, 342 S.W.3d 477, 485 (Tenn. 2011)). This court reviews “a post-conviction court’s conclusions of law, decisions involving mixed questions of law and fact, and its application of law to its factual findings de novo without a presumption of correctness.” Whitehead v. State, 402 S.W.3d 615, 621 (Tenn. 2013) (citing Felts v. State, 354 S.W.3d 266, 276 (Tenn. 2011); Calvert, 342 S.W.3d at 485). However, a post-conviction court’s findings of fact are conclusive on appeal unless the evidence in the record preponderates against them. Calvert, 342 S.W.3d at 485 (citing Grindstaff, 297 S.W.3d at 216; State v. Burns, 6 S.W.3d 453, 461 (Tenn. 1999)). Appellate courts do not “re-weigh or re-evaluate the evidence, nor are they free to substitute their own inferences for those drawn by the post-conviction court.” Whitehead, 402 S.W.3d at 621 (citing State v. Honeycutt, 54 S.W.3d 762, 766 (Tenn. 2001)). Generally, “appellate courts must defer to a post-conviction court’s findings with regard to witness credibility, the weight and value of witness testimony, and the resolution of factual issues presented by the evidence.” Id. (citing Momon v. State, 18 S.W.3d 152, 156 (Tenn. 1999)).

The right to effective assistance of counsel is protected by both the United States Constitution and the Tennessee Constitution. U.S. Const. amend. VI; Tenn. Const. art. I, § 9. In order to prevail on an ineffective assistance of counsel claim, the petitioner must establish that (1) his lawyer’s performance was deficient and (2) this deficient performance prejudiced the defense. Goad v. State, 938 S.W.2d 363, 369 (Tenn. 1996); Strickland v. Washington, 466 U.S. 668, 687 (1984). “Because a petitioner must establish both prongs of the test, a failure to prove either deficiency or prejudice provides a sufficient basis to deny relief on the ineffective assistance claim.” Goad, 938 S.W.2d at 369.

A petitioner successfully demonstrates deficient performance when the petitioner establishes that his attorney’s conduct fell “below an objective standard of reasonableness under prevailing professional norms.” Id. (citing Strickland, 466 U.S. at 688; Baxter v. Rose, 523 S.W.2d 930, 936 (Tenn. 1975)). Prejudice arising therefrom is demonstrated once the petitioner establishes “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id. at 370 (quoting Strickland, 466 U.S. at 694).

In assessing an attorney’s performance for the deficiency prong, we “must be highly deferential and should indulge a strong presumption that counsel’s

conduct falls within the wide range of reasonable professional assistance.” Burns, 6 S.W.3d at 462 (citing Strickland, 466 U.S. at 689). In addition, we must avoid the “distorting effects of hindsight” and must “judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed as of the time of counsel’s conduct.” Strickland, 466 U.S. 689-90. “No particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant.” Id. at 688-89. “‘However, deference to matters of strategy and tactical choices applies only if the choices are informed ones based upon adequate preparation.’” House v. State, 44 S.W.3d 508, 515 (Tenn. 2001) (quoting Goad, 938 S.W.2d at 369).

First, regarding the claim that trial counsel failed to investigate and present available witnesses, the Petitioner argues that although he “identified several witnesses who were present at the scene and would have corroborated his account that others fired weapons before he did,” trial counsel admitted he made no effort to locate or interview these witnesses. The Defendant asserts that trial counsel’s failure to investigate or call available witnesses was “not a strategic choice made after adequate investigation” but “a default of preparation[,]” which constitutes deficient performance. See Goad, 938 S.W.2d at 369.

The Petitioner claims that although the State introduced two witnesses present at the scene who “had [an] incentive to deflect blame” from themselves, trial counsel presented “no defense evidence,” which left the jury to “weigh only the State’s account [of the proof].” He argues that trial counsel’s failure to investigate and present witnesses who could have credited his self-defense claim, or who at least could have provided reasonable doubt as to his guilt, was prejudicial because the testimony of such witnesses “would likely have altered the verdict.” He also contends that the post-conviction court’s conclusion that the outcome of his trial would not have changed with additional witness testimony “ignores the centrality of witness credibility.” He insists that when omitted evidence can directly support a petitioner’s theory of defense, prejudice is established. See id. at 371 (citation omitted) (“Some errors [of trial counsel] will have had a pervasive effect on the inferences to be drawn from the evidence, altering the entire evidentiary picture, and some will have had an isolated, trivial effect.”).

At the post-conviction hearing, trial counsel testified that although he knew of four or five other people who were present at the scene, he did not believe these individuals would admit that they were the shooter because they were convicted felons who could not legally possess firearms. Trial counsel ultimately decided not

to call these individuals as a trial strategy because they were “allegedly in a rival gang” and were unlikely to provide helpful testimony for the Petitioner. Instead, he decided that it was more helpful to argue against the “empty chairs” of the convicted felons rather than have the convicted felons testify at trial. He said his primary trial strategy was to “show that someone else, at least one other person, was at the scene firing shots” because the Petitioner’s vehicle had bullet holes in it and there were shell casings on the scene establishing that “there w[ere] at least two weapons.” Ultimately, the post-conviction court recognized that “the risk of damage to the petitioner’s defense and the risk of assisting the [S]tate with supplying an element of the indicted charge was high” and that [t]rial counsel wisely avoided that risk.” We conclude that the post-conviction court’s finding that trial counsel was not deficient because he made a reasonable and strategic decision not to call witnesses is supported by the evidence admitted at the evidentiary hearing.

We also note that “[w]hen a petitioner contends that trial counsel failed to discover, interview, or present witnesses in support of his defense, these witnesses should be presented by the petitioner at the evidentiary hearing.” Black v. State, 794 S.W.2d 752, 757 (Tenn. Crim. App. 1990). The presentation of the witness at the post-conviction hearing is typically the only way for the petitioner to establish:

- (a) a material witness existed and the witness could have been discovered but for counsel’s neglect in his investigation of the case,
- (b) a known witness was not interviewed, (c) the failure to discover or interview a witness inured to his prejudice, or (d) the failure to have a known witness present or call the witness to the stand resulted in the denial of critical evidence which inured to the prejudice of the petitioner.

Id. Neither the post-conviction court nor this court may speculate on “what a witness’s testimony might have been if introduced by defense counsel.” Id.

Although the Petitioner asserts that trial counsel should have called certain individuals who witnessed to the victim’s shooting, he failed to have these witnesses testify at the post-conviction hearing. Presenting this witness testimony was likely the only way to show that the Petitioner was denied critical evidence that could have changed the outcome of his trial. Accordingly, the Petitioner has also failed to show that counsel’s failure to call these witnesses was prejudicial. Because the Petitioner failed to establish that trial counsel performance regarding these witnesses was

deficient and prejudicial, he is not entitled to relief.

Second, regarding the claim that trial counsel failed to adequately communicate with him or prepare his case, the Petitioner argues that trial counsel met with him only once or twice prior to trial and never discussed discovery or possible defenses with him. He asserts that pursuant to Rule 1.4 of the Rules of Professional Conduct, trial counsel had a duty to reasonably consult with him about the means by which his objectives are to be accomplished, keep him reasonably informed about the status of his case, and promptly comply with his reasonable requests for information. See Tenn. Sup. Ct. R. 8, RPC 1.4. The Petitioner argues that trial counsel's "[f]ailure to review discovery or discuss witnesses" was prejudicial because it "deprived [him] of an informed defense."

When a post-conviction petitioner claims that trial counsel did not adequately communicate information, this court must consider "how trial counsel was able to impart and receive important information—such as, among other things, the facts of the case, the application of the law, significant case developments, and the petitioner's objectives—so that counsel and the petitioner could make informed decisions about the case." Hall v. State, No. M2021-01555-CCA-R3-PC, 2023 WL 2726780, at *7 (Tenn. Crim. App. Mar. 31, 2023). To receive relief on this type of claim, a petitioner generally must establish that "better communication with his trial counsel or better involvement of [the petitioner] in trial preparation could have altered the outcome of the case." Tate v. State, No. W2019-01380-CCA-R3-PC, 2020 WL 1972586, at *4 (Tenn. Crim. App. Apr. 24, 2020), perm. app. denied (Tenn. Sept. 21, 2020).

Trial counsel testified that when he took over the case, the Petitioner admitted that he had received the discovery packet from prior counsel and that prior counsel had communicated the State's plea offer to him. He asserted that he met with the Petitioner "probably three" times to prepare for trial, wherein he discussed the evidence and the possible defense theories with him. Trial counsel said his trial strategy was to show that someone else's shot actually killed the victim because the Petitioner's vehicle contained bullet holes and because shell casings suggested that "there w[ere] at least two weapons. Trial counsel noted although the Petitioner was initially charged with first degree premeditated murder, he was found guilty at trial of the lesser included offense of second degree murder. Likewise, the Petitioner admitted at the post-conviction hearing that he received all discovery in his case. He also admitted that trial counsel informed him about the witnesses who testified at trial and apprised him of the physical evidence that was introduced at trial. Additionally, the Petitioner acknowledged that trial counsel did not neglect to call a

witness requested by him. Notably, the Petitioner failed to identify anything that would have better prepared trial counsel for trial. Because the Petitioner has failed to establish that trial counsel's communication or preparation was deficient and prejudicial, he is not entitled to relief.

CONCLUSION

Based on the above reasoning and authority, we affirm the judgment of the post-conviction court.

s/ Camille R. McMullen

CAMILLE R. MCMULLEN, JUDGE