Circuit Court for Prince George's County
Case Nos. CT961238X, CT970513X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 1316 & 1317

September Term, 2017

WILLIAM RAYMOND EASON

v.

STATE OF MARYLAND

Fader, C.J.,
Beachley,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: April 25, 2019

In the early morning of May 18, 1996, William Vila was murdered in the parking lot of an apartment complex in Oxon Hill, Maryland, and his friend, Jeffrey Forde, narrowly escaped the same fate. William Eason, appellant, was charged with the first-degree murder of Vila and the attempted first-degree murder of Forde, as well as related handgun offenses. In late 1997, a jury trial was held on those charges in the Circuit Court for Prince George's County. Three eyewitnesses testified: Forde and Redina Bouldin for the State; and Renee Wilson, Eason's reputed girlfriend, as an alibi witness for the defense. Wilson, in contradiction to the other two witnesses, claimed that Eason had not been present at the crime scene. That trial concluded in a hung jury and mistrial.

Three months later, in March 1998, Eason was retried. Although his trial counsel had intended to call Wilson as a witness at the retrial, she did not appear. Instead, Eason's trial counsel called a different witness, David Lamont Worcuff, Eason's cousin. Unlike Wilson, who had testified that Eason was not present at the crime scene, Worcuff testified that Eason was present at the scene, but was not the shooter. This time, the jury convicted Eason of first-degree murder of Vila, attempted second-degree murder of Forde, and two counts of use of a handgun in the commission of a felony or crime of violence. The court sentenced Eason to the maximum sentence: life imprisonment for first-degree murder and consecutive terms of twenty, thirty, and twenty years' imprisonment on the remaining charges.[1]

[1] Two separate indictments were issued, one for each victim. The cases were joined for trial. In Case No. CT-96-1238X, Eason was convicted of first-degree murder of Vila and use of a handgun in the commission of a felony or crime of violence. The court sentenced him to life imprisonment and a consecutive term of twenty years' imprisonment

Eason noted an appeal, challenging the sufficiency of the evidence to sustain his convictions for attempted murder and use of a handgun against Forde. A panel of this Court found the evidence sufficient and affirmed. *Eason v. State*, No. 780, Sept. Term, 1998 (filed Apr. 16, 1999).

Eason subsequently filed a post-conviction petition, alleging that his trial counsel had been ineffective in failing to ensure Wilson's appearance at the retrial. At the ensuing hearing, post-conviction counsel presented no live testimony, relying instead upon a partial transcript from the first trial (which included Wilson's testimony) as well as the case record. In its "Statement of Reasons and Order of Court," the post-conviction court denied Eason's claim, concluding that he had proven neither deficient performance by trial counsel nor prejudice.

A timely application for leave to appeal was prepared but not filed. Thereafter, Eason filed a motion to reopen, which was granted with the consent of the State, and he then filed a belated application for leave to appeal from the denial of his original post-conviction petition. This Court granted his application and transferred the case to the regular appellate docket.[2]

for the handgun offense. In Case No. CT-97-0513X, Eason was convicted of attempted second-degree murder of Forde and use of a handgun in the commission of a felony or crime of violence. The court sentenced him to thirty years' imprisonment for attempted second-degree murder and a consecutive term of twenty years' imprisonment for the handgun offense, and the entire sentence in that case was to be served consecutively to that in Case No. CT-96-1238X.

[2] Eason filed a single post-conviction petition challenging the judgments in both cases because they were tried together and involved the same allegation of error. This

Before us, Eason raises a single issue, which we rephrase: Did the post-conviction court err in concluding that trial counsel did not provide constitutionally ineffective assistance by failing to secure Wilson's appearance at Eason's second trial? We hold that Eason failed to meet his burden to prove that his trial counsel's efforts to secure Wilson's presence were deficient. Accordingly, we affirm.

BACKGROUND

We begin by setting forth the underlying facts, as summarized by this Court in its unreported opinion in Eason's direct appeal:

> In the spring of 1996, William Vila and Jeffrey Forde, the victims, lived at the Southview Apartments in Oxon Hill, Maryland. Forde lived with his mother, and both he and his mother were new to the neighborhood. Around 2:00 a.m. on May 18, 1996, Vila and Forde were returning to the Southview Apartment complex from a neighborhood club. They were in the parking lot area when they saw a group of people from the complex talking. Vila and Forde approached the group and started talking to [Eason's] girlfriend, Renee [Wilson], and Redina Bouldin. Standing nearby were [Eason] and [Eason's] cousin.[3] As Vila and the women talked, their conversation became heated. Apparently during the discussion, [Eason's] cousin told [Eason] that Vila was "disrespecting" Renee. At some point, [Eason] approached Renee and Bouldin, but Forde told him to "[b]ack off." [Eason] then approached Vila with a handgun and hit him in the head with it.
>
> At that point, [Eason] walked away and Forde attempted to take Vila, who was bleeding, home. As they rounded the corner of an apartment building, [Eason] and another man stood in their path. [Eason] was holding a gun in his hands; the other man had nothing in his hands. Vila started crying and told [Eason], "You ain't got to shoot me[.]" [Eason] raised his gun and shot Vila twice in the chest, killing him instantly. After [Eason] shot

Court initially granted applications for leave to appeal in separate cases, Nos. 1316 and 1317 of the September Term, 2017, but subsequently consolidated those appeals.

[3] Eason's cousin was David Worcuff, the lone defense witness at the retrial.

> Vila, Forde turned and ran. As he ran, Forde was shot twice in the back. Forde managed to run home and told his mother what had occurred. The police and an ambulance were called.
>
> When the police arrived, Forde cursorily told the police that he had not seen anything and he did not know who shot him and Vila. Forde explained at trial that the reason he said that he did not see anything was because he and his mother were new residents, whereas [Eason] had lived in the neighborhood for some time. He testified that he was afraid that [Eason] would hurt him or his mother. Bouldin also gave a statement to the police. She told the police that just before the shooting she saw [Eason] stop Vila. She told the police that [Eason] then reached inside his coat like he was reaching for a gun.

Eason, slip op. at 1-2 (footnote omitted).

Eason's criminal agency was the most significant fact in dispute at his two trials and in the post-conviction proceeding. At the first trial, two State's witnesses, Forde and Bouldin, apparently[4] testified that Eason had been present at the crime scene, but Wilson, the lone defense witness, testified that he had not been.

According to the State's summary of the evidence during closing argument, Forde testified that Vila and Wilson had gotten into an argument. Eason became angry because, during that argument, he believed that Vila "dissed [his] girl," and in response, Eason pistol-whipped Vila. Forde and Vila attempted to leave the scene, only to be overtaken by Eason, who shot and killed Vila. As Forde fled, he was shot from behind. Although Forde did not see who had shot him, neither he nor Bouldin had observed anyone but Eason with a gun that evening.

Wilson, on the other hand, testified that she had been in the parking lot in the early

[4] We use the word "apparently" due to the limited record before the post-conviction court.

morning of May 18, 1996, with Bouldin, two men whom she knew nicknamed "Pet" and "Pretty Boy," and a "[t]all, skinny, brown-skinned" man, whom she did not know. They were "standing outside drinking [and] talking."

According to Wilson, "two New York dudes" (Vila and Forde, who were from New York) approached her group, at approximately 1:00 a.m., with "a bottle of liquor in their hands." Wilson claimed that there had been no argument between her and Vila, but, for reasons left unexplained, the "tall, brown-skinned, skinny" man struck Vila with a gun, causing it to discharge but without striking anyone. At that point, according to Wilson, everyone present at the parking lot scattered. Somewhere between "five" and "fifteen" minutes later Wilson heard additional gunshots ring out but did not see who fired the weapon. Wilson confirmed that Eason "wasn't there at all."

From the transcript excerpt of the first trial introduced at the post-conviction hearing, which did not include closing argument of trial counsel, we can reasonably infer that trial counsel argued that the State had not proved Eason's criminal agency beyond a reasonable doubt, presumably relying upon Wilson's exculpatory testimony. In any event, the jury was unable to reach a verdict, a mistrial was declared, and the State declared its intention to retry the cases.

At the second trial three months later, Forde and Bouldin testified once again, generally consistently with their previous testimony. Near the conclusion of the first day of testimony, Eason's trial counsel, for the first time, informed the court that he was having difficulty finding Wilson, whom he intended to call as a witness:

Your Honor, may I apprise the Court of the fact that we have had some

> difficulty locating witnesses. Madam State probably can attest to this. It's someone who moves around.[5]
>
> I would ask the Court if she is not present --

The State then asked, "Has she been served?" Trial counsel replied to the court, "I don't have the return with me, Your Honor." The court responded, "You got the rest of today to get her."

Trial counsel then broached the possibility of a continuance:

> I wanted to apprise the Court of that difficulty and let the Court know it may be that we need to send some folks, and I may ask the Court for a brief continuance tomorrow, since we do have a two-day -- I wouldn't ask the Court to keep the jury past that. It may be that she is not here.

The court replied, "It's going to go to the jury tomorrow."

The following day, the State concluded its case, and, after Eason waived his right to testify, trial counsel once again addressed the court:

> Your Honor, we have a fact witness who testified at the last trial and has indicated to my client's mother--I have not spoken with her. I have a process server, investigator who has been endeavoring to serve her. It's my understanding from the mother that Ms. Wilson, who was supposed to be the girlfriend of Mr. Eason, is scheduled to be here and is running into difficulty because of the weather, rain, or whatever.
>
> I would ask the Court, given her hopefully close proximity, if the Court would permit us to go at least 20 minutes or so to find out if she is going to show. If she does not show, then I have one witness, Your Honor, and I would call that witness at that time.
> [STATE]: Who is that?
>
> [DEFENSE COUNSEL]: David Worcuff.

[5] Three months earlier, during the first trial, Wilson testified that she lived in Washington, D.C.

> THE COURT: I think you need to proceed. She is not even under subpoena**.**
>
> [STATE]: In [trial counsel's] defense, she did show for the last trial. The stakes are pretty doggone high in this case. I can wait 20 minutes if you can wait 20 minutes.
>
> THE COURT: You see, tomorrow I'm not even going to be here, so we are kind of crimped.

After what the transcript referred to as a "[b]rief recess," the court reconvened. Trial counsel called David Worcuff, Eason's cousin, to testify. According to Worcuff, he, along with Eason and "Pretty Boy," were at the apartment complex in the early morning of May 18, 1996. They were "standing in the parking lot having a little conversation when all of a sudden about three or four shots rang out," whereupon they "ran toward the rental office."

Worcuff further testified that he observed Bouldin, Vila, and Forde "with a group of people standing by the trash dump," "having their own conversation," while Worcuff, Eason, and "Pretty Boy" were "having [theirs]." Worcuff denied seeing Eason approach that other group or carrying a gun. On cross-examination, the State elicited Worcuff's admission that he never went to the police after hearing about the shootings or upon being informed that his cousin was charged with those shootings. The defense then rested its case.

The court next delivered jury instructions, and counsel made their closing arguments. At no time did trial counsel mention Worcuff or his testimony.

The jury deliberated for nearly six hours. During their deliberations, they asked the court twice for clarification of its instructions: the first time, as to the distinction between first and second-degree murder; and the second time, as to whether every question on the

verdict sheet required an answer. Shortly afterwards, the jury returned its verdict, finding Eason guilty of first-degree murder of Vila, attempted second-degree murder of Forde, and separate counts of use of a handgun in the commission of those crimes.

DISCUSSION

I. Standard of Review

In reviewing a decision of a post-conviction court, we accept its factual findings "unless they are clearly erroneous." *Wilson v. State*, 363 Md. 333, 348 (2001); *see* Md. Rule 8-131(c). We "must," however, "make an independent analysis to determine the 'ultimate mixed question of law and fact, namely, was there a violation of a constitutional right as claimed.'" *State v. Jones*, 138 Md. App. 178, 209 (2001) (quoting *Harris v. State*, 303 Md. 685, 699 (1985)), *aff'd*, 379 Md. 704 (2004).

II. Analysis

The Sixth Amendment of the United States Constitution and Article 21 of the Maryland Declaration of Rights guarantee all criminal defendants the right to the effective assistance of counsel. *Duvall v. State*, 399 Md. 210, 220-21 (2007). In order for a criminal defendant to successfully vacate his conviction on this basis, he must satisfy a two-prong test established in the landmark Supreme Court case *Strickland v. Washington*, 466 U.S. 668, 687 (1984). The two-part test is as follows:

> First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that 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. Unless a defendant makes both showings, it cannot be said

> that the conviction . . . resulted from a breakdown in the adversary process that renders the result unreliable.

Id.

Notably, the defendant bears the burden of proving both deficient performance and prejudice. *Id*. In terms of reviewing the two prongs, "*Strickland* also instructs that courts need not consider the performance prong and the prejudice prong in order, nor do they need to address both prongs in every case." *Newton v. State*, 455 Md. 341, 356 (2017). Because we hold that Eason failed to establish deficient performance, we need not consider *Strickland*'s prejudice prong.

A. Deficient Performance

In order to show that counsel rendered deficient performance, a post-conviction petitioner "must demonstrate that counsel's alleged acts or omissions, based on the facts of the particular case, viewed as of the time of counsel's conduct, fell outside the wide range of professionally competent assistance." *Shortall v. State*, 237 Md. App. 60, 72 (2018) (internal quotation marks omitted) (citing *Strickland*, 466 U.S. at 690), *aff'd*, ___ Md. ___, No. 31, Sept. Term, 2018, Slip Op. (Md. April 2, 2019). "But there is a 'strong presumption that counsel's conduct [fell] within the wide range of reasonable professional assistance,' and that counsel 'made all significant decisions in the exercise of reasonable professional judgment.'" *Id*. (internal citation omitted) (quoting *Strickland*, 466 U.S. at 689-90). Finally, "a reviewing court must 'avoid the *post hoc* second-guessing of decisions simply because they proved unsuccessful[.]'" *Id*. (quoting *Evans v. State*, 396 Md. 256, 274 (2006)).

Eason argues that his trial counsel rendered deficient performance by failing to subpoena Wilson, and by failing to take reasonable efforts to ensure her presence at the second trial. As we shall explain, however, Eason failed to produce sufficient evidence to rebut the strong presumption that counsel's conduct fell within the wide range of reasonable professional assistance.

The most analogous, yet distinguishable, Maryland case is *In re Parris W.*, 363 Md. 717 (2001). In that case, the Court of Appeals considered whether Parris's trial counsel rendered ineffective assistance by failing to subpoena Parris's alibi witnesses for the correct day of trial. *Id*. at 723. There, the State accused Parris of committing acts, which, if he had been an adult, would have constituted second-degree assault. *Id*. at 719. Parris failed to appear for the first scheduled adjudicatory hearing, scheduled for October 21, 1999. *Id*. at 720. At the second scheduled adjudicatory hearing, on December 23, 1999, Parris's counsel requested a continuance in order to put on an alibi defense. *Id*. "The hearing was continued until January 20, 2000. On December 27, 1999, however, the court sent a scheduling notice to [Parris's] counsel setting the hearing for January 21, 2000." *Id*. at 721. Unfortunately, Parris's counsel failed to subpoena Parris's five alibi witnesses for January 21—instead having subpoenaed them for January 20. *Id*. Parris sought yet another continuance on January 21, which the court denied. *Id*. at 721-22. At the adjudicatory hearing, the court "found beyond a reasonable doubt that [Parris] had committed the assault as alleged." *Id*. at 723.

On appeal, Parris argued that he was denied effective assistance because his counsel failed to subpoena his alibi witnesses for the correct trial date. *Id*. Although in the context

of a direct appeal, the Court of Appeals noted that "[t]he trial record [was] developed sufficiently to permit review and evaluation of the merits of the claim, and none of the critical facts surrounding counsel's conduct [were] in dispute." *Id*. at 727. The Court summarily concluded that Parris's counsel rendered deficient performance, relying heavily on the fact that "counsel conceded that the scheduling error was his and that his mistake was the sole reason for the witnesses' failure to appear for the hearing." *Id*.

Whereas in *Parris W.*, trial counsel admitted that his mistake was the sole cause for the witnesses' failure to appear for the correct trial date, here there is no evidence that Eason's trial counsel admitted any error in not securing Wilson's appearance, nor is there other sufficient evidence that trial counsel's action (or inaction) constituted deficient performance. At the post-conviction hearing, Eason did not produce any witnesses to testify. Instead, the only evidence Eason submitted was the transcript of Wilson's testimony from the first trial and the case file (of which the court took judicial notice).

Wilson's testimony in the first trial, however, has no bearing on whether counsel rendered deficient performance in failing to secure her presence at the second trial. The relevant evidence here was what Eason's trial counsel knew about the likelihood of Wilson appearing for the second trial. Unfortunately, the only evidence before us stems from the second trial, where on the first day, Eason's counsel informed the court that he was having difficulty locating a witness "who moves around." Although counsel did not "have the return with [him]," he apparently attempted to serve Wilson with a subpoena that day. On the second day, counsel told the court,

> Your Honor, we have a fact witness who testified at the last trial and has indicated to my client's mother--I have not spoken with her. I have a process server, investigator who has been endeavoring to serve her. It's my understanding from the mother that Ms. Wilson, who was supposed to be the girlfriend of Mr. Eason, is scheduled to be here and is running into difficulty because of the weather, rain, or whatever.
>
> I would ask the Court, given her hopefully close proximity, if the Court would permit us to go at least 20 minutes or so to find out if she is going to show. If she does not show, then I have one witness, Your Honor, and I would call that witness at that time.

Eason failed to meet his burden of establishing that his trial counsel rendered deficient performance. The second trial took place only three months after the first, where Wilson appeared. According to the State's brief, "Wilson had voluntarily appeared at the first trial[.]" From this record, we do not know whether Wilson voluntarily appeared at the first trial. However, that Wilson did appear at the first trial, was identified by the State as Eason's girlfriend, and testified favorably for Eason suggests that she may have appeared voluntarily as the State suggests. Moreover, Eason's counsel indicated that Eason's mother had communicated with Wilson, and that Wilson represented that she would appear. On this record, Eason's trial counsel received actual confirmation from his client's own mother that Wilson would appear. Finally, when Wilson did not appear on the first day of trial, Eason's counsel appropriately responded by attempting to subpoena her.[6]

In his reply brief, Eason cites *Washington v. Smith*, 219 F.3d 620 (7th Cir. 2000) to

[6] The record does not explicitly establish when Eason's counsel subpoenaed Wilson. According to Eason's brief, his counsel subpoenaed Wilson on the first day of trial, but Eason provides no citation to the record or a transcript to support this assertion.

argue that his trial counsel's failure to ensure Wilson's appearance constituted ineffective assistance.[7] In our view, *Washington* supports our conclusion that Eason failed to meet his burden of showing deficient performance.

In *Washington*, Washington was convicted in the State of Wisconsin of two counts of armed robbery and one count of being a felon in possession of a firearm. *Id*. at 622. Following his convictions, Washington filed a petition for post-conviction relief, arguing that his trial counsel rendered ineffective assistance. *Id*. Specifically, Washington alleged that his trial counsel failed to secure a woman named Gola Richardson as an alibi witness. *Id*. at 625. Trial counsel explained that

> he had attempted to contact Gola Richardson about three times by visiting her home ([because] she did not have a telephone), but he never interviewed her. [Counsel] left his business card with someone at her residence but never heard from her. [Counsel] did not seek the assistance of an investigator to contact her, and, although she was scheduled to testify on June 13, he did not give the sheriff a subpoena for Ms. Richardson until June 11 (the second day of trial). By the time the subpoena was served, Gola had left town for the week; therefore, she did not testify at trial.

Id.

Although Washington did not succeed on his state court post-conviction claims, he filed an application for a writ of habeas corpus in the United States District Court for the Eastern District of Wisconsin. *Id*. at 627. The district court granted Washington's

[7] Eason also relies on *Wright v. State*, 70 Md. App. 616 (1987). That case concerned whether the trial court abused its discretion in declining to grant a continuance when a witness did not appear. *Id*. at 623. Because *Wright* involved the court's discretion to continue a trial, and not whether trial counsel rendered deficient performance, the analysis in *Wright* does not apply here.

application, and the State appealed to the United States Court of Appeals for the Seventh Circuit. *Id*.

In affirming the district court's decision, the Seventh Circuit noted that

> Gola Richardson was going to be a critical witness at Washington's trial, and she was the only witness listed on Washington's pre-trial Notice of Alibi. [Counsel] filed this Notice of Alibi on April 22, 1991, but in the following month-and-a-half before trial, he failed to contact her. According to [counsel's] testimony, [he] tried to contact Gola Richardson three times-each without success. He claims to have left his business card at what he thought was Ms. Richardson's house, but he took no additional steps to reach her when she did not contact him. He did not seek the assistance of an investigator. Nor did he seem to take into account, in the timing of her subpoena, that Ms. Richardson was hard to reach. He subpoenaed her on the second day of trial, just two days before this woman he could never find was to testify for his client.

Id. at 629.

The Court concluded that there was no sound tactical reason to delay issuance of the subpoena, and that counsel's "minimal attempts to contact her and his failure to subpoena her until two days before she was to testify" did not constitute professionally competent assistance under *Strickland*. *Id*. at 630.

Washington is distinguishable. First, in *Washington* the district court had the benefit of a fully developed record concerning trial counsel's efforts to contact Richardson, including his three unsuccessful attempts to contact her at her home. Here, we have no information regarding Eason's counsel's efforts to contact Wilson prior to the second trial. We simply know that, on the second day of trial, Eason's mother relayed to counsel that Wilson was going to appear, and that at some point, counsel issued a subpoena. The record

here is almost completely silent as to Eason's counsel's efforts to contact Wilson before the second trial.

Additionally, while the record in *Washington* established that Richardson was "hard to reach" and that counsel failed to account for this fact when issuing Richardson's subpoena, here the only evidence concerning counsel's ability to contact Wilson was counsel's proffer that Wilson "moves around." That someone "moves around" does not necessitate that the person is also "hard to reach" and therefore cannot be relied upon to show up at trial. Indeed, Wilson appeared for the first trial three months earlier despite the fact that she "move[d] around." Eason failed to introduce any evidence at his post-conviction hearing tending to show that Wilson was difficult to contact, and that his trial counsel not only knew this fact, but failed to account for it when issuing her subpoena. For these reasons, *Washington* does not persuade us that Eason's counsel rendered ineffective assistance.

The lens for reviewing counsel's actions must focus on "the facts of the particular case, viewed as of the time of counsel's conduct[.]" *Shortall*, 237 Md. App. 72 (quoting *Strickland*, 466 U.S. at 690). Furthermore, appellate courts "should not, aided by hindsight, second guess counsel's decisions." *Gilliam v. State*, 331 Md. 651, 666 (1993). Eason presented no evidence in his post-conviction proceedings to suggest that his trial counsel suspected, at least prior to the first day of trial, that Wilson would not appear. To the contrary, Eason's counsel told the court that Eason's mother indicated Wilson "[was] scheduled to be [in court] and [was] running into difficulty because of weather, rain, or whatever." With such a limited record before us, and in light of the highly deferential

presumption of reasonableness, Eason has not demonstrated that his counsel rendered deficient performance.

Having established that Eason failed to prove deficient performance, we need not review *Strickland*'s prejudice prong. Accordingly, we affirm.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.