

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
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QUINZALE MASON

Appellant,

v.

THE STATE OF NEVADA

Respondent.

CASE NO. 77623

Appeal from the Denial of a Petition for Writ of Habeas Corpus
Second Judicial District Court, Washoe County
The Honorable Elliott A. Sattler, Department 10

APPELLANT'S OPENING BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed pursuant to that rule. These representations are made so that the justices of this Court may evaluate any potential conflicts warranting disqualification or recusal.

1. Attorney of Record for Appellant: Lyn E. Beggs, Esq.
2. Publicly-held Companies Associated: None
3. Law firm appearing in the Court(s) Below:

Law Offices of Lyn E. Beggs, PLLC

DATED this 24th day of June, 2019.

LYN E. BEGGS, ESQ.
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JURISDICTIONAL STATEMENT

Pursuant to NRS 34.575(1), this is an appeal of the denial of a post-conviction petition for writ of habeas corpus. An Order denying a Petition and Supplemental Petitions for Writ of Habeas Corpus (post-conviction) was filed on November 21, 2018 with a Notice of Entry of Order filed contemporaneously. The Notice of Appeal was timely filed on December 5, 2018. This Court has jurisdiction to hear this appeal pursuant to NRS 34.575(1) and NRAP 4(b).

STATEMENT OF ISSUES FOR REVIEW

Did the District Court err in finding that Appellant Mason's counsel was not ineffective under Strickland v. Washington in violation of Appellant's 5th, 6th and 14th amendment rights when he failed to engage in a reasonable investigation related to Mason's potential alibi witness?

STATEMENT OF THE CASE

Mason was charged on November 24, 2014 via Information with two counts Battery with a Deadly Weapon, one count Assault with a Deadly Weapon and one count Being a Felon in Possession of a Firearm. Appellant's Appendix ("AA") Volume I, 001. Mason was arraigned on December 9, 2014 at which time he pleaded not guilty to the four counts contained in the Information and invoked his right to proceed to trial within sixty (60) days. AA, I, 005.

An Amended Information was filed on February 4, 2015 omitting one count of Battery with a Deadly Weapon and charging Mason as follows: Count I, Battery with a Deadly Weapon, a violation of NRS 200.481(2)(e); Count II, Assault with a Deadly Weapon, a violation of NRS 200.471; and Count III, Being a Felon in Possession of a Firearm, a violation of 202.360. AA I, 009. A jury trial commenced on February 9, 2015 on Counts I and II of the Amended Information. AA I, 189. The found Mason guilty on Counts I and II of the Amended Information. Subsequently, Count III was presented to the jury for consideration after Mason stipulated that he had a prior conviction and the jury rendered verdict of guilty on Count III. AA IV, 700.

A Judgment was entered on March 17, 2015 sentencing Mason to one hundred twenty (120) months in the Nevada Department of Corrections (“NDOC”) with parole eligibility after thirty six (36) months with two hundred eighteen (218) days credit for time served on Count I; on Count II, sixty (60) months in the NDOC with parole eligibility after twenty four (24) months to run consecutively with Count I; and on Count III, sixty (60) months in the NDOC with parole eligibility after twenty four (24) months to run concurrently with Count II. AA IV, 707.

Mason filed a direct appeal raising two issues and the Nevada Supreme Court issued its opinion on June 16, 2016 remanding the matter to the District Court for aggregation of the consecutive sentences but affirming the conviction. AA IV, 709.

Mason timely filed his Petition for Writ of Habeas Corpus (post-conviction) on March 2, 2017. AA IV, 715. The District Court granted leave for Mason to proceed in forma pauperis and appointed counsel on March 21, 2017. AA IV, 734. Mason, through counsel, filed a Supplemental Petition on December 8, 2017 raising two issues. AA IV, 736. The State filed a Motion to Dismiss both the Petition and Supplemental Petition on January 10, 2018. AA IV, 747. An Opposition was filed on January 24, 2018. AA IV, 755. A hearing on the Motion to Dismiss was held on May 15, 2018. AA IV, 761. Subsequent to the hearing the District Court issued an Order on June 7, 2018 dismissing all grounds raised in Mason's original Petition and Ground One of Mason's Supplemental Petition. AA IV, 762. An evidentiary hearing was held on October 31, 2018 on the remaining ground in Mason's Supplemental Petition regarding whether Mason's trial counsel was ineffective for failing to engage in proper investigation to locate an alibi witness. AA IV, 770.

The District Court issued its Order on November 21, 2018 denying the final ground of Mason's Supplemental Petition. AA V, 841. A Notice of Entry of Order was filed contemporaneously. AA V, 839. Mason subsequently timely filed an appeal giving rise to the instant matter. AA V, 847.

STATEMENT OF FACTS

On the morning of August 9, 2014, Mason and his neighbor, Anthony Holly, along with others, played a game of dice outside the apartment buildings where

Mason and Mr. Holly resided. AA I, 148. Mr. Holly testified at trial that an argument arose during the game between he and Mason but that Mr. Holly simply left the game. AA I, 153. Later that same morning, Mr. Holly was outside his apartment building as was his neighbor, Delphine Martin, and Ms. Martin's daughter, Cecelia. AA I, 153. Mr. Holly was walking his neighbor's dog when a four-door gold sedan drove into the parking area of the apartment buildings and stopped. AA I, 154. Mr. Holly testified that the driver exited the vehicle, made a verbal threat to Mr. Holly which caused Mr. Holly to take off running. He further testified that he heard shots being fired but did not see who fired them. AA I, 155-156. Mr. Holly could not identify who was shooting (AA I, 156). A neighbor who was sitting outside his second-floor apartment across from where the car stopped, identified the driver as Mason, although he testified he saw him for only a second. AA I, 113.

Mr. Holly ran around the apartment building and did not incur any injuries other than a few scratches from jumping over fences. AA I, 158. However, Cecelia, Ms. Martin's daughter, suffered an injury to her leg and was found after medical examination to have a metal fragment in her leg that was assumed, but not definitively determined to be, a ricocheted bullet or fragment thereof. AA II, 225.

Law enforcement responded to the scene and based upon statements made by witnesses; Mason was identified as a suspect. AA III, 437-438. As part of the

investigation, it was learned that Mason's mother, Valerie Stewart was flying into Reno on April 10, 2014 to meet Mason. AA II, 276. When Ms. Stewart arrived in Reno, she was placed under surveillance and was observed entering a gold sedan with three female occupants. AA II, 353. The vehicle was followed to an address on Lone Cedar Lane in Sun Valley. AA II, 353. The four female occupants exited the vehicle and entered the residence. AA I, 359. An hour later three females and one male, identified as possibly Mason, exited the house and entered the vehicle. AA II, 360. The vehicle was followed by law enforcement and a felony stop was conducted. AA II, 362. Mason was taken into custody. AA II, 364. He was later charged as noted above.

Mason was represented by appointed counsel, Carl Hylin, during all trial proceedings. Prior to trial Mason indicated to Mr. Hylin that he had an alibi for the day in question but according to Mr. Hylin, was only able to provide a name, "Cisco" or "Sko". AA IV, 795. Mr. Hylin filed a Notice of Alibi Witness on January 16, 2015 with the limited information he had at the time. AA I, 006. Mr. Hylin indicated during the evidentiary hearing that an investigator was assigned to the case but that he never received any information to allow him to subpoena Cisco. AA IV, 796. He stated that he was "pretty sure" his investigator had spoken to Mason about the alibi witness but was not present if that occurred. AA IV, 804.

The State filed a Motion to Exclude Evidence of an Alibi on February 5, 2015. AA I, 13. During a pre-trial status hearing, Mr. Hylin notified the Court he was unable to find any further information regarding “Cisco” and accordingly the Court granted the Motion to Exclude Evidence of an Alibi. AA I, 055.

At the time of the evidentiary hearing, Cisco Neal appeared on behalf of Mason. Mr. Neal indicated that in 2014 he lived at a residence on Lone Cedar Lane in Sun Valley. AA IV, 776. He knew Mason from playing video games on-line and eventually they played video games together at Mr. Neal’s home. AA IV, 778. Mr. Neal testified that in addition to Mason, he knew Mason’s girlfriend, Eboni Spurlock (AA III, 417), as she was his cousin. AA IV, 777. Mr. Neal stated that Mason would frequently come to his house by bus or he would get a ride from Ms. Spurlock or a friend and they would play video games for most of the day. AA IV, 779. He stated that on frequent occasions Mason would stay the night at Mr. Neal’s home. AA IV, 779. While Mr. Neal could not remember specific dates, he testified that he remembered a day when Mason was picked up at his home by Mason’s aunt and mother after Mason has spent the night at Mr. Neal’s home. AA IV, 780.

Mr. Hylin admitted at the evidentiary hearing he did not interview the residents of the home on Lone Cedar where Mason had been picked up by his mother and others on April 10, 2014. AA IV, 799. Mr. Hylin also did not contact Ms. Spurlock to investigate whether she had any information about the possible alibi

witness but thought that the investigator might have. AA IV, 810. He further testified that he “may” have spoken with Mason’s mother, Ms. Stewart, who picked Mason up at the residence on Lone Cedar on April 10, 2014. AA IV, 811. Mr. Hylin admitted that he did not know what the assigned investigator did or did not do to locate Cisco. AA V, 814.

The District Court stated in part in the Order denying Ground Two of the Supplemental Petition that:

The Court denies Mason’s claim that Hylin was ineffective for failing to investigate and present an alibi defense at trial. Hylin presented the information Mason gave him to an investigator, but the investigator could not locate Mr. Neal. The Court finds Hylin credible, and that he performed a reasonable investigation into Mason’s proposed alibi. Hylin’s testimony that Mason failed to give him adequate information to locate Neal was unrefuted.

AA V, 844.

SUMMARY OF THE ARGUMENT

Over four years after the date of the alleged offense, Mason was able to call Cisco Neal, his alibi witness, to testify at evidentiary hearing on his surviving ground for habeas relief. Information needed to locate Mr. Neal was available prior to the time of trial, however trial counsel failed to engage in a reasonable investigation which would have identified Mr. Neal. Due to trial counsel’s error, Mason was prejudiced as he was unable to present his alibi witness to the jury; testimony Mason

believes would have created a reasonable probability that the jury would have found reasonable doubt existed and therefore resulting in a different outcome to the trial.

ARGUMENT

- 1. The District Court erred in finding that Appellant Mason's counsel was not ineffective under Strickland v. Washington in violation of Appellant's 5th, 6th and 14th amendment rights for failing to engage in a reasonable investigation related to his potential alibi witness?*

Standard of Review:

Claims of ineffective assistance of counsel have been determined by this court to be questions of both law and fact and thus such claims are reviewed *de novo*. Lader v. Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005) (citing Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996)). However, the district court's findings will be given deference if not clearly erroneous and supported by substantial evidence. Id.

Claims of ineffective assistance of counsel are considered pursuant to the test established in Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984). Pursuant to Strickland, a habeas petitioner must demonstrate that his or her counsel's performance was deficient, falling below an objective standard of reasonableness, and that counsel's deficient performance prejudiced the defense. Id.; *see also* Means v. State, 120 Nev. 1001, 1011-1012, 103 P.3d 25, 32 (2004). To establish prejudice based upon counsel's deficient performance, a petitioner must show that, but for

counsel's errors, there is a reasonable probability that the outcome would have been different. Id.

Argument:

“Defense counsel has a duty ‘to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.’ State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993) *citing* Strickland, 466 U.S. at 691, 104 S. Ct. at 2066 (1984). “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.” Id. Mason contends that his trial counsel did not engage in a reasonable investigation.

Mason was observed being picked up at residence in Sun Valley on Lone Cedar Lane on April 10, 2014 and entering a vehicle with three females, one of whom included his mother, and was arrested shortly after the vehicle left the residence. AA II, 360-362 Mason indicated to his trial counsel that he had been with his friend Cisco at the time the alleged incident occurred. Despite Mason being picked up the morning after the alleged offense at a residence in Sun Valley, Mr. Hylin did not inquire as to who lived at the house or why Mason was there. He had a vague recollection of speaking with Mason’s mother prior to trial but could not recall any details about the conversation or whether he spoke with her about an alibi or the residence on Lone Cedar Lane. He could recall vaguely speaking with Ms.

Spurlock about her car, which was involved in the case, but could not recall speaking with her about assisting in locating Mason's potential alibi witness. AA V, 817. Mr. Hylin assigned the matter to an investigator but had no knowledge of what the investigator did in the case and Mr. Hylin engaged in no further inquiries regarding Mason's potential alibi witness.

Despite the alleged difficulty in locating Cisco prior to the trial, Mr. Neal appeared, over four years after the events in question, at the time of the evidentiary hearing in October 2018. He testified that he lived on Lone Cedar Lane in Sun Valley in 2014 and that he had a recollection of Mason being picked up by his mother and others sometime in 2014 after Mason had stayed overnight playing video games. AA IV, 781.

Mason contends that Mr. Hylin's failure to speak with his mother or Ms. Spurlock about the potential alibi witness, or at a minimum ensuring his investigator did so, was unreasonable. Further, Mason contends that Mr. Hylin's failure to engage in any inquiry regarding the residence where Mason was picked up was also unreasonable. Mason had informed Mr. Hylin that he was with Cisco, aka "Sko" at the time of the alleged offense. It would have been reasonable for Mr. Hylin to inquire as to whether the residence where Mason was picked up by his mother was Cisco's residence. Mason asserts that Mr. Hylin's failure to engage in any activity other than assigning the case to an investigator; even failing to inquire what

investigation the investigator had engaged in, falls below an objective standard of reasonableness and meets the first prong of *Strickland*.

Mason further asserts that his counsel's error did result in prejudice against him. As his counsel failed to engage in reasonable investigation that would have identified Mr. Neal as the alibi witness, the State was successful in excluding any alibi evidence. Further, had Mr. Neal testified at the time of the trial, Mason asserts that he would have testified to the fact that Mason was playing video games with him at the time of the alleged incident. Due to counsel's failure to engage in a reasonable investigation to locate Mr. Neal, the jury did not hear from Mr. Neal. Mason contends that had the jury heard Mr. Neal's testimony there was a reasonable probability that the testimony would have created reasonable doubt and that the outcome of the trial could have been different.

CONCLUSION

Mason contends that the District Court erred in denying his Supplemental Petition for the reasons stated above. He contends that the evidence presented at the evidentiary hearing clearly supports that his trial counsel failed to engage in a reasonable investigation to locate his potential alibi witness. The alibi witness, Cisco Neal, lived at the residence that Mason was picked up from on April 10, 2014, supporting his alibi that he was with Mr. Neal at the time of the incident in question. Mason contends that he has met both prongs of *Strickland* to show that his trial

counsel was ineffective and accordingly the District Court erred in finding his counsel was not ineffective. Accordingly, Appellant Mason respectfully requests that this Court overturn the findings of the District Court.

ROUTING STATEMENT

This appeal is presumptively assigned to the Court of Appeals because it does not involve a death penalty, nor does it include convictions for category A felonies. See NRS NRAP 17(b)(1). Appellant knows of no reason why this matter should not be assigned to the Court of Appeals.

DATED this 24th day of June, 2019.

LYN E. BEGGS, ESQ.
Attorney for Appellant

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) as this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in Times New Roman, 14 points.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) as, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it does not exceed 30 pages.

3. Finally, I certify that I have read the appellate brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 24th day of June, 2019.

LYN E. BEGGS, ESQ.

CERTIFICATE OF SERVICE

Electronically

I hereby certify that on this date the foregoing document was filed electronically with the Nevada Supreme Court. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

Washoe County District Attorney
Jennifer P. Noble, Chief Appellate Deputy

Via USPS

I hereby certify that on this date the foregoing document was mailed via USPS, first-class postage pre-paid, to the following:

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DATED this 24th day of June, 2019.

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