IN THE SUPREME COURT OF THE STATE OF NEVADA

QUINZALE MASON,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.
_____/

No. 77623

RESPONDENT'S ANSWERING BRIEF

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RESPONDENT'S ANSWERING BRIEF

I. STATEMENT OF THE CASE

This is an appeal from an order denying a post-conviction petition for writ of habeas corpus. Following a jury trial, Quinzale Mason ("Mason") was convicted of Count I, Battery with a Deadly Weapon; Count II, Assault with a Deadly Weapon; and Count III, Being a Felon in Possession of a Firearm. IV Appellant's Appendix ("AA") 707. Mason pursued a direct appeal, which resulted in remand for aggregation of the sentences, but an affirmance of the conviction. IV AA IV 709.

Mason filed a petition for writ of habeas corpus, and a supplemental petition with the assistance of appointed counsel. IV AA, 715; 736. The State filed a motion to dismiss Mason's petition and supplemental petition,

and Mason opposed the motion. IV AA 747; 755. After a motion hearing, the district court dismissed all grounds but one, which alleged ineffective assistance of counsel relating to an alibi witness. *Id*., 762. Following the evidentiary hearing, the district court denied Mason's remaining ground for relief. V AA 841. This appeal followed.

II. ROUTING STATEMENT

Because this appeal does not involve a post-conviction challenge to a category A felony, it is presumptively assigned to the Court of Appeals. NRAP 17 (b)(1).

III. STATEMENT OF FACTS

1. Facts Established At Trial.

Anthony Holly lived in the same apartment complex as Mason. I AA 146. On August, 9, 2014, Holly joined in on a game of craps with several people, including Mason. *Id*. at 147-151. Holly and Mason got into a verbal argument over the game, and Holly left the area. *Id*. at 107, 151-153. A couple hours later, Holly was outside "playing with the neighbor's dog at the edge of the parking lot" when Mason pulled up in a car and said something like, " 'I got you now,' " or " 'I got yo ass.' " *Id*. at 153-154. Holly took off running, and Mason shot at Holly several times. *Id*. at 154-157.

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Several people were in the area, including two children and their two dogs. *Id*. at 160.

Huey Paul Stanley, Jr. lived near Holly and Mason. *Id*. at 86-87; 94-95. Stanley was sitting outside with his wife watching Holly play with the neighbor's dog when he saw Mason park his car. *Id*. at 96-97. Stanley heard Mason say " 'Ah-hah, I got you now;' " seconds later he heard gunshots–'"pow, pow, pow"'–coming from Mason's direction. *Id*. at 101, 108. Stanley saw Holly "ducking, going back and forth trying to figure out which way to get out." *Id*. at 101-102. Stanley then heard his neighbor, Delphine Martin, "screaming that her baby got shot." *Id*. at 102.

Reno Police Officer Benjamin Lancaster arrived, and found a little girl, Cecilia M., shot in her lower right leg. *Id*. at 127-128, 74, 75. *Id*. He wrapped the leg with gauze and applied pressure until medical personnel arrived. *Id*. He found two 9 millimeter casings on scene. *Id*. at 139-140, 143; III AA 442.

At the hospital, Dr. Cinelli found that the "[d]istortion of the metal fragment[] [in Cecilia's leg was] typical with a ricochet." II AA 222, 225. When police later arrested Mason, he stated he was on his way " 'to the station to turn [him]self in.' " II AA 521, 530.

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2. Facts Established At Post-Conviction Evidentiary Hearing.

Mason presented two witnesses at the evidentiary hearing to prove Hylin was ineffective for failing to present an alibi defense at trial—Cisco Neal, and former counsel Hylin.

Neal testified he knew Mason well "from online" and played video games with him every day, or nearly every day, during the summer of 2014 at Neal's residence in Sun Valley, Nevada. IV AA 776-777. While they often played games "together" online with each person at a separate location, sometimes they played video games together in person. *Id*., 778. Neal explained that Mason's friend or cousin dropped Mason off at Neal's residence in the summer of 2014, and Mason spent the night at Neal's residence about two times a week during this period of time. *Id*., 779-782. Different people, including Neal's cousin, Ebony, picked Mason up from Neal's residence. *Id*.

Neal testified he did not see Mason every day. *Id*., 784. Neal did not know where he was or what he was doing on August 9, 2014, the date of the crimes at issue in this case. *Id*., 787. Neal did not know where Mason was or what he was doing on August, 9, 2014. *Id*. He knew Mason had been arrested, but never Neal testified that his memory has been compromised by smoking marijuana on a daily basis. *Id*., 790-792.

Hylin testified that he went over the discovery, the nature of the charges, and all possible defenses with Mason. *Id*., 795, 799-800. Hylin testified that according to his custom and practice he left a copy of the discovery with Mason at the Washoe County Detention Center. *Id*., 799-800. According to Hylin, Mason told him that he was not at the crime scene on August 9, 2014, and that a person named "Cisco" or "Sco" (i.e., Neal) could provide an alibi for Mason on the day of the crime. *Id*., 795. But Mason could not provide Hylin with Neal's full name, address, contact information, or even a description of Mason's neighborhood. *Id*., 795-796, V AA 805. Hylin asked his investigator to try to locate Neal, but the investigator had no success. IV AA, 796-797. Nevertheless, Hylin filed a notice of alibi to protect Mason's right to present an alibi defense at trial, in case Hylin and his investigator found credible evidence of an alibi. *Id*., 797. The notice of alibi Hylin filed did not state specifically where Mason was when the crime was committed. Thus, the State filed an objection to the notice before trial. V AA 809.

IV. STATEMENT OF ISSUES

A. Mason failed to provide trial counsel with any contact information, including an actual name for his purported alibi witness, and two eyewitnesses identified Mason as the perpetrator at trial. The alibi

witness could not actually provide an alibi. Did the district court error in denying Mason's ineffective assistance of counsel claim regarding the alibi witness?

V. SUMMARY OF ARGUMENT

In this appeal, Mason does not allege that the district court erred in denying the bulk of his claims prior to evidentiary hearing. However, with respect to his alibi witness claim, he asserts that the district court erred in denying relief.

At the evidentiary hearing, it was established that 1) Mason did not provide his counsel with any meaningful information that might help counsel locate the witness prior to trial; and 2) the witness could not actually provide an alibi. The district court correctly concluded that no relief was warranted.

VI. ARGUMENT

A. The District Court Correctly Concluded That Counsel Was Not Ineffective With Respect to the Purported Alibi Witness.

1. Standard of Review

In a post-conviction habeas action, the district court must evaluate claims of ineffective assistance of counsel under the test established in *Strickland v. Washington,* 466 U.S. 668 (1984). *Strickland*, and its local progeny, dictate that our evaluation begins with the "strong presumption

that counsel's conduct falls within the wide range of reasonable professional assistance." The Supreme Court further explained that the "defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." *Id*. Within the context of this strong presumption, the petitioner must demonstrate, by a preponderance of evidence, that his counsel's performance was deficient, falling below an objective standard of reasonableness, and that counsel's deficient performance prejudiced the defense. *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). To establish prejudice based on counsel's deficient performance, a petitioner must show that, but for counsel's errors, there is a reasonable probability that the outcome of the trial would have been different. A court may evaluate the questions of deficient performance and prejudice in either order and need not consider both issues if the defendant fails to make a sufficient showing on one. *Id*.

2. Discussion

Mason asserts that the district court erred in finding that his former counsel, Carl Hylin, was not ineffective for failing to locate and call Neal, whom he alleges was an available alibi witness. In making a fair assessment of counsel's performance, the trial court must reconstruct the

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circumstances of counsel's challenged conduct and evaluate that challenged act or omission from counsel's perspective at the time,
while remaining perfectly mindful that counsel is "strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id*. at 689-90.

At the evidentiary hearing, Mason failed to establish that Hylin's or his investigator's performances were deficient with respect to locating or presenting an alibi witness. Hylin's testimony that prior to trial, his client could not provide him with the alibi witness's name, address, or neighborhood description went unrefuted. Without such basic information from his client, it was not unreasonable for Hylin not to locate the witness. Therefore, the first prong of *Strickland* was not satisfied, and the analysis could end there.

Moreover, there was absolutely no demonstration of *Strickland* prejudice. Mason failed to establish that Neal would have actually provided an alibi, had he been called to testify. Additionally, the evidence against Mason was overwhelming. The district court correctly found that the strength of the State's evidence at trial further undermined his effort to demonstrate *Strickland* prejudice. V AA 645.

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VII. CONCLUSION

Based on the foregoing, the State respectfully asserts that this Court should deny Mason's appeal in its entirety.

DATED: August 23, 2019.

CHRISTOPHER J. HICKS
DISTRICT ATTORNEY

By: JENNIFER P. NOBLE
Chief Appellate Deputy

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) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in Georgia 14.

2. I further certify that this brief complies with the page limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(c), it does not exceed 30 pages.

3. Finally, I hereby certify that I have read this 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

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the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED: August 23, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on August 23, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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