

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs July 15, 2026

FILED

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Clerk of the
Appellate Courts

DONALD LEE SHIELDS, JR. v. STATE OF TENNESSEE

**Appeal from the Circuit Court for Warren County
No. 2017-CR-1576 Larry B. Stanley, Jr., Judge**

No. M2025-01181-CCA-R3-PC

The Petitioner, Donald Lee Shields, Jr., appeals the order denying post-conviction relief from his Warren County convictions for attempted aggravated assault, false imprisonment, and three counts of especially aggravated kidnapping, for which he received an effective sentence of eighteen years. Two weeks before his original trial, the Petitioner fired his original counsel and retained new trial counsel despite being advised by the trial court that a continuance would not be granted if he did so. As grounds for post-conviction relief, the Petitioner now contends that he was denied the effective assistance of counsel based upon trial counsel's failure to adequately prepare for trial given the limited time available for preparation and trial counsel's failure to present exculpatory witness testimony. After review, we affirm the judgments of the post-conviction court.

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

CAMILLE R. McMULLEN, J., delivered the opinion of the court, in which JILL BARTEE AYERS and TOM GREENHOLTZ, JJ., joined.

L. Scott Grissom (on appeal), McMinnville, Tennessee; Robert S. Peters (at trial), Winchester, Tennessee, for the appellant, Donald Lee Shields, Jr.

Jonathan Skrmetti, Attorney General and Reporter; Kelly M. Telfeyan, Assistant Attorney General; Matthew T. Colvard, District Attorney General, for the appellee, State of Tennessee.

OPINION

On October 6, 2017, a Warren County Grand Jury indicted the Petitioner for four counts of aggravated kidnapping, two counts of aggravated assault, and aggravated. The Petitioner's case was severed from his three co-defendants for trial. A full recitation of the facts supporting the Petitioner's convictions may be found in our direct appeal opinion at State v. Shields, No. M2019-00344-CCA-R3-CD, 2019 WL 6049019 at *1-8, (Tenn. Crim. App. Nov. 15, 2019). In summary, the evidence presented at the Petitioner's trial established that in August 2017, the four victims—Lisa Denson, Stephanie Vanatta, James Beaver, and Rahsaan Dye—traveled to the rural home of co-defendant Turner so that Vanatta could purchase methamphetamine. After Vanatta briefly entered the residence, Turner, the Petitioner (identified by witnesses as “D.J.”), and co-defendant Pegg ordered all four victims inside, informing them that approximately twenty-six grams of methamphetamine were missing and that no one would be allowed to leave until the drugs or \$2,000 were produced. Multiple witnesses testified that Turner and the Petitioner were armed and that the victims' cell phones were confiscated. The victims were required to write down personal identifying information and were held in the home for approximately three days.

According to Denson, Beaver, Vanatta, Dye, and co-defendant Golden, the Petitioner actively participated in escalating threats and violence. Witnesses testified that the Petitioner encouraged or directed the victims to tie themselves to the back of a pickup truck, “jerked” the truck forward while victims were attached, threatened to “shoot [their] kneecaps out,” and told Beaver, “I should gut you.” Several witnesses testified that the Petitioner carried a pistol and, at times, a shotgun or revolver. Multiple witnesses also testified that the Petitioner cut Dye on the neck and helped “amp up” Turner during assaults. The victims were forced to fight one another, perform yardwork, and undergo strip and cavity searches while armed co-defendants—including the Petitioner—stood guard. Denson testified that Turner raped her during the confinement.

Co-defendants Golden and Pegg corroborated the victims' accounts, describing the Petitioner as Turner's “right-hand man” who watched the victims, threatened them with firearms, and participated in the truck-dragging incident. Investigator Cavanaugh testified that the victims' statements were consistent and that a search of Turner's home revealed cell phones, handwritten personal information sheets, rope, surveillance equipment, firearms, and other items consistent with the victims' accounts.

At the close of the State's proof, and upon trial counsel's motion, the trial court dismissed the counts of aggravated rape and aggravated assault (Dye).

The Petitioner testified in his own defense, claiming he was present only briefly, did not carry a weapon, did not participate in the assaults, and attempted to stop Turner from dragging the victims. He denied knowledge of the events when interviewed by law enforcement. Investigator Cavanaugh testified in rebuttal that the Petitioner stated he knew nothing about the incident despite being asked multiple times.

Based on the above evidence, the jury convicted the Petitioner of three counts of especially aggravated kidnapping (Dye, Beaver, Denson) and the lesser included offenses of false imprisonment (Vanatta) and attempted aggravated assault (Denson). The Petitioner received an effective sentence of eighteen years. Following his convictions, the Petitioner filed a direct appeal and argued that he “was denied his due process rights by being given a disproportionately high sentence” and that the evidence was insufficient to sustain his convictions for especially aggravated kidnapping. *Id.* at *9. This court affirmed the trial court’s judgments. *Id.* at *11.

Post-Conviction. On April 14, 2021, the Petitioner filed a timely pro se petition for post-conviction relief, alleging that trial counsel rendered ineffective assistance by failing to subpoena a crucial defense witness.¹ Shortly thereafter, the post-conviction court appointed counsel, who filed an amended petition incorporating the claims raised in the pro se petition. The amended petition also alleged that the Petitioner was denied effective assistance of counsel because his original counsel withdrew approximately two weeks before trial and replacement counsel was appointed without sufficient time to prepare and become familiar with the case. The Petitioner further asserted that the trial court’s refusal to grant a continuance after permitting the substitution of counsel deprived him of a fair trial. On August 6, 2021, the State filed a response to the amended petition denying the Petitioner’s allegations and asserting that “[the] Petitioner made the decision to fire [original counsel] and to hire [new trial counsel] knowing that his case would not be continued and that his new attorney would only have fourteen days to prepare.”

At the June 25, 2025 post-conviction hearing,² the Petitioner testified that he initially retained original counsel to represent him after he was indicted. He stated that he met with original counsel on two occasions: first to review discovery and later to discuss a plea offer. During the second meeting, original counsel and the Petitioner’s father

¹ Although the Petitioner raised additional issues in his petition, he expressly waived those issues during the evidentiary hearing. Accordingly, we will only address the Petitioner’s ineffective assistance of counsel claims.

² The record reflects statements by both the trial court and the State indicating that trial counsel was deceased at the time of the post-conviction hearing. Post-conviction counsel did not lodge an objection to those statements.

disagreed concerning the plea offer. According to the Petitioner, after the disagreement, original counsel withdrew from representing him. The Petitioner testified that he did not fire original counsel because he believed it would have been “probably a bad idea to fire an attorney that close to trial” and instead claimed that original counsel withdrew from the representation of his own accord.

The Petitioner stated that he began looking for replacement counsel immediately and hired trial counsel two weeks before his scheduled trial date. When asked how many times he met with trial counsel before trial, the Petitioner responded, “I guess one time to ask him if he could take the case. The next time, I paid him. And the next time I’d see him, I was in court.” The Petitioner testified that his discussions with trial counsel were limited and that they were unable to discuss the case in detail because trial counsel was waiting to receive discovery from original counsel. He further testified that he informed trial counsel of a potential witness, Sarah Lewis, who could have testified that he was with her at the time of the incident, but, to his knowledge, trial counsel never interviewed or spoke with her. The Petitioner testified that trial counsel was unprepared throughout the trial and acknowledged that trial counsel “kind of ha[d] to discover the case as he went” because he had been retained so shortly before trial.

On cross-examination, the Petitioner acknowledged that, following original counsel’s withdrawal, he appeared before the trial court and informed the court that he wished to retain new counsel. When asked whether he recalled the trial court advising him that changing attorneys two weeks before trial would be a “bad idea,” the Petitioner testified that he did not remember. When asked whether he recalled the trial court advising him that he would not receive a continuance if he changed attorneys, the Petitioner stated that he did not remember.

The Petitioner acknowledged that trial counsel had a good reputation as a defense attorney but claimed that trial counsel “didn’t have enough time to prepare an adequate defense [or] investigate all the things that he should investigate.” The Petitioner also acknowledged that trial counsel successfully obtained the dismissal of two of the “most serious” felony charges against him: aggravated rape and aggravated assault (Dye).

The State questioned the Petitioner about each victim’s trial testimony, which consistently identified the Petitioner as one of the perpetrators and described how he tied them to the back of a truck and began driving it, held them at gunpoint while they were forced to undergo body cavity searches, and threatened to shoot them in the kneecaps if they moved. When asked if he remembered the testimony of the victims, the Petitioner stated, “I remember the testimony in the court, sir, but I didn’t -- that’s not how it happened.”

Sarah Lewis, the Petitioner's girlfriend at the time, testified that on August 9, 2017, she and the Petitioner spent the night together at a local motel. She stated that the Petitioner arrived at the motel around 6:00 p.m. and did not leave until the next day around noon. When asked if trial counsel ever contacted her regarding the Petitioner's case, Ms. Lewis said that he did not. When asked by the post-conviction court how she is able to recall the specific date of an event that happened eight years ago, Ms. Lewis stated,

I mean, I don't -- like, I don't -- I -- honestly, I can't tell you exactly how I can remember it. It's just like certain things you can remember and not remember, you know? Just like that, that was a major aspect -- or important aspect of somebody's life, I think, you know? I don't know how to, you know, say it or, like, I don't know exactly how to describe it, but, you know, there's certain things that you can remember back in, you know, saying August 2020 or 2017, you can remember.

On cross-examination, Ms. Lewis admitted that she and the Petitioner used "a little bit" of methamphetamine at the motel on August 9. When asked how she learned of the Petitioner's charges, Ms. Lewis testified that she had a cell phone application that notified her whenever certain individuals she knew were arrested. She then claimed that at the time of the Petitioner's trial, she was incarcerated and no one had contacted her about being with the Petitioner on August 9. Later, however, she admitted that she was unsure of the date of the Petitioner's trial. On redirect examination, Ms. Lewis maintained that she did not testify at the Petitioner's trial because she was never contacted or subpoenaed. She asserted that she would have been willing to testify had she been notified.

The record reflects that Ms. Lewis was questioned extensively by the State and the post-conviction court about whether she was incarcerated at the time of the Petitioner's July 26-27, 2018 trial and about her understanding of when the underlying offenses occurred. Her answers reflected significant confusion about dates and the sequence of events. Ms. Lewis initially stated she did not know when the Petitioner's trial occurred and believed she "might have been incarcerated during that time frame." After the State and the post-conviction court clarified that the trial took place at the end of July 2018, Ms. Lewis acknowledged that she had been released from jail in March or April 2018 and ultimately agreed that she was not incarcerated when the trial occurred.

The post-conviction court then attempted to determine how Ms. Lewis formed her belief that the Petitioner was with her at the time of the offenses. Ms. Lewis repeatedly stated that she knew the Petitioner "was with me," but she struggled to explain how she learned the dates of the alleged crimes. She alternately referenced Mobile Patrol, the newspaper, and conversations with another inmate while she was jailed in October 2017. She testified that the inmate mentioned events occurring "August 8th or 9th... like 8th

through the 10th,” and that she concluded the Petitioner could not have been involved because he had been with her. However, Ms. Lewis admitted she did not recall the specific dates and agreed that the Petitioner had only been with her for approximately twelve hours—from about 6:00 or 7:00 p.m. one evening until around noon the next day.

Overall, Ms. Lewis’s testimony reflected uncertainty about when she was incarcerated, when the Petitioner’s trial occurred, how she learned the dates of the alleged offenses, and whether the Petitioner’s time with her overlapped with the period in question.

The Petitioner’s original counsel testified that, after being retained to represent the Petitioner, he filed a discovery request, discussed the case with the Petitioner, and interviewed several witnesses in preparation for trial. He interviewed the Petitioner’s girlfriend as a potential alibi witness because the Petitioner claimed to have been with her throughout the weekend of the incident. He explained that the Petitioner had two girlfriends at the time and specifically recalled interviewing Nancy Self. He further testified that he later learned of another girlfriend with whom the Petitioner also claimed to have been with on the weekend of the offenses, but he could not recall whether he interviewed her. When asked if he found the girlfriends to be credible witnesses, former counsel stated,

Well, of course, this is just based on my experience. I started out with [the Petitioner] primarily because his mother knew us and was a friend of my wife. She was convinced that he was innocent, that he wasn’t there. And so she is the one who actually contacted us about hiring him. And it wasn’t long after I talked with him and after some of the witnesses came forward, that I found out some of the things he was telling me just weren’t true. And little by little, when he would come up with something, we would find out that that really wasn’t the case.

Counsel stated that during his representation, he received an offer from the State for a 15-year sentence to be served at 30 percent and recommended that the Petitioner accept the plea offer. Given the facts of the case, he believed that the “possibility[] of [the Petitioner] winning was very, very slim” and that the “possibility of [the Petitioner] getting convicted and getting hammered [was] very great.” He recalled exchanging text messages with the Petitioner regarding the plea offer, which reflected as follows:

I’ll read what [the Petitioner] said. “Try to work out a deal that lets me keep my job, like a split confinement. If possible, I’ll plea.” And I told him, you know, I would throw that out. But the chances that he was going to get a split confinement was not very good. So then here’s where we really got our problem. He said, “I have a question. If I had more money for the cause,

would it help me any? I know you said usually for a trial it cost a lot more. If that's an issue, please let me know. I have people willing to help me anyway they can and they can get me out with jail time." And I responded, "No. I quoted you the price. You paid the price. Money has nothing to do with it." He responded, "Do you need more?" And again, I said, "[Petitioner], it's not money. It's witnesses saying you had a gun. I'm not sure how money could change that. We quoted you a low price because we cared about your mother, and she was convinced that you were innocent." And then he said, "It's not true."

Original counsel stated that, following the text message exchange, the Petitioner and the Petitioner's father came to his office and continued to ask what it would cost to "get [the Petitioner] out of this." He repeatedly told them that money was not the issue and that the Petitioner was free to retain different counsel if he wished. The Petitioner stated that he wanted a different attorney and left. Original counsel stated that he immediately texted the Petitioner and read the messages into the record as follows:

"[Petitioner], I'm sorry about this, but you need to think long and hard about the 15 years at 30 percent to wrap this up. But if you want new counsel, you need to get one immediately. Unless you tell me otherwise, I'm filing a motion to withdraw. It'll be next Wednesday the 27th."

After not hearing back from the Petitioner, counsel withdrew. He recalled that, during the hearing on the motion to withdraw, the trial court advised the Petitioner that his trial date would remain the same.

On cross-examination, original counsel stated that the process of reviewing discovery and interviewing potential witnesses occurred over the course of a few months. When asked if he could have done the amount of work he did on the case in two weeks, original counsel stated that he could not. When asked whether he would have accepted the case with only two weeks remaining before trial, the State objected, and the post-conviction court sustained the objection, stating, "What he would do and another 2000 attorneys would do. Everybody might do something differently." Original counsel stated that he personally would not have accepted the case two weeks before trial but acknowledged that attorneys handle their cases differently, adding that he was "probably a lot more methodical than some attorneys."

Co-defendant Turner's counsel testified that before the case was severed, he worked closely with trial counsel. He stated that he found trial counsel to be "a competent attorney who was prepared and diligent."

At the conclusion of the evidentiary hearing, the post-conviction court denied relief. Regarding the Petitioner's argument that trial counsel did not have sufficient time to adequately prepare for trial, the post-conviction court found the following:

[W]hen [the Petitioner] figured out that there was not going to be a better offer, [he] wanted a different attorney. And as I have always done when a defendant comes forward and says, I want a different attorney, and there's a trial not too far away, especially when the defendant's out of jail, I am rarely inclined to grant a continuance simply because the defendant wants a different attorney unless something -- there's been some physical illness where the attorney can't do their job or mental illness or something to say that the attorney couldn't do their job to represent them.

Firing someone at the last minute is not a great idea. I'm sure I passed that along, and I'm really sure I told him that I was not going to continue his trial date. But if you wanted to hire a different attorney, the attorney was going to have to sign on knowing that his trial date was set when it was and that we were going to go forward.

[The Petitioner] obviously talked to [trial counsel] shortly thereafter when they asked [original counsel] to resign and [trial counsel] signed on. The [Petitioner]'s argument, as I understand it today, is that simply taking a case that close to trial is malpractice. I don't find that to be the case. As one of -- somebody mentioned, there are attorneys that -- and I know two or three really good ones right now. If you said you're going to trial in 48 hours, who would you want to represent you? I could think of one or two because they can do it -- appear to be able to do a good job quickly. And other people need more time because they want to be more methodical, like [original counsel].

So I don't think that simply saying that he couldn't do what he needed to do in that time frame is grounds for saying that he fell below -- his actions fell below the standard of care -- actions or inactions. Because what I have not been presented with is anything showing that the outcome would have been different had [trial counsel] had two months or six months or nine months.

Regarding the testimony of Ms. Lewis, the post-conviction court determined as follows:

Ms. Lewis testified, and I really agree with [the State] on this. Ms. Lewis could testify -- and assuming she's telling the truth, she could testify that she was with [the Petitioner] from maybe 6:00 p.m. to maybe noon-ish the next morning on one day. And she had a hard time saying she knew exactly what day it was, that she knew that she was told that these allegations took place on these particular days, which I think it was over about a three-day period. She can't say how she knew what day the allegations were and how she knew that that was the day or the evening that she was with the [Petitioner].

And even if all that is true, even if it matched up, [the State]'s right, the testimony at trial was the [Petitioner] came and went from this place on two or more occasions. So nobody ever argued he was there the entire time. [The Petitioner] acknowledged on the witness stand that he was there and left and would come back. So simply saying that she was with him for X number of hours at some point during this time doesn't alleviate him at all from his testimony, much less the other testimony from the other witnesses who said, Yeah, he was there. He was there for a period of time. Then he would leave, and then he'd come back and he engaged in this sort of activity.

And the evidence was overwhelming. I mean, I've heard a lot of trials in 23 years, but these people were very consistent and very straightforward about who was there when all -- each of these different things happened, who left, who came back, who was holding the gun. They were very clear on what they had said, and the [Petitioner]'s statements that . . . acknowledging that he was there, but simply just didn't take place in some of these activities doesn't -- you know, her testimony doesn't contradict that at all. She basically says, I -- you know, for that 14-hour period, 18-hour period or whatever it was, he was with me. But other than that, I don't know.

So I don't think her testimony exonerates him at all. I don't think the outcome would have changed a bit. And I don't see anything else that Mr. - - there's nothing been presented today that [trial counsel] could have done, other witnesses he could have presented. He cross-examined the witnesses. He . . . conducted a direct examination of his own witness. And it just didn't turn out in their favor[.]

In August 2025, the post-conviction court entered a written order denying relief, which provided as follows:

The [Petitioner] decided to hire a different attorney. The [Petitioner] was out of jail at the time. The [trial court] advised him that he would not continue

the upcoming trial for a change of attorney, that if he hired another attorney, they had to sign on with the understanding the trial would not be continued. The [Petitioner] talked to [trial counsel], who took on the case knowing that the trial would go forward. Does taking a case that close to trial constitute malpractice on the attorney's part? This Court does not find that to be the case. Simply saying that the attorney could not do what he needed to do does not fall below the standard of care. This Court does not find that the outcome would have been different should the attorney have had more time. Ms. Lewis testified that she was with [the Petitioner] from maybe 6:00 p.m. to noon the next day but had a hard time specifying the exact date. The testimony at trial was that the [Petitioner] came and went from this place on two or more occasions. The [Petitioner] acknowledged he was there and left and then came back. Other witnesses testified that he came and left. This Court finds that the evidence at trial was overwhelming in favor of guilt, that the witnesses were very clear and consistent with their testimonies. The [Petitioner]'s statement was that he was there but didn't participate in the activities that went on.

Therefore, this Court found that the attorney representing the [Petitioner] did not fall below the standard of care, that the outcome would have been the same and there was nothing presented today that [trial counsel] could have done differently that would have changed the outcome and based upon the testimony of the witnesses presented in open court, arguments of counsel, and the record as a whole, the Court finds that the motion is not well taken and should be denied.

It is from this order that the Petitioner now appeals.

ANALYSIS

The Petitioner argues that the post-conviction court erred in denying his petition for relief. Specifically, he claims that trial counsel provided ineffective assistance of counsel by failing to adequately prepare for trial and failing to adequately investigate or present the testimony of Sarah Lewis at trial. The State responds that the Petitioner is not entitled to relief. We agree with the State.

Post-conviction relief is only warranted when a petitioner establishes that his or her conviction or sentence is void or voidable because of an abridgment 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 decision involving mixed questions of law and fact 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. at 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).

The Petitioner contends that trial counsel rendered ineffective assistance by failing to adequately prepare for trial, arguing that, given “the numerous witnesses, alleged victims, [and] multiple co-defendants[,] there is no way . . . any attorney with approximately two weeks’ time [could] be prepared for trial.” The post-conviction court rejected this claim, finding that the Petitioner chose to retain new trial counsel, despite being advised by the trial court that hiring new counsel two weeks before trial is “not a great idea” and that a continuance would not be granted. The post-conviction court determined that the mere fact that trial counsel accepted the case shortly before trial did not establish deficient performance. Further, the court found that the Petitioner failed to present any evidence demonstrating that additional preparation time would have changed the outcome of the trial, noting that the Petitioner had not shown “that the outcome would have been different had [trial counsel] had two months or six months or nine months” to prepare.

We conclude that the evidence does not preponderate against the post-conviction court’s conclusion that the Petitioner failed to identify any specific deficiency resulting from the two-week preparation period or demonstrate a reasonable probability that additional preparation would have affected the verdict. As evidence of trial counsel’s preparedness, we note that at the close of the State’s proof at trial, trial counsel successfully moved for dismissal of two of the most serious offenses in this case: aggravated rape and aggravated assault. The jury verdict also reflects trial counsel’s preparation because the Petitioner was convicted of the lesser included offenses of false imprisonment and attempted aggravated assault. Here, we observe that the relevant inquiry is not the number of days counsel had before trial, but whether counsel adequately investigated the case, reviewed discovery, consulted with the Petitioner, developed a defense, and whether any alleged lack of preparation resulted in prejudice. See Johnson v. State, No. M2019-01849-CCA-R3-PC, 2021 WL 4026188, at *11 (Tenn. Crim. App. Sept. 3, 2021) (concluding that trial counsel was “amply prepared” for trial despite being appointed two weeks before trial). A petitioner “must demonstrate with specificity that counsel made errors so serious that counsel was not functioning as counsel guaranteed the defendant by the Sixth

Amendment and that such errors prejudiced the defense.” Bland v. State, No. W2007-00020-CCA-R3-PD, 2009 WL 910197, at *39 (Tenn. Crim. App. Apr. 3, 2009). Without proof identifying what additional preparation would have uncovered or how it would have changed the outcome, the Petitioner’s generalized assertion that trial counsel had insufficient time to prepare fails to satisfy either prong of Strickland. Accordingly, the Petitioner is not entitled to relief on this claim.

Next, the Petitioner contends that trial counsel rendered ineffective assistance of counsel by failing to adequately investigate or present the testimony of Sarah Lewis at trial. He argues that Ms. Lewis’s testimony “would have been persuasive to the jury that the [Petitioner] was not guilty of the [a]llegations against him.” At a post-conviction hearing, when a petitioner presents a witness whom he claims should have testified at trial, the post-conviction court must determine whether such testimony would have been admissible and was material to the defense. Nesbit, 452 S.W.3d at 796 (citing Pylant v. State, 263 S.W.3d 854, 869 (Tenn. 2008)). “If the post-conviction court determines that the proffered testimony would not have been admissible at trial or that, even if admissible, it would not have materially aided the petitioner’s defense at trial, the post-conviction court is justified in finding that trial counsel was not deficient in failing to call that witness at trial.” Pylant, 263 S.W.3d at 869. If the proffered testimony is both admissible and material, the post-conviction court must assess whether the witness is credible. Id.

Here, even assuming Ms. Lewis’s testimony was admissible, it would not have materially aided the defense or affected the outcome of the trial. At most, Ms. Lewis could testify that she was with the Petitioner for a limited number of hours during a three-day period in which the offenses occurred. Her testimony, however, did not account for the entirety of the three-day period and therefore did not negate the possibility that the Petitioner was present at co-defendant Turner’s residence when the offenses were committed.

Moreover, as stated by the post-conviction court, Ms. Lewis’s testimony was consistent with, rather than contradictory to, the trial evidence. At trial, Ms. Denson testified that the Petitioner left the residence after the victims entered the house and later returned during the forced fights. Mr. Beaver testified that he saw the Petitioner at the residence during the day but did not recall seeing him there at night. The Petitioner’s own testimony acknowledged that he repeatedly came and went from the residence over the course of the offenses. Specifically, the Petitioner testified that he was present when the victims first arrived on August 9, left after approximately fifteen to thirty minutes, returned the following day, departed again after only a few minutes, and later returned while the victims were still being held. No witness claimed that the Petitioner remained at the residence continuously. Because Ms. Lewis’s testimony accounted for only a portion of

the three-day period, it did not contradict the evidence that the Petitioner was present at the residence on multiple occasions or that he left and later returned.

Furthermore, the post-conviction court found that Ms. Lewis's testimony alone would not have changed the outcome of the trial based on the "overwhelming" evidence against the Petitioner. The post-conviction court noted that the witnesses at trial were "very consistent and very straightforward about who was there when all -- each of these different things happened, who left, who came back, who was holding the gun. They were very clear on what they had said." Multiple witnesses testified that they were detained at co-defendant Turner's residence after methamphetamine was reported missing; that the Petitioner was present during the confinement, carried a firearm, threatened the victims, supervised the forced fights, participated in forcing them to tie themselves to the back of a truck, was present during the strip searches, and repeatedly encouraged or assisted co-defendant Turner throughout the ordeal. In light of this overwhelming and consistent proof, the post-conviction court concluded that Ms. Lewis's proposed testimony did not undermine the State's proof that the Petitioner was present when the offenses occurred and therefore would not have changed the outcome of the trial even if it had been presented. See Nesbit, 452 S.W.3d at 796.

Upon our review, the record does not preponderate against the determination of the post-conviction court. Accordingly, the Petitioner is not entitled to relief.

CONCLUSION

Upon review, we affirm the judgments of the post-conviction court.

s/ *Camille R. McMullen*

CAMILLE R. MCMULLEN, JUDGE