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ERROL GODFREY-HILL *v.* COMMISSIONER OF CORRECTION
(AC 45841)

Bright, C. J., and Elgo and Seeley, Js.

Syllabus

The petitioner, who had been convicted of the crime of murder and other offenses in connection with a shooting, sought a writ of habeas corpus, claiming that his criminal trial counsel, C, had rendered ineffective assistance by failing to investigate and to call as a witness M, whose testimony, the petitioner contended, could have undermined that of T and R, witnesses to the shooting who identified the petitioner as the gunman. At the petitioner's habeas trial, M testified that she had been standing on the street outside a convenience store when she saw two masked men, whom she could not identify, running toward her, after which she heard gunshots and ran into the store for shelter. The petitioner claimed that he had told C before the criminal trial that M had described another person who committed the crimes at issue. C testified that he had reviewed portions of statements M had given to the police and vaguely remembered talking or meeting with her before the trial but could not recall having made a conscious decision not to call her to testify. The court rendered judgment denying the habeas petition, concluding that C had investigated M as a potential witness but determined that her testimony would not have been helpful to the petitioner. The court further concluded that the petitioner was not prejudiced by C's decision not to call M to testify. Thereafter, the court granted the petitioner certification to appeal, and the petitioner appealed to this court. *Held* that the habeas court properly determined that the petitioner had failed to meet his burden of proving that C rendered deficient performance, the petitioner having failed to present evidence sufficient to overcome the presumption that C's decision not to call M as a witness was based on objectively reasonable strategic considerations: the court's determination that C had investigated M as a potential witness was not clearly erroneous, as C, an experienced criminal defense attorney, testified that he had reviewed a portion of M's statements to the police, had a vague recollection of having met with or spoken to her prior to the petitioner's criminal trial, which M's testimony confirmed, and would not have taken the petitioner's case to trial without having first spoken to anyone who could have been considered a witness or without having first evaluated how such potential witnesses could assist in the petitioner's defense; moreover, although C could not recall the exact reason he did not call M as a witness, C testified that he recalled being concerned that any positive value in calling M as a witness would have been outweighed by the negative effect her testimony may have had on the petitioner's defense and referred to her potential testimony as a "double-edged sword," and C reasonably could have determined that M's testimony would not have supported a theory of third-party culpability and might have distracted the jury from the focus of C's defense, which was to discredit T and R and to show that they had intentionally misidentified the petitioner and fabricated their testimony to satisfy a grudge T held against the petitioner since childhood, all of which suggested that C had made a strategic decision not to call M to testify.

Argued May 11—officially released September 12, 2023

Procedural History

Amended petition for a writ of habeas corpus, brought to the Superior Court in the judicial district of Tolland and tried to the court, *M. Murphy, J.*; judgment denying the petition, from which the petitioner, on the granting of certification, appealed to this court. *Affirmed.*

Matthew C. Eagen, assigned counsel, for the appellant (petitioner).

Rebecca R. Zeuschner and *Nicholas L. Scarlett*, certified legal interns, with whom were *Ronald G. Weller*, senior assistant state's attorney, and, on the brief, *John P. Doyle*, state's attorney, and *Stacey M. Miranda*, supervisory assistant state's attorney, for the appellee (respondent).

Opinion

SEELEY, J. Following the granting of his petition for certification to appeal, the petitioner, Errol Godfrey-Hill, appeals from the judgment of the habeas court denying his second amended petition for a writ of habeas corpus. On appeal, the petitioner claims that the court improperly concluded that (1) his trial counsel did not provide ineffective assistance by failing to investigate and to call a certain witness to testify during the petitioner's criminal trial and (2) he was not prejudiced by counsel's alleged deficiencies.[1] We disagree and, accordingly, affirm the judgment of the habeas court.

The record reveals the following relevant facts and procedural history. On August 1, 2014, Troy Mitchell and Tyrese Jones were standing outside a convenience store near the intersection of Kensington Street and Chapel Street in New Haven when a gunman appeared and shot them. Mitchell was injured but survived the shooting, and Jones was killed. Later that month, on August 25, 2014, the petitioner was arrested and charged with murder in violation of General Statutes (Rev. to 2013) § 53a-54a, assault in the first degree in violation of General Statutes § 53a-59 (a) (5), and criminal possession of a firearm in violation of General Statutes (Supp. 2014) § 53a-217. The petitioner elected a jury trial with respect to the murder and assault charges, and a bench trial as to the criminal possession of a firearm charge.[2] Throughout the proceedings, the petitioner was represented by Attorney Glenn Conway.

The sole issue at the petitioner's criminal trial was the gunman's identity. The surviving victim, Mitchell, testified that he did not see the shooter. Although there was a surveillance video that placed the petitioner in the area twenty minutes before the shooting, there was no forensic evidence, such as fingerprints or DNA, placing the petitioner at the scene or implicating him as the perpetrator. As a result, the state's case was primarily based on the testimony of two eyewitnesses: Teddy Cornelius and Richard Hayes.

Cornelius and Hayes were friends at the time of the shooting. Cornelius testified that, on the night in question, he and Hayes were on their way to have drinks downtown when they encountered and began talking with friends on Kensington Street. Cornelius testified that, as he walked up Kensington Street, he saw a man he recognized as "Dino," whom he later identified as the petitioner, emerge from the end of a park off of Chapel Street. He explained that he had known the petitioner for many years and that they had fought when they were younger. Cornelius further testified that he saw the petitioner, with a silver-colored gun in his hand, pull a black ski mask over his face, run up to the victims, and fire four or five shots at them. Cornelius stated that, after the first shot, he closed his eyes and hid

behind a building, and that, when he came out, one of the victims was lying on the ground.

Hayes similarly testified that the petitioner was the shooter. Although most of his testimony was consistent with that of Cornelius, there were a few discrepancies, namely, that Hayes testified that the petitioner's gun was black, not silver-colored; that the petitioner had grabbed Jones' arm before shooting him; and that there were "way more than five or six" shots fired. Unlike Cornelius, Hayes testified further that, after the petitioner fired the shots, he dropped the gun and that another man, "Uncle Ant," later identified as Antoine Paige, picked up the gun, wiped it off, and told Hayes to get back from Jones and let him die or else Paige would shoot Hayes. Hayes explained that Paige "put [the gun] in the front of his pants, and he put his shirt over it and he walked off," and that there was "no doubt in [his] mind" that it was the gun that the petitioner had used.

The state presented additional evidence, including a ski mask and Timberland boots consistent with those worn by the shooter that were recovered from the petitioner's bedroom, as well as a note that was found in the petitioner's sock by a correctional officer when the petitioner was incarcerated on the relevant charges. The note stated: "Remember that box you gave me to put my money in? It has the same bullets from the gun are in there, they in Auntie Mara basement, get rid of them." As a result of this note, the police seized a small safe from the basement of the building where the petitioner's aunt lived, which contained a sock filled with bullets. Although the bullets were the same caliber as the bullet removed from one of the victims' bodies and the bullets located at the scene of the shooting, the bullets in the safe were "hollow points," whereas the ones recovered at the scene were "soft points." Other than this evidence, the state's case primarily relied on the testimony of Cornelius and Hayes.

Conway focused the petitioner's defense on discrediting Cornelius and Hayes. In his closing argument to the jury, Conway highlighted the fact that the state had not presented any suggested motive or scientific evidence in support of its case. He asserted: "The reality of this case, it comes down to two witnesses. It comes down to . . . Cornelius and . . . Hayes. It's that simple." Conway argued that the stories to which Hayes and Cornelius testified were inconsistent with each other and with the evidence, and that their "evasive and forgetful" demeanors undermined their credibility. He also emphasized that Cornelius and Hayes were close friends at the time of the shooting, and he suggested reasons for why they would be motivated to lie. Specifically, Conway argued that Cornelius was motivated to lie because he and the petitioner had fought when they were younger. With respect to Hayes, Conway reminded

the jury of the testimony of Monice Glasper, who was friends with both Hayes and the petitioner, that Hayes had told her that he was nervous about testifying because he had lied about seeing the petitioner's face that night. She testified that, when she asked Hayes why he had lied, he said that it was because Cornelius had told the police that Hayes had information, and the police had threatened Hayes with five years of incarceration if he did not cooperate. Conway pointed out that Hayes had to be subpoenaed to give a statement to the police. He argued, therefore, that Hayes had two reasons to inculpate the petitioner: his friendship with Cornelius and to stay out of jail. In closing, Conway argued to the jury that it should disregard the testimony of Cornelius and Hayes, and that, without such testimony, the evidence was insufficient to find the petitioner guilty.

Ultimately, on October 13, 2016, the jury found the petitioner guilty of murder and assault in the first degree, and that same day, the trial court, *Blue*, *J.*, found the petitioner guilty of criminal possession of a firearm and found that he had violated his probation. Thereafter, the petitioner was sentenced to a total effective term of eighty years of incarceration.[3] In November, 2021, the petitioner filed the operative second amended petition for a writ of habeas corpus, in which he alleged that Conway had provided ineffective assistance by, inter alia, failing to investigate and to call Anita Morales as a witness at the petitioner's criminal trial.[4] A trial was held before the habeas court, *M. Murphy*, *J.*, on April 21, 2022, during which the petitioner was represented by Attorney Robert L. O'Brien. Conway, the petitioner, and Morales each testified at the habeas trial.

Conway's testimony at the habeas trial can be summarized as follows. Conway, an experienced criminal defense attorney, testified that, at the time of trial, the petitioner's case was one of six or seven murder cases that he was handling "almost back-to-back" at the time, and that he had tried more than sixty jury trials to verdict in his career. With respect to the petitioner's case, he testified that he would have discussed the theory of defense with the petitioner but could not recall the specifics of that discussion. He characterized the case as one focused on "eyewitness testimony," and he recalled that Cornelius was "kind of the primary witness for the state." He testified that Cornelius and the petitioner "had a history that went back to childhood," so "the idea was, you know, this is his chance to . . . get even." When asked about Morales, Conway testified that, from what he could recall, she was a community activist who went by the nickname "Tweet." He explained that, in preparation for the habeas trial, he had reviewed a small portion of the statements that Morales had given to the police and that he would have had those statements prior to the petitioner's criminal trial. He testified that, from what he could remember,

Morales was at the scene on the night in question and was in a relationship and had a child with a man named "Ant," who was also at the scene of the shooting on the night in question. Conway stated that he had a vague recollection of meeting with Morales before trial, that he could not recall making the conscious decision not to call her as a witness, and that, "[i]f [he] had thought that she would have been helpful at the trial, [he] would have called her."

Conway also recollected that "Ant" was a reference to Paige, and that, on the night in question, Paige had picked up a handgun and "told people to stay away." The petitioner's habeas counsel asked Conway whether he had considered using Morales' testimony to undermine the credibility of Cornelius, to which Conway stated: "I would [have] absolutely . . . looked at that . . . and for some reason I'm thinking that there may have been . . . something in her . . . statement or in . . . what she witnessed that may have done that. It's starting to come back to me a little bit. And I can't answer exactly what it was, but there was something about her testimony; I think that's why I believe I did speak to her, that was—it was a double-edged sword." On cross-examination by the attorney for the respondent, the Commissioner of Correction, Conway confirmed that he would not have taken the petitioner's case to trial without first speaking to anyone who could be considered an eyewitness to the crimes or without first evaluating each potential witness in terms of how he or she could assist in the defense.

The petitioner briefly testified after Conway. He testified that Morales was one of three additional witnesses to the shooting, and that, with respect to Morales, he told Conway that "[they] could possibly use her as a witness because she describes somebody else committing the crime." The petitioner explained that these additional witnesses, including Morales, did not show up to trial and, as a result, he assumed that Conway did not follow up with them.

Morales was the last witness to testify at the habeas trial. She explained that, on the night of the incident, she was outside of the convenience store on the corner of Kensington Street standing with Cornelius and some other people when she saw two men wearing masks and dark clothing running toward where she was standing. She testified that, after she saw the men, she heard gunshots and ran into the store for shelter. She explained that, less than five minutes after the shots rang out, she exited the store and saw her daughter's father, Paige, whom she had not seen yet that day. Morales further testified that she could not identify the two men in the masks. She stated that she knew the petitioner, as did Paige, and that she had not seen the petitioner at all that day. Morales confirmed that she had spoken with the police on multiple occasions and

that each time her statements were the same as her testimony before the habeas court. Finally, she testified that she had been contacted by Conway and that she spoke with him. When asked whether she told Conway the same information to which she had testified that day, she stated: "Exactly. Yes, I did. . . . Verbatim and I remember the dates." She explained that she was available to testify at the petitioner's criminal trial and that Conway told her it was a possibility that the prosecution may try to call on her beforehand.

In a memorandum of decision dated August 8, 2022, the habeas court denied the operative habeas petition. In doing so, the court concluded, inter alia, that the petitioner had failed to meet his burden of demonstrating that Conway performed deficiently by failing to investigate and to call Morales as a defense witness.[5] The court stated: "The record demonstrates that . . . Conway did investigate Morales as a potential defense witness but ultimately determined [that] her testimony would not be helpful." The court also concluded that the petitioner was not prejudiced by Conway's failure to call Morales to testify at the petitioner's criminal trial. Thereafter, the court granted the petitioner's petition for certification to appeal, and the petitioner appealed to this court.

Before we address the merits of the claims raised by the petitioner, we first set forth our standard of review and general principles governing habeas matters and claims of ineffective assistance of counsel. "Our standard of review of a habeas court's judgment on ineffective assistance of counsel claims is well settled. In a habeas appeal, this court cannot disturb the underlying facts found by the habeas court unless they are clearly erroneous, but our review of whether the facts as found by the habeas court constituted a violation of the petitioner's constitutional right to effective assistance of counsel is plenary." (Internal quotation marks omitted.) *Soto* v. *Commissioner of Correction*, 215 Conn. App. 113, 119, 281 A.3d 1189 (2022).

"To succeed on a claim of ineffective assistance of counsel, a habeas petitioner must satisfy the two-pronged test articulated in *Strickland* v. *Washington*, [466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)]. *Strickland* requires that a petitioner satisfy both a performance prong and a prejudice prong. To satisfy the performance prong, a claimant must demonstrate that counsel made errors so serious that counsel was not functioning as the counsel guaranteed . . . by the [s]ixth [a]mendment. . . . To satisfy the prejudice prong, a claimant must demonstrate that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. . . . Because both prongs . . . must be established for a habeas petitioner to prevail, a court may [deny] a petitioner's claim if he fails to meet either

prong." (Internal quotation marks omitted.) *Crocker* v. *Commissioner of Correction*, 220 Conn. App. 567, 583, A.3d (2023), petition for cert. filed (Conn. July 26, 2023) (No. 230120).

With respect to the first prong of *Strickland*, "[t]he petitioner must . . . show that counsel's representation fell below an objective standard of reasonableness considering all of the circumstances. . . . [A] court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the [petitioner] must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy. . . . Furthermore, the right to counsel is not the right to perfect counsel." (Internal quotation marks omitted.) *Carter* v. *Commissioner of Correction*, 219 Conn. App. 389, 401–402, 295 A.3d 460, cert. denied, 347 Conn. 906, 297 A.3d 198 (2023).

"Regarding ineffectiveness claims relating to the failure to call witnesses, [w]hen faced with the question of whether counsel performed deficiently by failing to call a certain witness, the question is whether this omission was objectively reasonable because there was a strategic reason not to offer such . . . testimony . . . [and] whether reasonable counsel could have concluded that the benefit of presenting [the witness' testimony] . . . was outweighed by any damaging effect it might have. . . . Moreover, our habeas corpus jurisprudence reveals several scenarios in which courts will not second-guess defense counsel's decision not to investigate or call certain witnesses . . . such as when . . . counsel learns the substance of the witness' testimony and determines that calling that witness is unnecessary or potentially harmful to the case . . . ." (Internal quotation marks omitted.) *Inglis* v. *Commissioner of Correction*, 213 Conn. App. 496, 513, 278 A.3d 518, cert. denied, 345 Conn. 917, 284 A.3d 300 (2022). Moreover, "[t]he failure of defense counsel to call a potential defense witness does not constitute ineffective assistance unless there is some showing that the testimony would have been helpful in establishing the asserted defense. Defense counsel will be deemed ineffective only when it is shown that a defendant has informed his attorney of the existence of the witness and that the attorney, without a reasonable investigation and without adequate explanation, failed to call the witness at trial." (Internal quotation marks omitted.) *Meletrich* v. *Commissioner of Correction*, 178 Conn. App. 266, 278–79, 174 A.3d 824 (2017), aff'd, 332 Conn. 615, 212 A.3d 678 (2019).

"It is axiomatic that decisions of trial strategy and tactics rest with the attorney." (Internal quotation marks omitted.) *Meletrich* v. *Commissioner of Correction*, 332 Conn. 615, 627, 212 A.3d 678 (2019). Furthermore, "[t]he decision whether to call a particular wit-

ness falls into the realm of trial strategy, which is typically left to the discretion of trial counsel . . . .'' (Internal quotation marks omitted.) Id., 628. We are also mindful that ''[j]udicial scrutiny of counsel's performance must be highly deferential. . . . A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the [petitioner] must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy. . . . In reconstructing the circumstances, a reviewing court is required not simply to give [the trial attorney] the benefit of the doubt . . . but to affirmatively entertain the range of possible reasons . . . counsel may have had for proceeding as [he] did . . . . Accordingly, our review of the petitioner's claim requires us, first, affirmatively to contemplate the possible strategic reasons that might have supported trial counsel's [decision not to have the witness testify] . . . and, second, to consider whether those reasons were objectively reasonable.'' (Citations omitted; internal quotation marks omitted.) *Sease* v. *Commissioner of Correction*, 219 Conn. App. 504, 513–14, 295 A.3d 436 (2023), petition for cert. filed (Conn. June 12, 2023) (No. 220397); see also *Meletrich* v. *Commissioner of Correction*, supra, 178 Conn. App. 279 (''[O]ur review of an attorney's performance is especially deferential when his or her decisions are the result of relevant strategic analysis. . . . Thus, [a]s a general rule, a habeas petitioner will be able to demonstrate that trial counsel's decisions were objectively unreasonable only if there [was] no . . . tactical justification for the course taken.'' (Internal quotation marks omitted.)).

With respect to claims of ineffective assistance relating to counsel's failure to investigate, this court has stated previously that ''[i]nasmuch as [c]onstitutionally adequate assistance of counsel includes competent pretrial investigation . . . [e]ffective assistance of counsel imposes an obligation [on] the attorney to investigate all surrounding circumstances of the case and to explore all avenues that may potentially lead to facts relevant to the defense of the case. . . . [C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. 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.'' (Internal quotation marks omitted.) *Jordan* v. *Commissioner of Correction*, 197 Conn. App. 822,

832, 234 A.3d 78 (2020), aff'd, 341 Conn. 279, 267 A.3d 120 (2021).

We now turn to the petitioner's claim on appeal challenging the habeas court's determination that he had failed to meet his burden of showing deficient performance by Conway.[6] The petitioner first argues that the habeas court's determination that Conway investigated Morales as a potential witness is not supported by the record. The basis for the petitioner's claim is that, when Conway testified at the habeas trial, he could not recall if he had made contact with Morales prior to the criminal trial, nor could Conway recall the reason why he did not call Morales as a witness or whether he made the conscious decision not to call her to testify. Thus, according to the petitioner, "there [was] no evidence from which the . . . court . . . reasonably [could have] conclude[d] that [Conway] investigated Morales as a potential witness." We disagree.

The petitioner's claim that there is *no* evidence from which the court could have concluded that Conway investigated Morales as a potential witness is simply belied by the record. Conway testified that he reviewed all available witness statements, including a portion of Morales' statements to the police, he was aware that she was at the scene on the night of the shooting, and he did have a vague recollection of either speaking with her over the phone or meeting with her prior to trial. When Morales testified at the habeas trial, she confirmed that she had spoken with Conway prior to the petitioner's criminal trial, and stated that she had provided him the same information she had provided to the police and that Conway had told her that the state might contact her and call her as a witness. Conway also testified that he would not have taken the petitioner's case to trial without first speaking to anyone who could be considered an eyewitness to the crime or without first evaluating each potential witness in terms of how he or she could assist in the defense. As we stated previously in this opinion, "counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." (Internal quotation marks omitted.) *Jordan* v. *Commissioner of Correction*, supra, 197 Conn. App. 832. The "strong presumption of professional competence extends to counsel's investigative efforts . . . ." (Citation omitted.) Id., 834; see also *Shaheer* v. *Commissioner of Correction*, Superior Court, judicial district of Tolland, Docket No. CV-17-4009009-S (October 21, 2019) (reprinted at 207 Conn. App. 454, 472–73, 262 A.3d 158) (petitioner did not establish claim that trial counsel did not investigate witness when evidence showed that trial counsel did contact witness), aff'd, 207 Conn. App. 449, 262 A.3d 152, cert. denied, 340 Conn. 903, 263 A.3d 388 (2021). Accordingly, in light of the strong presumption of competence that we must afford to Conway and, given that the testimony

at the habeas trial demonstrates that Conway had contacted Morales prior to the criminal trial and that he would not have gone to trial without first evaluating any potential witness who could assist the defense, we conclude that the court's finding that Conway had investigated Morales as a potential witness is not clearly erroneous and is supported by the record.

Next, the petitioner challenges the habeas court's determination that Conway was not deficient in failing to call Morales as a witness. Specifically, he argues that the record does not support the habeas court's determination that Conway decided not to call Morales to testify because her testimony would not have been helpful. In support of this claim, the petitioner, again, points to the fact that Conway could not recall the reason why he failed to have Morales testify. He also argues that Morales' testimony "would have been extremely helpful to the petitioner in casting doubt on the testimony of Cornelius and Hayes."[7] We are not persuaded.

When Conway was asked at the habeas trial if he recalled making a decision not to call Morales to testify, he responded: "Well, she did not testify. She was available, no doubt about it. If I had thought that she would have been helpful at the trial, I would have called her." It reasonably can be inferred from his statements that, because Conway did not call Morales as a witness, he must have determined that her testimony would not have been helpful. Thus, there is a basis in the record for the court's finding in that regard, and the petitioner has not demonstrated otherwise. Moreover, when Conway was asked why he had decided not to use Morales' testimony at the criminal trial, he answered that, after he had reviewed a small portion of her statements to the police, he "didn't see what she added to the equation . . . ." He further testified: "I mean, she had a relationship with this guy, Ant, who was at the scene, had a child by him. He takes this gun that's there; it's a different caliber than the gun that was used in the case. It just . . . wasn't going to be a basis for, like, third-party culpability . . . . So, you know, I didn't want there to be a sideshow when the whole . . . issue here is . . . the lack of credibility of . . . Cornelius and . . . Hayes."

Furthermore, when Conway was asked specifically whether he had considered using Morales' testimony to undermine the credibility of Cornelius or any other state's witness, or whether he had any recollection of evaluating Morales for that purpose, he replied: "I would [have] absolutely . . . looked at that . . . and for some reason I'm thinking that there may have been . . . something in her . . . statement or in . . . what she witnessed that may have done that. It's starting to come back to me a little bit. And I can't answer exactly what it was, but there was something about her testi-

mony; I think that's why I believe I did speak to her, that was—it was a double-edged sword. . . . I seem to remember that there was something, and it—it eludes me as I sit here today . . . but it could have [been something that] outweighed what she had to say, and that . . . may very well have been the reason why I didn't . . . bring her on." Thus, according to Conway, even though there might have been some positive value to calling Morales as a witness, that was outweighed by the negative effect her testimony may have had on the petitioner's case. Conway's testimony suggests that he made a strategic decision not to call Morales as a witness at the petitioner's criminal trial. Such strategic choices made by counsel are "virtually unchallengeable" when "made after thorough investigation of law and facts relevant to plausible options . . . ." (Emphasis omitted; internal quotation marks omitted.) *Jordan* v. *Commissioner of Correction*, supra, 197 Conn. App. 832.

The petitioner makes much of the fact that Conway could not recall the exact reason for not calling Morales as a witness. That alone, however, does not demonstrate deficient performance by Conway, nor is it sufficient to overcome the presumption of competence afforded to counsel. As this court previously has stated, "[t]ime inevitably fogs the memory of busy attorneys. That inevitability does not reverse the *Strickland* presumption of effective performance. Without evidence establishing that counsel's strategy arose from the vagaries of ignorance, inattention or ineptitude . . . *Strickland*'s strong presumption must stand. . . . *Williams* v. *Commissioner of Correction*, 177 Conn. App. 321, 333, 175 A.3d 565, cert. denied, 327 Conn. 990, 175 A.3d 563 (2017); see also *Rodriquez* v. *Commissioner of Correction*, 35 Conn. App. 527, 536–37, 646 A.2d 919 (fact that attorney could not recall specifically informing petitioner of right to testify did not establish that he never told petitioner of his right to testify and was not sufficient, by itself, to demonstrate deficient performance), cert. denied, 231 Conn. 935, 650 A.2d 172 (1994)." (Internal quotation marks omitted.) *Coltherst* v. *Commissioner of Correction*, 208 Conn. App. 470, 483, 264 A.3d 1080 (2021), cert. denied, 340 Conn. 920, 267 A.3d 857 (2022); see also id. (petitioner failed to demonstrate deficient performance when, although trial counsel could not recall what specific advice he may have given petitioner regarding whether petitioner should testify, counsel did testify as to what he normally would do in advising criminal defendant about whether to testify, and habeas court found that testimony credible).

As a reviewing court, we must "properly apply the strong presumption of competence that *Strickland* mandates" and are "required not simply to give [trial counsel] the benefit of the doubt . . . but to affirmatively entertain the range of possible reasons [that]

counsel may have had for proceeding as [he] did." (Emphasis omitted; internal quotation marks omitted.) *Jordan* v. *Commissioner of Correction*, supra, 197 Conn. App. 834. Moreover, "[w]hether to call a particular witness at trial . . . is a tactical decision for defense counsel, and, to the extent that the decision 'might be considered sound trial strategy,' it cannot be the basis of a finding of deficient performance." Id., 855; see also *Meletrich* v. *Commissioner of Correction*, supra, 178 Conn. App. 278 ("failure of defense counsel to call a potential defense witness does not constitute ineffective assistance unless there is some showing that the testimony would have been helpful in establishing the asserted defense" (internal quotation marks omitted)). As Conway's testimony suggests, there were a number of possible reasons as to why Conway did not have Morales testify at the petitioner's criminal trial. First, he could have determined that her testimony would not have been helpful to the defense, as he referred to her potential testimony as a "double-edged sword" and stated that he did not think that "she added anything to the equation." He also recalled being concerned that there was something negative in her potential testimony that outweighed any value it may have brought to the case.

Specifically, although Morales claimed that she did not see the petitioner on the day of the shooting, another witness, McKenney Davis, told the police that the petitioner and Morales were together that day. Furthermore, Morales' physical description of the shooter as being "slim . . . maybe, like, five feet, nine inches, five feet, ten inches," matched the petitioner's physical characteristics. Morales also claimed that the shooting happened midday when it actually happened at 9:46 p.m. Additionally, Conway was able to bring out in his cross-examination of one of the New Haven detectives details of Morales' police statements, including her description of the clothing she saw the two assailants wearing.

Second, Conway reasonably could have determined that Morales' testimony might have distracted the jury from the central issue of the case, namely, the credibility of Cornelius and Hayes, and the defense theory that they intentionally had misidentified the petitioner and fabricated their testimony to satisfy a grudge against him. Conway also reasonably could have determined that Morales' testimony would not have helped the defense because it was not sufficient to support a theory of third-party culpability.

We conclude that these possible strategic reasons that might have supported Conway's decision not to call Morales to testify were objectively reasonable, as Conway reasonably could have concluded that the benefit of presenting Morales' testimony "was outweighed by any damaging effect it might have." (Internal quotation marks omitted.) *Inglis* v. *Commissioner of Correc-*

tion, supra, 213 Conn. App. 513.

Accordingly, we conclude that the habeas court properly determined that the petitioner had failed to meet his burden of proving that Conway performed deficiently by failing to call Morales as a defense witness, as the petitioner failed to present evidence sufficient to overcome the presumption that Conway's decision not to call Morales as a defense witness was made on the basis of strategic reasons that were objectively reasonable.

The judgment is affirmed.

In this opinion the other judges concurred.

[1] See footnote 6 of this opinion.

[2] The petitioner also had been charged with violation of probation, which was tried to the court as well. The court found that the petitioner had violated his probation.

[3] The petitioner filed a direct appeal from his criminal conviction, after which his appointed appellate counsel filed a motion to withdraw as appellate counsel, which was granted by the trial court, on the ground that an appeal in the case would be wholly frivolous. Subsequently, our Supreme Court dismissed the petitioner's direct appeal as a result of his failure to file an appearance in lieu of counsel or an appellate brief. See *State* v. *Godfrey-Hill*, Docket No. SC 19939 (Conn. April 10, 2019).

[4] The petitioner also alleged that Conway was deficient because he (1) failed to investigate or interview, to call as witnesses, and to develop a defense utilizing the statements of four additional witnesses, (2) failed to raise a third-party culpability defense as to Paige, and (3) failed to preserve the petitioner's appellate rights, and/or failed to preserve the petitioner's right to a meaningful appeal. The habeas court deemed the first and third claims abandoned and rejected on the merits the petitioner's second claim. Because the petitioner has not challenged any of those decisions on appeal, any issues relating thereto are not before us in this appeal.

[5] The habeas court also concluded that the petitioner failed to sustain his burden of proving his claim that Conway was ineffective by failing to raise a third-party culpability defense concerning Paige. See footnote 4 of this opinion.

[6] On appeal, the petitioner also challenges the court's conclusion that he failed to demonstrate that he was prejudiced by Conway's alleged deficiencies. Because we agree with the habeas court that the petitioner failed to meet his burden under the performance prong of *Strickland*, we need not address the petitioner's argument as to the prejudice prong. See *Coltherst* v. *Commissioner of Correction*, 208 Conn. App. 470, 484 n.4, 264 A.3d 1080 (2021) (in light of petitioner's failure to demonstrate deficient performance by trial counsel, Appellate Court did not need to address prejudice prong of *Strickland* test), cert. denied, 340 Conn. 920, 267 A.3d 857 (2022); see also *Lance W.* v. *Commissioner of Correction*, 204 Conn. App. 346, 355, 251 A.3d 619 ("[i]n its analysis, a reviewing court may look to the performance prong or to the prejudice prong, and the petitioner's failure to prove either is fatal to a habeas petition" (internal quotation marks omitted)), cert. denied, 337 Conn. 902, 252 A.3d 363 (2021).

[7] We note that the petitioner also argues in his principal appellate brief that "Morales was a neutral witness whose testimony contradicted the testimony of the state's two chief witnesses on several key points and whose testimony [did] not interfere with counsel's planned defense." Those key points included "the number of assailants, their clothing and appearance, and the presence of the petitioner near the scene prior to the shooting." The petitioner cites *Bryant* v. *Commissioner of Correction*, 290 Conn. 502, 964 A.2d 1186, cert. denied sub nom. *Murphy* v. *Bryant*, 558 U.S. 938, 130 S. Ct. 259, 175 L. Ed. 2d 242 (2009), for the proposition that, "in circumstances that largely involve a credibility contest . . . the testimony of neutral, disinterested witnesses is exceedingly important." (Internal quotation marks omitted.) Id., 518. We find this claim unavailing, as the record shows that Morales knew and was acquainted with the petitioner and had a child in common with Paige. See *Sanchez* v. *Commissioner of Correction*, 138 Conn. App. 594, 600, 53 A.3d 1031 (2012) (completely disinterested witness is one who does not know and is not in any way acquainted or associated with

petitioner), aff'd, 314 Conn. 585, 103 A.3d 954 (2014).