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JASON A. ROMAN *v.* COMMISSIONER OF CORRECTION (AC 45971)

Cradle, Suarez and Flynn, Js.

Syllabus

The petitioner, who had been convicted of assault of public safety personnel and who had been found to be a persistent felony offender, sought a writ of habeas corpus, claiming that his trial counsel, I, and his counsel on direct appeal, R, each rendered ineffective assistance. The habeas court denied the petition, and, on the granting of certification, the petitioner appealed to this court. *Held*:

1. The habeas court did not err in concluding that I did not provide ineffective assistance:

   a. This court declined to review the petitioner's claims that I failed to investigate mitigation during the plea negotiation process regarding the petitioner's mental health, that he failed to investigate and prepare a defense regarding the petitioner's mental state at the time of the offense, and that he failed to present mitigation at sentencing, those claims having been inadequately briefed; the claims consisted of bare allegations of deficient performance and failed to assert any specific error as to the habeas court's findings of facts or its application of facts to the law and, thus, were deemed to be abandoned.

   b. The petitioner could not prevail on his claim that I failed to advise him appropriately about the offenses charged, the elements of those offenses, the risk of exposure, and the likelihood of success at trial: the petitioner's claim was inadequately briefed because he failed to assert any specific claim of error by the habeas court; moreover, even if this court were to interpret the petitioner's argument as an implied challenge to the habeas court's findings, in making that argument the petitioner relied on portions of his testimony that the habeas court determined not to be credible, and it was not this court's role to reweigh the evidenced adduced at the habeas trial; furthermore, the one specific claim of error that the petitioner asserted within this portion of his argument, namely, that the habeas court's finding that credited I's testimony that there was no breakdown in communication or in the attorney-client relationship was clearly erroneous in light of the fact that the petitioner sought to remove I as counsel immediately before the trial, failed because, as the sole arbiter of the credibility of witnesses, the habeas court was free to believe I's testimony.

   c. The petitioner's claim that I's representation was deficient as it related to the plea offer was unavailing: even if this court were to broadly construe the petitioner's claim as challenging the habeas court's conclusion that the petitioner failed to prove deficient performance by I, the habeas court credited I's testimony that the petitioner considered the plea offer but did not want to accept it, and there was ample evidence in the record demonstrating that the petitioner had opportunities to accept a plea agreement yet affirmatively declined to do so; accordingly, it was reasonable for I to defer to the petitioner's decision to go to trial.

   d. The habeas court properly found that the petitioner did not establish that I performed deficiently by failing to request a more specific jury instruction regarding the scope of law enforcement's performance of duties; the trial court's instruction satisfied the requirements set forth in *State* v. *Davis* (261 Conn. 553) and *State* v. *Baptiste* (133 Conn. App. 614), as the court's detailed instruction provided that the state was required to establish that the police officer had been acting in the performance of his duties and included an instruction regarding reasonable force.

   e. The petitioner could not prevail on his claims that I provided ineffective assistance by failing to request a continuance of the trial on the part B information, which related to the charge of being a persistent felony offender, and by failing to request a competency evaluation: the habeas court credited I's testimony, which it was entitled to do, that the petitioner was able to engage in the part B trial and understood what the findings were going to be, that I believed that a competency evaluation could

negatively impact the petitioner if it indicated that the petitioner was choosing not to assist counsel, and that I did not request a continuance to avoid the adverse consequence of anyone believing that the petitioner was trying to delay the inevitable; moreover, the petitioner did not meet his burden of overcoming the strong presumption that I's trial strategy was reasonable.

2. The habeas court properly rejected the petitioner's ineffective assistance claim as to R with respect to his failure to present a claim regarding the petitioner's mental state and competency on direct appeal: the petitioner did not call R to testify at the habeas trial to explain why he did not present arguments regarding the petitioner's mental health and competence on direct appeal and did not offer any other evidence of R's reasons for choosing which claims to raise on direct appeal; moreover, the petitioner did not cite to any legal authority in support of his claim that R's testimony at the habeas trial was unnecessary because R had acknowledged at an earlier habeas hearing, when he was representing the petitioner, that his conflict in representing the petitioner both on direct appeal and at the habeas trial would preclude him from raising the claim that the issue of the petitioner's mental health could have been raised on direct appeal, nor did the petitioner provide any legal analysis as to what the claim would have entailed or how it would have affected the result of his appeal; accordingly, the petitioner did not meet his burden of overcoming the strong presumption that R exercised reasonable professional judgment.

Argued September 20—officially released December 26, 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.*

Judie Marshall, assigned counsel, for the appellant (petitioner).

Melissa L. Streeto, senior assistant state's attorney, with whom, on the brief, were *Christian M. Watson*, state's attorney, *Angela R. Macchiarulo*, supervisory assistant state's attorney, *Michael J. Proto*, senior assistant state's attorney, and *Sarah Hanna*, former senior assistant state's attorney, for the appellee (respondent).

Opinion

CRADLE, J. The petitioner, Jason A. Roman, appeals following the granting of his petition for certification to appeal from the judgment of the habeas court denying his petition for a writ of habeas corpus. The petitioner contends that the habeas court improperly rejected his claims of ineffective assistance on the part of both his criminal trial counsel and his appellate counsel. We affirm the judgment of the habeas court.

The following facts, as set forth by the habeas court, and procedural history are relevant to the petitioner's claims on appeal. "The petitioner was charged with assault [of] public safety [personnel] in violation of General Statutes § 53a-167c (a) (1).[1] In a separate part B information, the petitioner was also charged with being a persistent felony offender in violation of General Statutes § 53a-40 (g) and (o).[2] The underlying charges arose from an incident on May 2, 2014, the facts of which are not in dispute. New Britain police officers were dispatched to a reported potential domestic incident or protective order violation. When the police officers arrived at [the site of the incident], the petitioner and his mother . . . were in a white Toyota parked near the front of [the site]. A police officer investigating the reported dispute or violation went to the vehicle and asked [the petitioner] for his motor vehicle operator's license. [The petitioner] was also asked to turn off the car engine. [The petitioner] gave the police officer his driver's license and the police officer returned to his vehicle to contact dispatch to ascertain if there were any outstanding warrants at that time. [The petitioner's] mother exited the vehicle at some point and sat on the sidewalk nearby. The police determined that [the petitioner] was not involved in the reported domestic dispute or protective order violation; however, the police were informed that there was a paperless arrest warrant for [the petitioner]. A police officer approached the vehicle and asked [the petitioner] to step out of the vehicle. [The petitioner] started the engine, which resulted in the police officer reaching inside the vehicle in an attempt to turn off the ignition. Police officers yelled 'stop' repeatedly but [the petitioner] drove off and the police officer was pulled along for about thirty to forty feet before he was able to free himself. [The petitioner] was subsequently arrested and charged." (Footnotes added.)

The petitioner was first represented by Attorney James Hardy, who entered an appearance at the petitioner's arraignment on August 26, 2014. On April 29, 2015, the petitioner indicated on the record his intention to replace Hardy with new counsel.

After the court granted the petitioner multiple continuances to secure new counsel, Attorney William Gerace filed an appearance in lieu of Hardy's appearance on

July 20, 2015. On November 17, 2015, the petitioner was presented with a plea offer of six years of incarceration followed by four years of special parole, with the right to argue for a lesser sentence. After the court explained the offer, including the potential repercussions of going to trial, and gave the petitioner time to consider the offer, the petitioner entered not guilty pleas and elected a trial by jury.

On September 27, 2016, Gerace moved to withdraw his appearance on the basis that the petitioner had not responded to him or met with him. During a court appearance on October 17, 2016, the petitioner stated that he did not "trust [Gerace] enough to go to trial with him," and the court granted Gerace's motion to withdraw his appearance. On the same day, the court appointed Michael Isko, a public defender, to represent the petitioner. On April 24, 2017, a hearing was held to determine the status of the petitioner's case and to schedule a date for trial to commence. At the hearing, the petitioner was asked by the court whether he wanted a trial to a jury, to a court, or whether he wanted to resolve his case by way of a plea agreement. The petitioner was presented with a new plea offer of four years of incarceration. Isko represented that, if the petitioner were to decide to go to trial, he intended to proceed with a jury trial. The petitioner then asked for a continuance "to be able to speak to his family about the new offer." The court, *Alexander*, *J.*, gave him until April 26, 2017, to accept the offer or to reject it and begin jury selection. On April 26, 2017, the petitioner appeared before Judge Alexander because he "indicated that [he] had some things [he] wanted to say on the record . . . ." The petitioner asked to replace Isko with a special public defender, alleging that Isko was ineffective for not moving forward with a medical expert and not investigating the side effects of a medication he was taking at the time of the incident. The court informed the petitioner that he could seek new counsel but declined to continue the case further. Isko clarified that he had the petitioner's "[medical and mental health] records from 2014, when this incident occurred," and stated that he would receive additional records before the start of evidence. To address the petitioner's concerns, the court requested that Isko "make sure . . . [t]hat those records [would] be available [and] . . . analyzed for entry, as [the petitioner] want[ed] that as part of his defense . . . ." Jury selection commenced that day with Isko representing the petitioner.

During jury selection, the court, *Keegan*, *J.*, explained that the part B information "enhances the penalty if [the petitioner were] convicted for the underlying offense" to a "twenty year felony instead of a ten year felony . . . ." Isko confirmed that, even though he "[had not received] the part B [information] until [that] morning," he had "advised [the petitioner] of the potential of the part B [information] in that effect." The peti-

tioner addressed the court to indicate that he was aware of the part B information and understood its potential consequences.

Trial commenced on May 1, 2017, with Judge Keegan presiding. On May 2, 2017, before the commencement of the second day of trial, the petitioner appeared before Judge Alexander who confirmed that Isko had received the additional records discussed on April 26, 2017, and that Isko had been able to present testimony in the petitioner's defense. Judge Alexander also informed the petitioner that it would be his decision whether to proceed with a jury trial or a bench trial if the part B information were to "[become] an issue . . . ." Isko stated that he had "not discussed that with [the petitioner] as of yet." Trial continued, and the jury subsequently found the petitioner guilty of assault of public safety personnel. Following the jury's verdict, Isko indicated to the court, *Keegan, J.*, that he had not yet spoken with the petitioner about whether he wanted to have a bench trial or a jury trial on the part B information and asked for a short recess in order to do so. Thereafter, during a canvass by a different judge, the court, *D'Addabbo, J.*, declined to allow the petitioner to waive his right to a jury trial, finding that "[the petitioner was] not understanding what [he was] doing."[3]

The same day, the petitioner appeared again before Judge Keegan and a jury trial commenced on the part B information. The jury found the petitioner guilty of being a persistent felony offender and the court accepted the verdict. Thereafter, the court ordered a presentence investigation report and scheduled a date for sentencing. On July 7, 2017, the court, *Keegan, J.*, conducted a sentencing hearing in which the petitioner received a total effective sentence of twelve years of incarceration.[4]

Represented by Attorney David Reich, the petitioner appealed from the judgment of the trial court, which this court affirmed. *State* v. *Roman*, 187 Conn. App. 903, 200 A.3d 226, cert. denied, 331 Conn. 931, 208 A.3d 279 (2019).

On July 29, 2021, the petitioner filed his sixth amended petition for a writ of habeas corpus, alleging eight counts of ineffective assistance as to Isko and one count of ineffective assistance as to Reich.[5] At the habeas trial on March 1 and April 7, 2022, the petitioner, through counsel, offered into evidence his medical records and presented the testimony of three witnesses: Isko, a mitigation specialist, and himself. The petitioner did not call Reich, his direct appellate counsel, to testify. On August 23, 2022, the habeas court, *M. Murphy, J.*, issued a memorandum of decision in which it concluded that the petitioner had failed to prove that Isko and Reich had provided ineffective assistance and denied his petition for a writ of habeas corpus.[6] The habeas court thereafter granted certification to appeal, and this

appeal followed. Additional facts and procedural history will be provided as necessary.

We begin by setting forth the standard of review and the following relevant legal principles. "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.) *Lance W.* v. *Commissioner of Correction*, 204 Conn. App. 346, 354, 251 A.3d 619, cert. denied, 337 Conn. 902, 252 A.3d 363 (2021). "[T]his court does not retry the case or evaluate the credibility of the witnesses. . . . Rather, we must defer to the [trier of fact's] assessment of the credibility of the witnesses based on its firsthand observation of their conduct, demeanor and attitude. . . . The habeas judge, as the trier of facts, is the sole arbiter of the credibility of witnesses and the weight to be given to their testimony. . . . Thus, the court's factual findings are entitled to great weight. . . . Furthermore, [a] finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." (Internal quotation marks omitted.) *Collins* v. *Commissioner of Correction*, 202 Conn. App. 789, 812, 246 A.3d 1047, cert. denied, 336 Conn. 931, 248 A.3d 1 (2021). On the other hand, "[t]he application of the habeas court's factual findings to the pertinent legal standard . . . presents a mixed question of law and fact, which is subject to plenary review." (Internal quotation marks omitted.) *Spearman* v. *Commissioner of Correction*, 164 Conn. App. 530, 537, 138 A.3d 378, cert. denied, 321 Conn. 923, 138 A.3d 284 (2016).

"In *Strickland* v. *Washington*, [466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)], the United States Supreme Court established that for a petitioner to prevail on a claim of ineffective assistance of counsel, he must show that counsel's assistance was so defective as to require reversal of [the] conviction . . . . That requires the petitioner to show (1) that counsel's performance was deficient and (2) that the deficient performance prejudiced the defense. . . . Unless a [petitioner] makes both showings, it cannot be said that the conviction . . . resulted from a breakdown in the adversary process that renders the result unreliable. . . . Because both prongs . . . must be established for a habeas petitioner to prevail, a court may dismiss a petitioner's claim if he fails to meet either prong. . . .

"To satisfy the performance prong [of the *Strickland* test] the petitioner must demonstrate that his attorney's

representation was not reasonably competent or within the range of competence displayed by lawyers with ordinary training and skill in the criminal law. . . . [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." (Internal quotation marks omitted.) *Lance W.* v. *Commissioner of Correction*, supra, 204 Conn. App. 354–55. "[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." (Internal quotation marks omitted.) *Diaz* v. *Commissioner of Correction*, 214 Conn. App. 199, 215–16, 280 A.3d 526, cert. denied, 345 Conn. 967, 285 A.3d 736 (2022).

"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. . . . A reasonable probability is a probability sufficient to undermine confidence in the outcome. . . . In 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.) *Lance W.* v. *Commissioner of Correction*, supra, 204 Conn. App. 355.

Finally, "[w]e repeatedly have stated that [w]e are not required to review issues that have been improperly presented to this court through an inadequate brief. . . . Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly. . . . [F]or this court judiciously and efficiently to consider claims of error raised on appeal . . . the parties must clearly and fully set forth their arguments in their briefs. . . . The parties may not merely cite a legal principle without analyzing the relationship between the facts of the case and the law cited." (Internal quotation marks omitted.) *Robb* v. *Connecticut Board of Veterinary Medicine*, 204 Conn. App. 595, 611, 254 A.3d 915, cert. denied, 338 Conn. 911, 259 A.3d 654 (2021). "[When] a claim is asserted in the statement of issues but thereafter receives only cursory attention in the brief without substantive discussion or citation of authorities, it is deemed to be abandoned." (Internal quotation marks omitted.) *Burton* v. *Dept. of Environmental Protection*, 337 Conn. 781, 803, 256 A.3d 655 (2021).

On appeal, the petitioner essentially sets forth the same allegations of ineffective assistance of counsel as he did before the habeas court. He claims that Isko

failed (1) to advise him appropriately about the offenses charged, the elements of those offenses, the risk of exposure, and the likelihood of success at trial; (2) to advise him appropriately about the benefits of accepting the plea offer and ensure that he had an opportunity to accept or reject the plea offer on the record; (3) to investigate mitigation during the plea negotiation process regarding the petitioner's mental health; (4) to investigate and prepare a defense regarding the petitioner's mental state at the time of the offense; (5) to present mitigation at sentencing; (6) to request a more specific jury instruction on the scope of law enforcement's performance of duties; (7) to request a continuance on the part B trial; and (8) to request a competency evaluation. The petitioner also claims that the habeas court erred in finding that he failed to demonstrate ineffective assistance of his direct appellate counsel, Reich, because Reich failed to present a claim regarding the petitioner's mental state and competency on direct appeal.

We need not address all of the petitioner's numerous claims. Because the petitioner has failed to adequately brief claims three, four, and five as to Isko, we deem those claims abandoned and decline to review them. See id. With regard to claims three, four and five, the petitioner frames his arguments in a manner that asks this court to find that there had been ineffective assistance of trial counsel, although he neglects to allege any error on the part of the habeas court. It is well established that this court may not review a claim of ineffective assistance of counsel in the absence of claimed error on the part of the habeas court. *Artiaco* v. *Commissioner of Correction*, 180 Conn. App. 243, 249–50, 182 A.3d 1208 (holding that petitioner's claims were indiscernible and, therefore, unreviewable when he "fail[ed] to identify which of the habeas court's determinations he [was] challenging"), cert. denied, 328 Conn. 931, 184 A.3d 758 (2018). Although this court may reframe poorly framed claims consistent with the manner in which they are analyzed in an appellate brief; see *Doe* v. *Quinnipiac University*, 218 Conn. App. 170, 173 n.4, 291 A.3d 153 (2023) (reframing "the claims in this appeal to more accurately reflect the arguments set forth in the body of the plaintiff's brief"); the petitioner's analysis of these claims in his brief is consistent with the manner in which they are framed. His arguments consist of bare allegations of deficient performance without challenging the factual or legal grounds on which the court relied in rejecting the allegations. The petitioner in claims three, four and five has failed to assert specific error as to the habeas court's findings of fact or its application of facts to the law. Resultantly, these claims are inadequately briefed and we decline to review them.[7] See *Cohen* v. *Rossi*, 346 Conn. 642, 689, 295 A.3d 75 (2023) (declining to review briefed claims that "[left our Supreme Court] unable to ascertain exactly what alleged error the [petitioner was] claim-

ing").

Although the petitioner's remaining claims of ineffective assistance of counsel suffer from the same infirmities as those set forth in the preceding paragraph, we can identify within them a few specific claims of error. We therefore address the petitioner's remaining claims in turn.[8]

I

We first address the petitioner's claim that the habeas court erred in concluding that Isko did not provide ineffective assistance.

A

The petitioner first claims that Isko failed to advise him appropriately about the offenses charged, the elements of those offenses, the risk of exposure, and the likelihood of success at trial. We are not persuaded.

In addressing this claim, the habeas court found that "Isko met with [the petitioner] at length to discuss the trial and his vulnerabilities at trial. Isko described [the petitioner] as being resistant to his assessment of the chances of prevailing at trial. Nevertheless, Isko made an extra effort to explain to [the petitioner] the trial and how different issues would likely play out. . . . Isko never thought that there was a breakdown in communications between him and [the petitioner]. Isko had discussions with [the petitioner], who he described as being able to freely and easily communicate with him, took his time to carefully listen and understand [the petitioner's] concerns, and adapted [the petitioner's] view of the case as the trial strategy. . . . Isko described [the petitioner] as attentive and concerned about the trial." The habeas court also found that "Isko discussed the part B information at length with [the petitioner]. The transcripts from the underlying criminal proceedings reflect that the part B information issue arose regularly and [the petitioner] acknowledged that he understood the courts' explanations about the part B information." Even though "Isko acknowledged that . . . [the petitioner] was anxious . . . about the guilty verdict" and the petitioner "was unable to complete the court's canvass to determine if he could waive the jury trial on the part B information . . . Isko described [the petitioner] as being able to communicate with him. Isko again explained the part B process and jury waiver to [the petitioner] . . . ." According to the habeas court, "Isko described [the petitioner] as being able to make his feelings known to Isko and as being able to assist his counsel. Isko confirmed that he discussed with [the petitioner] the charged offense, its elements, what the state would need to prove, the evidence the state intended to present, and the strength of the evidence." The habeas court recounted that the petitioner testified that he "did not approve of Isko and did not feel like talking with him because he was abrasive. [The peti-

tioner] felt that Isko did not adequately explain the evidence against him . . . [and the petitioner] did not understand the part B process." The habeas court credited Isko's testimony over the testimony of the petitioner and held that "[t]his basis for ineffective assistance [of counsel] is denied because there is no credible evidence of deficient performance."

As in other areas of his brief, the petitioner's argument that Isko failed to advise him appropriately about the offenses charged, the elements of those offenses, the risk of exposure, and the likelihood of success at trial cannot be entertained by this court without a claim that the habeas court was clearly erroneous as to one of its specific findings or determinations. Moreover, the petitioner again references portions of his testimony in support of this argument and ignores the habeas court's related credibility determinations. In the absence of any specific claim of error by the habeas court, the petitioner's claim is inadequately briefed. See *Cohen* v. *Rossi*, supra, 346 Conn. 689. Even if we were to liberally interpret his argument as an implied challenge to the habeas court's findings, it is not our role to reweigh the evidence adduced at the habeas trial.

The petitioner's one specific claim of error within this portion of his argument fails for the same reason. He claims that "[t]he habeas court's finding that credited [Isko's] testimony that there was no breakdown in communication or the attorney-client relationship is clearly erroneous in light of the fact that the petitioner sought to remove him as counsel immediately before trial." Because the habeas court is the sole arbiter of the credibility of witnesses; see *Collins* v. *Commissioner of Correction*, supra, 202 Conn. App. 812; it is entitled to this court's deference as to which party's testimony to credit. Thus, the habeas court was free to believe that "Isko never thought that there was a breakdown in communications . . . ." Accordingly, the petitioner's claim fails.

B

The petitioner next argues that Isko's representation of him was deficient as it related to the plea offer. As to this claim, the habeas court found that "Isko described [the petitioner] as being persistent about his decision to take the case to trial and not plead guilty. [The petitioner] neither accepted the initial court indicated sentence nor the modified offer. Isko testified that [the petitioner] considered the offer but did not want to accept it." The habeas court determined that "[t]he credible evidence presented by Isko leads . . . to the conclusion that [the petitioner] wanted a jury trial instead of resolving the matter with a plea agreement" and that the petitioner had "failed to prove deficient performance by Isko."

The petitioner argues that "[t]he habeas court erred

in finding there was no deficient performance because there is no reason the petitioner was never presented to the court to accept or reject the [plea] offer. The habeas court's finding that [Isko] presented credible evidence that the petitioner wanted a jury trial instead of a [guilty] plea was clearly erroneous. Not only did the petitioner testify unequivocally [that] he wanted the plea offer, but the trial transcripts make clear that the petitioner required time to consider the offer, as evidence[d] by the continuance allowing him to do so."

Even if we were to broadly construe this claim challenging the habeas court's conclusion that the petitioner failed to prove deficient performance by Isko, we are not persuaded. The habeas court credited Isko's testimony that the petitioner "considered the [plea] offer but did not want to accept it." See *Collins* v. *Commissioner of Correction*, supra, 202 Conn. App. 812. Moreover, there is ample evidence in the record that the petitioner had opportunities to accept a plea agreement yet affirmatively declined to do so. Consistent with well established principles, it was reasonable for Isko to defer to his client's decision to go to trial. See *Maia* v. *Commissioner of Correction*, 347 Conn. 449, 463, 298 A.3d 588 (2023) (explaining that, although defense counsel "must give the client the benefit of counsel's professional advice on this crucial decision of whether to plead guilty . . . the ultimate decision whether to plead guilty must be made by the defendant" (internal quotation marks omitted)). We, therefore, find the petitioner's claim unavailing.

C

The petitioner next claims that Isko rendered deficient performance "in failing to request a more specific jury instruction on the scope of law enforcement's performance of duties." The habeas court rejected this claim, finding that "[t]he trial court's jury charge . . . described all the elements of assault of public safety personnel with sufficient detail" and that the petitioner "ha[d] not established that the instruction given failed to properly guide the jury given the facts established at the criminal trial." Although the petitioner, again, fails to claim specific error on the part of the habeas court, we review this claim because it essentially challenges a legal determination of the habeas court as to the sufficiency of the jury instruction.

The following additional procedural history is relevant to this claim. At trial on May 2, 2017, the court, *Keegan*, *J.*, instructed the jury on the elements of the charge of assault of public safety personnel.[9] The petitioner challenged the sufficiency of this jury instruction on direct appeal, arguing that the court should have instructed the jury "that it needed to weigh whether the use of force was necessary considering [the officer's] own safety and that of the general public. . . . [The] instruction does not relay to the jury what factors

the court should use in determining how to determine whether the use of force was reasonable." (Citation omitted.) This court affirmed the trial court's judgment without elaboration. *State* v. *Roman*, supra, 187 Conn. App. 903.

With regard to jury instructions addressing the second element of § 53a-167c (a) (1), our Supreme Court has held that a trial court must provide "a detailed instruction that the state must establish that the police officer had been acting in the performance of his duty and that a person is not required to submit to the unlawful use of physical force during the course of an arrest . . . ." *State* v. *Davis*, 261 Conn. 553, 571, 804 A.2d 781 (2002). This court further held that, "[b]ecause reasonable force is an inherent component of the performance of an officer's duties . . . an instruction regarding reasonable force is required to comply with the standard set forth in *Davis*." *State* v. *Baptiste*, 133 Conn. App. 614, 627, 36 A.3d 697 (2012), appeal dismissed, 310 Conn. 790, 83 A.3d 591 (2014).

In the present case, the trial court's jury instruction satisfies the requirements set forth in *Davis* and *Baptiste* because the court provided a detailed instruction that the state must establish that the police officer had been acting in the performance of his duties, including an instruction regarding reasonable force. Although this court declined to comment on this jury instruction in the petitioner's direct appeal; see *State* v. *Roman*, 187 Conn. App. 903; it did analyze an almost identical jury instruction in *State* v. *Nelson*, 144 Conn. App. 678, 694–95, 73 A.3d 811, cert. denied, 310 Conn. 935, 79 A.3d 888 (2013).[10] In *Nelson*, this court concluded, on the basis of a review of the entire charge, that "the court's jury instructions properly framed the issues and thus, sufficiently protected the defendant's rights to due process." Id., 695. On the basis of the foregoing, the habeas court properly found that the petitioner did not establish that Isko performed deficiently by failing to request a more specific charge.

D

Finally, as to Isko, the petitioner claims that Isko provided ineffective assistance by failing to request a continuance of the trial on the part B information and, furthermore, by failing to request a competency evaluation. The habeas court addressed these claims together, finding that "[the petitioner] acknowledge[d] that Isko did not think that a continuance would benefit him" but that "[the petitioner] glosse[d] over the fact that Isko never saw a basis for requesting a competency evaluation prior to the part B trial or at any other time he represented [the petitioner]." The habeas court ultimately concluded that "[the petitioner] ha[d] not shown that Isko rendered deficient performance for not requesting a continuance or requesting a competency evaluation prior to the part B trial, nor ha[d] [the peti-

tioner] shown that he suffered any prejudice."

The petitioner argues that "[t]he habeas court's finding that [Isko] did not render deficient performance because he did not see a basis for a continuance was clearly erroneous in light of the circumstances. While a continuance may or may not have changed the ultimate outcome of the case, counsel nevertheless had an obligation to ensure the petitioner was competent for his criminal proceedings and that he had a rational, as well as factual, understanding. The record demonstrates unequivocally that the petitioner did not."[11] In fact, according to Isko's testimony, the petitioner, at the time of the part B trial, "was able . . . to . . . engage. He understood what the findings were going to be. . . . [The petitioner] exhibited . . . very similar behavior as anyone who's just been found guilty would exhibit." Isko's testimony also reveals that he believed that a competency evaluation could negatively impact the petitioner, in case it were to show that the petitioner was "choosing not to" assist counsel. Isko testified that he did not request a continuance to avoid the similarly "adverse consequence of anyone believing [the petitioner] was trying to delay the inevitable." The habeas court credited Isko's testimony, and it was entitled to do so. Moreover, the petitioner has not met his burden of overcoming the strong presumption that Isko's trial strategy was reasonable. Accordingly, the petitioner's claims are unavailing.[12]

II

We now turn to the petitioner's claim that the habeas court erred in concluding that Reich, his appellate attorney on direct appeal, did not render ineffective assistance. In support of this claim, the petitioner argues that Reich failed "to present a claim regarding the petitioner's mental state and competency on direct appeal" when "[t]here was no objectively reasonable basis . . . not to do so." We are not persuaded.

The following additional procedural history is relevant to this claim. When the petitioner filed his initial petition for a writ of habeas corpus, Reich was still his attorney. The fifth amended habeas petition, which Reich filed, alleged Isko's ineffective assistance for, inter alia, not pursuing mitigation or defenses related to the petitioner's mental health at trial. At a hearing on November 9, 2020, the parties discussed a potential conflict of interest in Reich's representation of the petitioner at the habeas trial because of his previous role as the petitioner's appellate counsel. The court, *Oliver*, *J.*, asked Reich if he thought "certain [habeas] claims may be foreclosed" if he continued to represent the petitioner. Reich replied that he did, "especially the due process claim that . . . could have been brought forth when [the petitioner] . . . was not quite in his right mind and not able to engage the court in the part B [trial] . . . ." As a result, the court, *Oliver*, *J.*, removed

Reich as counsel, and the petitioner proceeded to the habeas trial with Attorney Judie Marshall, who filed a sixth amended petition on behalf of the petitioner, including a claim alleging that Reich was ineffective.

The habeas court, *M. Murphy, J.*, found that the petitioner presented no evidence of deficient performance or evidence that the outcome of the appeal would have been different but for any alleged deficiency. The court reasoned that, because Reich did not testify as to how he "selected issues to raise on appeal," the court "must presume . . . that Reich was reasonably competent as appellate counsel."

In this appeal before us, the petitioner makes only one cognizable appellate claim, that the habeas court's legal analysis was improper, arguing that "[i]t is not necessary to know how [Reich] selected issues on appeal . . . . Rather, this court need only look to the fact that [Reich] did not raise the issue on appeal, but believed there was a basis for a claim based on mental health, which is demonstrated by the amended petition he filed."

The petitioner alleges that "[Reich's] testimony was unnecessary, especially because he, at the November 9, 2020 habeas hearing, [admitted] that there was a due process claim regarding the petitioner's mental state prior to the part B trial that he could not raise against himself. . . . [Reich] acknowledged his conflict in representing the petitioner because it would preclude him from raising the claim that this could have been raised on appeal. The record demonstrates that the issue was not raised on direct appeal, but it could have been." (Citation omitted.)

The petitioner does not cite to any legal authority in support of his claim. Aside from alleging that Reich should have asserted a claim that he did not, the petitioner does not provide any legal analysis as to what that claim would have entailed or how it would have affected the result of the petitioner's appeal. "While an appellate advocate must provide effective assistance, he is not under an obligation to raise every conceivable issue." (Internal quotation marks omitted.) *McIver* v. *Warden*, 28 Conn. App. 195, 202, 612 A.2d 103, cert. denied, 224 Conn. 906, 615 A.2d 1048 (1992); see also *Moore* v. *Commissioner of Correction*, 119 Conn. App. 530, 540, 988 A.2d 881 (holding that appellate counsel "did not have to argue every colorable claim to render effective assistance"), cert. denied, 296 Conn. 902, 991 A.2d 1103 (2010). In *McIver*, "[t]he petitioner's appellate counsel selected for review those issues that he believed were strongest and most likely to result in reversal." *McIver* v. *Warden*, supra, 202–203.

Here, although Reich did not present arguments about the petitioner's mental health and competence on direct appeal, the petitioner did not call Reich to

testify at the habeas trial to explain why, and the petitioner did not offer any other evidence of Reich's reasons for choosing which claims to raise on direct appeal. In the absence of such evidence, the petitioner did not otherwise meet his burden of overcoming the strong presumption that Reich exercised reasonable professional judgment. See *Bush* v. *Commissioner of Correction*, 169 Conn. App. 540, 550, 151 A.3d 388 (2016) ("There is a strong presumption that counsel has rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. . . . Just as the decision of trial counsel not to object to certain evidence is a matter of trial tactics, not evidence of incompetency . . . the tactical decision of appellate counsel not to raise a particular claim is ordinarily a matter of appellate tactics, and not evidence of incompetency, in light of the presumption of reasonable professional judgment." (Internal quotation marks omitted.)), cert. denied, 324 Conn. 920, 157 A.3d 85 (2017); see also *Crocker* v. *Commissioner of Correction*, 220 Conn. App. 567, 585, 300 A.3d 607 ("although not automatically fatal to a petitioner's claim, failure to elicit testimony from counsel about trial strategy renders it less likely that the petitioner can prevail with respect to his burden to demonstrate deficient performance"), cert. denied, 348 Conn. 911, 303 A.3d 10 (2023). Accordingly, the court properly rejected the petitioner's ineffective assistance claim as to Reich.

The judgment is affirmed.

In this opinion the other judges concurred.

[1] Although § 53a-167c (a) has been amended since the time of the underlying incident; see Public Acts 2019, No. 19-108, § 8; Public Acts 2015, No. 15-211, § 15; those amendments have no bearing on the merits of this appeal. In the interest of simplicity, we refer to the current revision of § 53a-167c.

[2] We note that, between the time of the underlying incident in 2014 and the filing of the part B information in 2017, subsections (f) and (m) of General Statutes (Rev. to 2013) § 53a-40 were redesignated as subsections (g) and (o), respectively. Public Acts, Spec. Sess., June, 2015, No. 15-2, § 19. Although § 53a-40 (g) has been amended since the time of the filing of the part B information; see Public Acts 2021, No. 21-102, § 10; that amendment has no bearing on the merits of this appeal. In the interest of simplicity, we refer to the current revision of the statute.

[3] The following colloquy between Judge D'Addabbo and the petitioner transpired during the canvass:

"The Court: Okay. Does the medication [you take] in any way affect your ability to think?

"[The Petitioner]: At times, yes.

"The Court: Is it affecting your ability to think today?

"[The Petitioner]: I can't really determine that just for the simple fact of my emotional state at this point . . . .

"The Court: Do you understand what's going on today?

"[The Petitioner]: In a sense, yes.

"The Court: Okay. All right. Is anyone forcing you or threatening you in any way to change your election from a jury trial to a court trial?

"[The Petitioner]: I thought we already had the trial. . . .

"The Court: So, you understand what's going on here today?

"[The Petitioner]: Again, my emotions and my anxiety are kicking in right now. It's like I'm everywhere right now, you know? I'm sorry. . . . I really don't understand.

"The Court: Okay. Very well. We'll have a jury trial then. He doesn't understand. . . . He can't make it through a canvass and as a result we can't have a waiver of his right to a jury trial if he's not understanding what

he's doing."

[4] In September, 2022, the court, *Keegan*, *J.*, reduced the petitioner's sentence from twelve to ten years of incarceration.

[5] In that petition, the petitioner claimed that Isko was ineffective (1) because of a "breakdown in the attorney-client relationship which resulted in a lack of clear communication, including communication regarding the offenses charged, the elements of those offenses, the petitioner's risk of exposure at trial, the evidence against the petitioner, and the likelihood of success at trial"; (2) in failing "to meaningfully convey a plea offer to the petitioner and ensure [that] the petitioner had an opportunity to accept or reject that offer on the record"; (3) in failing "to investigate or present appropriate mitigation during the plea negotiation process"; (4) in failing "to investigate or prepare a defense regarding the petitioner's mental state at the time of the offense"; (5) in failing "to investigate or prepare and present mitigation at the petitioner's sentencing"; (6) in failing "to effectively request a jury instruction . . . on the scope of law enforcement's performance of duties and ensure the issue was appropriately preserved for appeal"; (7) in failing "to request a continuance prior to the part B trial given the petitioner's mental state at the time"; and (8) in failing "to request a competency evaluation prior to the part B trial given the petitioner's mental state at the time." The petitioner's claim against Reich at the habeas trial alleged that Reich was ineffective in failing "to raise a claim on appeal regarding the petitioner's mental state at the time of trial."

[6] The habeas court made findings, as to each of the petitioner's claims, that he had failed to prove that counsel's performance was deficient. The court made clear findings under the prejudice prong of the test established in *Strickland* v. *Washington*, 466 U.S. 648, 687, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984), only as to some of the petitioner's claims.

[7] Even if we were to liberally construe these as implicit claims that the habeas court's findings were erroneous, the petitioner's arguments are unavailing. He relies almost exclusively on evidence that he proffered at the habeas trial, which the habeas court explicitly discredited or found unpersuasive. It is axiomatic that the fact finder is free to accept or reject any of the evidence it chooses, and it is not the role of this court to reassess or reweigh that evidence. See *Barlow* v. *Commissioner of Correction*, 343 Conn. 347, 367–68, 273 A.3d 680 (2022) ("The court reiterate[d] the well settled principle that [an appellate court] must defer to the finder of fact's evaluation of the credibility of the witnesses that is based on its invaluable firsthand observation of their conduct, demeanor and attitude. . . . [The fact finder] is free to juxtapose conflicting versions of events and [to] determine which is more credible. . . . It is the [fact finder's] exclusive province to weigh the conflicting evidence and to determine the credibility of witnesses. . . . The [fact finder] can . . . decide what—all, none or some—of a witness' testimony to accept or reject." (Internal quotation marks omitted.)). Accordingly, the petitioner cannot prevail on these claims.

[8] With reference to the manner in which we previously have numbered the petitioner's claims on appeal, we note that the petitioner's remaining claims include his claims that Isko failed (1) to advise him appropriately about the offenses charged, the elements of those offenses, the risk of exposure, and the likelihood of success at trial, (2) to advise him appropriately about the benefits of accepting the plea offer and ensuring that he had an opportunity to accept or reject the plea offer on the record, (6) to request a more specific jury instruction on the scope of law enforcement's performance of duties, (7) to request a continuance on the part B trial, and (8) to request a competency evaluation, and, finally, his claim that Reich failed to present a claim regarding the petitioner's mental state and competency on direct appeal.

[9] The jury instructions provided in relevant part: "The second element is that the conduct of the [petitioner] occurred while [the officer] was acting in the performance of his duties. The phrase 'in the performance of his duties' means that the . . . police officer was acting within the scope of what he is employed to do and that his conduct was related to his official duties. The question of whether he was acting in good faith in the performance of his duties is a factual question for you to determine on the basis of the evidence in this case.

"In determining whether the officer was acting in the performance of his duties, you must consider another provision in our law that justifies the use of physical force by officers in making an arrest or preventing an escape. That statute provides that an officer is justified in using physical force upon another person when and to the extent that he reasonably believes such to

be necessary to effect an arrest or prevent an escape from custody of a person whom he reasonably believes to have committed an offense, unless he knows that the arrest or custody is unauthorized. An officer's use of force to effect the arrest or prevent the escape from custody is justified only so far as he reasonably believes that a person has committed an offense. . . .

"If the reasonably believed facts or circumstances would not in law constitute an offense . . . the officer would not be justified in the use of physical force to make an arrest or prevent an escape from custody. . . .

"If you find that the force used by the officer was not reasonable, you will find that [the officer] was not acting within the performance of his official duties while attempting to arrest or prevent the escape of the [petitioner]."

[10] In contrast to the present case, the defendant in *Nelson* had been convicted of interfering with an officer under General Statutes (Rev. to 2007) § 53a-167a. *State* v. *Nelson*, supra, 144 Conn. App. 680. This court's conclusion related to the jury instruction in *Nelson* is nonetheless applicable to the present case because General Statutes § 53a-167a (a) is a lesser included offense of § 53a-167c (a) (1); *State* v. *Flynn*, 14 Conn. App. 10, 17–18, 539 A.2d 1005, cert. denied, 488 U.S. 891, 109 S. Ct. 226, 102 L. Ed. 2d 217 (1988); and the relevant holding in *Davis* applies to it. See *State* v. *Davis*, supra, 261 Conn. 571.

[11] The petitioner also contends that "[t]he habeas court's factual findings that neither [Isko], nor the petitioner's two prior attorneys, saw a basis for a competency evaluation is clearly erroneous in light of the record." He asserts that the "two prior attorneys ha[d] nothing to do with the . . . habeas claim against [Isko]," and "they . . . did not represent the petitioner at the operative time when a competency evaluation was necessary." As to this contention, however, the petitioner misconstrues the habeas court's finding. Within its analysis of the petitioner's claim that Isko should have investigated and raised a defense of mental disease or defect, the habeas court found that "[t]he petitioner ha[d] not presented any evidence that demonstrates that he could establish a defense such as extreme emotional disturbance or mental disease or defect. There is no evidence that *any* of the attorneys who represented [the petitioner]—Hardy, Gerace, and Isko—ever determined that such defenses were viable and supported." (Emphasis in original.) In other words, the habeas court never found that the petitioner's other attorneys saw no basis for a *competency evaluation*. Because the petitioner can challenge only a finding the habeas court actually made, this claim fails.

[12] The petitioner also challenges the habeas court's conclusion that he did not demonstrate that he suffered any prejudice due to Isko's failure to request a continuance or a competency evaluation. In two sentences, the petitioner alleges that he was presumed to be prejudiced by Isko's failure to request a continuance at the time of the commencement of the part B trial "because the adversarial process had broken down" pursuant to *United States* v. *Cronic*, 466 U.S. 648, 659–60, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984). Aside from providing the legal citation to *Cronic*, however, the petitioner has not set forth a legal or factual analysis in support of this argument. See *Robb* v. *Connecticut Board of Veterinary Medicine*, supra, 204 Conn. App. 611 (explaining that "[t]he parties may not merely cite a legal principle without analyzing the relationship between the facts of the case and the law cited" (internal quotation marks omitted)). Moreover, the petitioner's acknowledgment that "a continuance may or may not have changed the ultimate outcome of the case" explicitly defeats any further argument that he was prejudiced by Isko's alleged failure to seek a continuance. See *Strickland* v. *Washington*, supra, 466 U.S. 696 (holding that "a court making the prejudice inquiry must ask if the defendant has met the burden of showing that the decision reached would reasonably likely have been different absent the errors").