

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT JACKSON  
Assigned on Briefs March 7, 2023

**FILED**  
04/05/2023  
Clerk of the  
Appellate Courts

**KEITH WARD v. STATE OF TENNESSEE**

**Appeal from the Criminal Court for Shelby County**  
**No. 13-00277 Paula Skahan, Judge**

---

**No. W2022-00746-CCA-R3-PC**

---

A Shelby County jury convicted the Petitioner, Keith Ward, of rape of a child, and the trial court sentenced him to 32.5 years in prison, to be served at 100%. The Petitioner appealed, and this court affirmed the conviction. The Petitioner then filed a petition for post-conviction relief in which he alleged that his trial counsel was ineffective for failing to meet with him, review discovery with him, and develop an effective strategy before trial. After a hearing, the post-conviction court dismissed the petition. On appeal, the Petitioner maintains his arguments. After our review, we affirm the post-conviction court's judgment.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed**

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which CAMILLE R. MCMULLEN and ROBERT H. MONTGOMERY, JR., JJ., joined.

Joseph A. McClusky, Memphis, Tennessee, for the appellant, Keith Ward.

Jonathan Skrmetti, Attorney General and Reporter; Brent C. Cherry, Senior Assistant Attorney General; Steven J. Mulroy, District Attorney General; and Eric Walton, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

**I. Facts**

This case arises from the rape of an eight-year-old victim which occurred in 2012.

**A. Trial**

When reviewing the sufficiency of the evidence for the underlying conviction in the direct appeal, this court summarized the facts presented as follows:

On the Friday before Easter 2012, the then eight-year-old victim disclosed to her stepmother that the [Petitioner], who at the time was her stepfather, had awoken her in the middle of the night, carried her to the living room, removed her pants, shorts, and underwear, and licked her vagina. The victim's stepmother reported the abuse to the authorities, and the [Petitioner] was subsequently arrested and indicted for rape of a child.

The State's first witness at trial was Patricia Lewis, the forensic interview program manager at the Child Advocacy Center in Memphis, who testified that she interviewed the victim on April 12, 2012, about the reported rape. She identified the videotape of that interview, as well as the anatomical drawings she had used with the victim during the interview, which were admitted as trial exhibits.

The victim, who was eleven years old at the time of trial, testified she currently lived with her father and stepmother but that she used to live with her mother, her mother's ex-husband, who was the [Petitioner], and five of her siblings . . . . She . . . and her family lived in an apartment . . . where her mother and the [Petitioner] shared one bedroom, her sisters shared a second room, her brother, Patrick, had his own room, and she usually slept on a sofa bed with her brother, Eugene, who used the dining room as his bedroom. She stated that Eugene was one year older than she.

The victim testified that she preferred to sleep in the position against the wall, but one night when she forgot and was sleeping on the edge of the bed, the [Petitioner] came into the room, awakened her, carried her to the couch in the living room, pulled down her jogging pants, shorts, and underwear, and licked her for a long time on her private area, which hurt her legs and made her uncomfortable. She said that "when [the Petitioner] had his hands like around [her] private area it really hurt[ ]." She eventually "kind of whined and he told [her] to put back on [her] clothes." The [Petitioner] then picked her up and carried her back to her bed like a baby, telling her it had been a dream.

The victim testified that after the [Petitioner] put her back in the bed, she tried to remain awake and also tried to hug Eugene so that he would be awakened if the [Petitioner] returned later that night. She said she did not scream or run to tell her mother because she was afraid she would not believe her. She also worried that the [Petitioner], who used to fight with her mother often, would hurt one of her siblings or her mother or herself.

The victim testified that she eventually disclosed the abuse to her stepmother, with whom she had a close relationship. She said she called her paternal grandmother to ask to be picked up from school and her aunt, who responded, took her to her father's house. That night while her father was at work, her stepmother talked to her about good touches versus bad touches. Her stepmother then went to the kitchen to start to cook, but she asked if they could talk and, after extracting her stepmother's promise that she would not tell anyone, she divulged what had happened. The victim said she did not want her stepmother to tell anyone because she was afraid of how it would affect her family, especially her father, who she worried would fight with the [Petitioner].

The victim testified that her stepmother later took her to their pastor's house, where she repeated her account to her father while in the presence of their pastor. The victim said that her father was very protective of her and that her stepmother had her reveal the abuse to him while in the presence of their pastor to prevent him from taking any rash actions.

The victim testified that she also talked to "Miss Pat" of the Child Advocacy Center. She identified the videotape of that forensic interview, which was then published to the jury. The victim acknowledged that she mentioned in the interview two separate occasions on which the [Petitioner] had awoken her from sleep, carried her to the living room couch, removed her clothes, and licked her vagina. She said that both incidents happened during the time she lived in the same apartment. The first time it happened, she was wearing a yellow nightgown with a moon design. Before the first incident, she had not cared where she slept in the bed. Afterwards, however, she had tried to sleep by the wall so that the [Petitioner] would have to reach over her brother to get to her.

The victim testified that she later told her mother about the abuse while they were in the counselor's office at her school. During that conversation, her mother told her to tell the truth and reminded her that she had video cameras in the house. According to the victim, her mother's reminder about the cameras made her feel good because she knew the videotapes would show everyone that she was being truthful.

On cross-examination, the victim denied that her mother and father were involved in any custody disputes before she revealed the [Petitioner's] abuse. She testified that her stepmother had talked to her about good and bad touches long before their conversation on the day she divulged the abuse.

She explained that she and her stepmother had a very good rapport and that her stepmother had told her several times about how she had been inappropriately touched when she was a young girl but had not had the opportunity to tell anyone. The victim said her stepmother asked her regularly whether anyone had inappropriately touched her and told her that she should tell if it ever happened.

On redirect examination, the victim reiterated that she revealed the abuse to her stepmother because they had a close relationship and she felt comfortable talking with her. She denied that her stepmother told her to make up the story or that she fabricated it because she wanted to live with her stepmother and her father. Finally, she testified that everything she had related was the truth.

The victim's mother testified that she learned of the abuse on the Monday afternoon following the victim's Easter weekend visitation with her father. She expected the victim to come home from school with Eugene and [one of her sisters] but the victim was not with them. After Eugene informed her that the police told him that the [Petitioner] had raped the victim, she first tried unsuccessfully to reach the victim's father and stepmother and then called the school, which put her in touch with a social worker. The witness said that she originally did not believe the allegations and that her first thought was to wonder if the victim's father was behind them. The next day, however, she went to the school with Ms. Jackson of the Department of Children's Services and spoke with the victim, who told her that the allegations were true and that she had not told her about the abuse because she did not want to ruin her mother's life.

The witness testified that when she told the victim to be truthful and reminded her about the video cameras in the house, the victim "got happy" because "[s]he felt like [the authorities] could see for themselves what happened." She said she did not, in fact, have any video cameras in the house, but all her children believed she did. She explained that she lied to her children about the cameras in an effort to get them to be truthful about their activities in the home.

The witness testified that at the time of the reported abuse, she and the [Petitioner] were living in a three-bedroom . . . apartment with the victim, [and four of her other children], while her older son, Patrick, lived in a separate apartment in the same complex. The victim and [her sister] were supposed to share bedrooms with their older sisters, but both girls preferred

to sleep with their brother, Eugene, on a futon bed in the dining room. She recalled that the victim originally slept on the outside of the bed with [her sister] in the middle and Eugene against the wall, but “all of a sudden,” sometime around Easter, the victim became afraid to sleep on the outside and wanted to instead sleep against the wall.

On cross-examination, the witness denied that she was involved in a custody dispute with the victim’s father at the time of the reported abuse. She conceded, however, that the victim’s father had filed for custody when the victim was two or three and that the victim’s stepmother had more recently been “very adamant about wanting [the victim] to live with her.” She said she and the victim’s stepmother had simply “agreed to disagree” about it.

The victim’s stepmother testified that the victim developed a pink eye infection when she was three years old, which eventually resulted in her losing sight in her right eye. She said the victim’s mother had transportation issues during that time and was not getting the victim the appropriate level of medical care, so she and the victim’s father sought to gain custody through juvenile court proceedings. They were unsuccessful, and custody remained with the victim’s mother until after the allegations in the instant case arose.

The witness testified that the victim’s father picked up the victim from school on the Friday afternoon of Easter weekend, brought her to their home, and then went back to work. During his absence, she gave the victim a bath. The victim appeared “very shaky and nervous” but just shook her head when she asked her what was wrong. She was later combing the victim’s hair when the weeping victim laid her head on her leg, asked if she remembered having said that the victim could tell her anything, and related what had happened.

The witness testified that she reassured and comforted the victim and then called the police and child protective services in both Mississippi, where she and the victim’s father lived, and in Tennessee, where the incident occurred. The next morning, she, the victim, and the victim’s father met at their pastor’s house, where the victim told her father what had happened and spoke with the police, who came to take her statement.

The witness testified that she also took the victim to the child advocacy center and to her physician. No examination was performed, however, because the physician was a man and the terrified victim kept screaming “no” when the witness attempted to get the victim to let him

examine her. Since the incident with the [Petitioner], the victim had difficulty sleeping, was afraid to go the bathroom alone at night, lost weight, and went from being an “A” to an “F” student.

The [Petitioner] chose not to testify and rested his case without presenting any proof. The State elected the second offense in which the victim was dressed in jogging pants, and, following deliberations, the jury convicted the [Petitioner] of the indicted offense of rape of a child.

*State v. Keith Ward*, W2015-000931-CCA-R3-CD, 2016 WL 7654943, at \*1-3 (Tenn. Crim. App., at Jackson, Aug. 26, 2016), *perm. app. denied* (Tenn. Dec. 15, 2016). The trial court sentenced him to 32.5 years in prison, to be served at 100%. The Petitioner appealed the sufficiency of the evidence, alleging that the victim’s testimony was inconsistent. This court affirmed the conviction. *Id.* at \*1.

### **B. Post-Conviction Facts**

The Petitioner filed a petition for post-conviction relief in which he alleged that his trial counsel was ineffective. The post-conviction court held a hearing during which the following evidence was presented: The Petitioner testified that his trial counsel (“Counsel”) was appointed to him. The Petitioner was on bond before his trial and unsuccessfully attempted to meet with Counsel on multiple occasions. The Petitioner said that the two did not speak until the Friday before his trial started on Monday. The two met for a total of thirty minutes.

The Petitioner said that Counsel never reviewed discovery with him. The Petitioner also testified that he was unable to tell Counsel that there was a custody dispute between the victim’s mother and father around the time that this alleged rape occurred. The Petitioner opined that the victim made these allegations because she wanted to live with her father.

The Petitioner said that Counsel never interviewed him or spoke with him extensively. He further stated that Counsel did not adequately cross-examine the victim and should have been more aggressive with her.

During cross-examination, the Petitioner testified that he was on bond for three years in this case and attempted to call Counsel almost every week. The Petitioner said he did not go by Counsel’s office until three days before trial. He agreed that he had a vehicle and had “looked up” Counsel’s address, but then said that he could not find his office.

The Petitioner said that the Friday before trial, Counsel contacted him and asked him to come meet with Counsel. The Petitioner went to Counsel's office but noted that the only other times the two had seen each other was during the Petitioner's court dates. During the meeting, the Petitioner and Counsel discussed "[n]othing." He said Counsel told him what to expect in court but that Counsel never asked him what had happened or discussed the evidence in the case. The Petitioner then agreed that Counsel showed him a video that was later used in court.

The Petitioner denied that the trial judge discussed his rights with him at any point before trial. The day of trial, the Petitioner turned down the State's plea offer because he was innocent. The Petitioner said that Counsel never asked him if he wanted to testify before the day of trial.

The Petitioner reiterated that Counsel was not aggressive enough with the State's witnesses. He said that Counsel "pretty much" went along with their testimony. The Petitioner said that Counsel never met with him during the trial and never came to see him during the trial.

The Petitioner testified that he never stood before the judge and went over his right to testify. The State then had the Petitioner read the portion of the transcript wherein the trial judge reviewed the Petitioner's rights with him, including his right to testify. He further read from the transcript where Counsel reviewed with him that Counsel thought the Petitioner would be a good witness on his own behalf, and the Petitioner agreed that Counsel had done so. The Petitioner then said that he had, in fact, informed the trial judge that he did not want to testify but that the transcript omitted his statement that he was only doing so because he was following Counsel's "lead."

The Petitioner said that he met with a private investigator that Counsel sent to interview him. He reiterated, however, that Counsel never himself interviewed him. The Petitioner agreed that he met with the investigator on December 13, 2013, and his trial was not until 2015.

The Petitioner expressed concern that part of the victim's video interview was "cut out." He agreed that Counsel explained that the video had been redacted because the victim alleged that the Petitioner had abused a second child. The Petitioner raised concern that Counsel did not more thoroughly cross-examine the victim regarding her testimony.

During redirect examination, the Petitioner testified that Counsel told him that the State had offered a plea deal for fifteen to twenty-five years, but the Petitioner was not interested in pleading guilty. He said that he had no interest in pleading guilty.

Counsel testified that he had been practicing criminal defense law for close to twenty years, fifteen years around the time of this trial. Counsel said that he kept detailed notes in this case, including his investigation notes, trial strategies, research, transcriptions, and cross-examination preparation. The Petitioner maintained his innocence and gave Counsel information on a motive from the victim, so Counsel “investigated every angle of that motive.” Counsel kept all his notes about that investigation.

Counsel said that a lot of the meetings that he had with the Petitioner occurred before or after the Petitioner’s court hearings. He said the two also participated in telephone conferences. Counsel also recalled visiting the Petitioner at his place of employment to briefly discuss the case. Additionally, the two did meet at Counsel’s office, but Counsel did not recall on how many occasions.

Counsel testified that he and the Petitioner met before the Petitioner met with the investigator. The two had discussed the evidence against the Petitioner. In his notes from one of their meetings, Counsel saw that he sent a request for investigation based upon the meeting asking the investigator to explore possible motives for the victim’s statements and to explore whether the molestation accusation of another child in the house against the Petitioner was credible. The request was sent on December 4, 2013, and stated that the investigator should meet with the Petitioner, his wife, Ms. Grayson, and Ms. Sellers, and anyone else that the investigator thought would be a good witness.

After the investigation, Counsel met with the Petitioner and discussed with him the issues surrounding the credibility given to children by juries. Counsel thought that, because the Petitioner did not have a criminal history, he would be a good witness. He said the Petitioner also had a good demeanor, was clean cut, a hard worker, and a family man. Later, during the trial, the Petitioner asked Counsel if he should take the stand, and Counsel said he did not think so based on the evidence presented but left the decision to the Petitioner. Counsel further based his advice on the fact that the prosecutor was very aggressive and might be able to elicit unfavorable information from the Petitioner if he testified.

Counsel identified the multiple pages of notes from the investigator’s investigation of each of the potential witnesses. He said that he discussed the notes and the investigation with the Petitioner.

Counsel said he filed multiple motions in this case, including a motion for disclosure of impeaching information, a motion for witness statements, and a motion to file additional motions. Counsel said that he gave the Petitioner paper and a pencil during the trial and told him to write down any questions he would like asked of a witness either on direct or cross-examination. Counsel said he spent a lot of time cross-examining the forensic



examiner, Ms. Sellers, about her protocol when interviewing the victim, and he attacked the protocol. He said that Ms. Sellers became very upset while testifying, so Counsel was unsure how he could have been more “aggressive” with that witness. He was similarly aggressive with all the other witnesses, even asking the victim about her visual impairment and how it affected her testimony about the events.

Counsel said that he began preparing for this case in November 2013 and started the investigation in December 2013. Counsel said he received discovery in this case, and he gave the Petitioner a copy of the discovery. Counsel opined that he would not have done anything differently in the Petitioner’s case, even in hindsight.

During cross-examination, Counsel testified that the Petitioner knew about his investigation. The Petitioner saying otherwise, in his petition and testimony, “surprised” Counsel because he could not have done the investigation without the Petitioner telling him who to contact, providing their phone numbers, and giving Counsel advice about what questions the investigator should ask. He said that he and the Petitioner discussed the investigator’s findings, either by phone or in person. He told the Petitioner that, after the investigation, he felt that the Petitioner’s allegation that the eight-year-old victim made up this allegation because she wanted to live with her biological father would not be found credible by a jury. Counsel told the Petitioner that he felt similarly about the Petitioner’s allegation that the victim made up the allegation because her mother wanted to reconcile with her ex-husband. In fact, he said that, while these were theories, he could find no basis for them or evidence to support them.

Counsel testified that he met with the Petitioner before trial and discussed trial strategy. During the trial, the Petitioner never expressed that he wanted Counsel to be more aggressive with any witness. He agreed that he was not as aggressive with the victim, saying that he did not think that such a tactic would be successful in front of a jury, considering that she was a child. He was more aggressive with the other witnesses.

Counsel recalled that during the trial the victim’s mother testified that the victim did not like being left alone with the Petitioner. She then referenced a movie, and Counsel objected. Counsel agreed that this was a case based mostly on the victim’s testimony. The Petitioner chose not to testify. Counsel agreed that his advice was for the Petitioner not to testify because he did not think it was worth the risks associated with testifying.

Based upon this evidence, the post-conviction court dismissed the Petitioner's petition for post-conviction relief.<sup>1</sup> In its order, the court stated that:

**(1) Counsel failed to present witnesses for the defense**

Petitioner claims that counsel failed to present witnesses for the defense. Trial counsel may pursue arguments counsel believes will most benefit his client . . . . [Counsel] testified that strategically he did not believe putting witnesses on the stand would serve the most beneficial purpose because of the prosecution's ability to cross-examine the witness. . . . [Counsel] also testified he considered the Rules of Evidence when making his choice not to put witnesses on the stand because he could present no witness that had personal knowledge of the incident which is a requirement under the Rules of Evidence, thus he thought his attempt would have been objected to on the basis of relevance. . . . The choice not to present witnesses was a choice of defense strategy and therefore this Court finds that Petitioner[] is not entitled to relief on this claim.

. . . .

**(3) Counsel failed to conduct a proper investigation**

Petitioner claims counsel failed to conduct a proper investigation. The burden is on the Petitioner to prove the above listed elements by clear and convincing evidence . . . .

Petitioner has failed to prove that "trial counsel's conduct fell below the objective standard of reasonableness under prevailing professional norms." . . . At the hearing [Counsel] testified that as a result of a meeting with Petitioner [Counsel] sent out a request for an investigation on December 4<sup>th</sup>, 2013 . . . . Further, [Counsel] provided the names of the potential witnesses along with the dates, the mode of communication and how many times the potential witnesses spoke with the investigator. . . . [Counsel] also testified at the completion of the inve[st]igation that he went over the findings of the investigator with Petitioner. . . . [Counsel's] investigation did not fall below the objective standard of reasonableness under prevailing professional norms. Thus, Petitioner is not entitled to relief on this claim.

---

<sup>1</sup>On appeal, the Petitioner maintains only one argument, that Counsel did not effectively meet with him, review discovery and strategy before trial, or offer a meaningful defense. We will limit our review of the post-conviction court's order to these issues.

....

### **(5) Counsel failed to provide a copy of discovery to Petitioner**

Petitioner claims that [C]ounsel failed to provide Petitioner with a copy of discovery. . . . [T]he burden is on the Petitioner to prove by clear and convincing evidence that trial counsel’s performance was deficient and that the performance prejudiced the outcome of the case . . . . At the hearing [Counsel] testified that Petitioner did get a copy of discovery and it was his typical practice to give his clients discovery when he received it from the State. . . . Thus, Petitioner is not entitled to relief on this claim.

(Citations omitted). It is from this judgment that the Petitioner now appeals.

## **II. Analysis**

On appeal, the Defendant asserts that the post-conviction court erred when it denied his petition for post-conviction relief. The entirety of his argument on appeal is that his “trial counsel did not effectively meet with him or review discovery and strategy prior to trial. Counsel’s failure to offer a meaningful defense essentially robbed [the Petitioner] of his right to effective counsel.” The State responds, and we agree, that the post-conviction court properly denied the petition.

In order to obtain post-conviction relief, a petitioner must show that his or her conviction or sentence is void or voidable because of the abridgment of a constitutional right. T.C.A. § 40-30-103 (2018). The petitioner bears the burden of proving factual allegations in the petition for post-conviction relief by clear and convincing evidence. T.C.A. § 40-30-110(f) (2018). Upon review, this court will not re-weigh or re-evaluate the evidence below; all questions concerning the credibility of witnesses, the weight and value to be given their testimony, and the factual issues raised by the evidence are to be resolved by the trial judge, not the appellate courts. *Momon v. State*, 18 S.W.3d 152, 156 (Tenn. 1999) (citing *Henley v. State*, 960 S.W.2d 572, 578-79 (Tenn. 1997)). A post-conviction court’s factual findings are subject to a *de novo* review by this court; however, we must accord these factual findings a presumption of correctness, which can be overcome only when a preponderance of the evidence is contrary to the post-conviction court’s factual findings. *Fields v. State*, 40 S.W.3d 450, 456-57 (Tenn. 2001). A post-conviction court’s conclusions of law are subject to a purely *de novo* review by this court, with no presumption of correctness. *Id.* at 457.

The right of a criminally accused to representation is guaranteed by both the Sixth Amendment to the United States Constitution and article I, section 9, of the Tennessee Constitution. *State v. White*, 114 S.W.3d 469, 475 (Tenn. 2003); *State v. Burns*, 6 S.W.3d 453, 461 (Tenn. 1999); *Baxter v. Rose*, 523 S.W.2d 930, 936 (Tenn. 1975). The following two-prong test directs a court's evaluation of a claim for ineffectiveness:

First, the [petitioner] must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the [petitioner] by the Sixth Amendment. Second, the [petitioner] must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the [petitioner] of a fair trial, a trial whose result is reliable. Unless a [petitioner] makes both showings, it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable.

*Strickland v. Washington*, 466 U.S. 668, 687 (1984); see also *State v. Melson*, 772 S.W.2d 417, 419 (Tenn. 1989).

In reviewing a claim of ineffective assistance of counsel, this Court must determine whether the advice given or services rendered by the attorney are within the range of competence demanded of attorneys in criminal cases. *Baxter*, 523 S.W.2d at 936. To prevail on a claim of ineffective assistance of counsel, "a petitioner must show that counsel's representation fell below an objective standard of reasonableness." *House v. State*, 44 S.W.3d 508, 515 (Tenn. 2001) (citing *Goad v. State*, 938 S.W.2d 363, 369 (Tenn. 1996)).

When evaluating an ineffective assistance of counsel claim, the reviewing court should judge the attorney's performance within the context of the case as a whole, taking into account all relevant circumstances. *Strickland*, 466 U.S. at 690; *State v. Mitchell*, 753 S.W.2d 148, 149 (Tenn. Crim. App. 1988). The reviewing court should avoid the "distorting effects of hindsight" and "judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." *Strickland*, 466 U.S. at 689-90. In doing so, the reviewing court must be highly deferential and "should indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Burns*, 6 S.W.3d at 462. Finally, we note that a defendant in a criminal case is not entitled to perfect representation, only constitutionally adequate representation. *Denton v. State*, 945 S.W.2d 793, 796 (Tenn. Crim. App. 1996). In other words, "in considering claims of ineffective assistance of counsel, 'we address not what is prudent or appropriate, but only what is constitutionally compelled.'" *Burger v. Kemp*, 483 U.S. 776, 794 (1987) (quoting *United States v. Cronin*, 466 U.S. 648, 665 n.38

(1984)). Counsel should not be deemed to have been ineffective merely because a different procedure or strategy might have produced a different result. *Williams v. State*, 599 S.W.2d 276, 279-80 (Tenn. Crim. App. 1980). ““The fact that a particular strategy or tactic failed or hurt the defense, does not, standing alone, establish unreasonable representation. However, deference to matters of strategy and tactical choices applies only if the choices are informed ones based upon adequate preparation.”” *House*, 44 S.W.3d at 515 (quoting *Goad*, 938 S.W.2d at 369).

If the petitioner shows that counsel’s representation fell below a reasonable standard, then the petitioner must satisfy the prejudice prong of the *Strickland* test by demonstrating “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Strickland*, 466 U.S. at 694; *Nichols v. State*, 90 S.W.3d 576, 587 (Tenn. 2002). This reasonable probability must be “sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694; *Harris v. State*, 875 S.W.2d 662, 665 (Tenn. 1994).

The Petitioner failed to present the testimony of any potential witnesses at the post-conviction hearing. It has long been held that we cannot speculate on what the testimony of any potential witness might have been if introduced. *See Black v. State*, 794 S.W.2d 752, 757 (Tenn. Crim. App. 1990) (“When a petitioner contends that trial counsel failed to discover, interview, or present witnesses in support of his defense, these witnesses should be presented by the petitioner at the evidentiary hearing.”). Therefore, the Petitioner is not entitled to relief on the claim that Counsel erred when he failed to call additional witnesses.

Similarly, the Petitioner is not entitled to relief on his vague claims that Counsel failed to “meet with him or review discovery and strategy prior to trial.” The Petitioner offers no argument beyond this bare assertion in his brief. The post-conviction court found credible Counsel’s testimony that he gave the Petitioner a copy of the discovery and met with him to review that. Counsel said that his trial strategy was to challenge the victim’s credibility and the value of the forensic interview. He aggressively cross-examined the forensic interviewer. Counsel’s notes showed that he met with the Petitioner on multiple occasions, including at the courthouse, at his office, over the telephone, and briefly at the Petitioner’s place of employment. The Petitioner has failed to prove that Counsel’s representation was deficient or that he was prejudiced by Counsel’s representation. As such, he is not entitled to relief.

### **III. Conclusion**

For the foregoing reasons, we affirm the post-conviction court’s judgment.

