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Taylor v. Commissioner of Correction

On appeal to this court, the petitioner claims that the Appellate Court incorrectly affirmed the judgment of the habeas court denying his petition. Specifically, the petitioner asserts that the Appellate Court incorrectly required him to demonstrate prejudice from Simon's handling of the jury note during trial.

We begin by setting forth the legal principles and standard of review applicable to the petitioner's appeal. "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." (Internal quotation marks omitted.) *Taylor v. Commissioner of Correction*, 284 Conn. 433, 448, 936 A.2d 611 (2007). The application of historical facts to questions of law that is necessary to determine whether the petitioner has demonstrated prejudice under *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), however, is a mixed question of law and fact subject to our plenary review. See, e.g., *Copas v. Commissioner of Correction*, 234 Conn. 139, 152–53, 662 A.2d 718 (1995).

"As enunciated in *Strickland* . . . [a] claim of ineffective assistance of counsel consists of two components: a performance prong and a prejudice prong. To satisfy the performance prong . . . the petitioner must demonstrate that his attorney's representation was not reasonably competent or within the range of compe-

failed to meet that burden?" *Taylor v. Commissioner of Correction*, 316 Conn. 905, 906, 111 A.3d 881 (2015). In accordance with our long-standing policy of reframing certified questions to more accurately reflect the issues presented on appeal, we now reframe the certified questions in the present case as follows: (1) If Simon's performance was deficient, as held by the Appellate Court, did the Appellate Court properly determine that it was the petitioner's burden to prove that the deficient performance in responding to the treatment of the jury note prejudiced him?; and (2) Did the Appellate Court correctly determine that the petitioner had failed to demonstrate prejudice? See *State v. Ouellette*, 295 Conn. 173, 184, 989 A.2d 1048 (2010); *Rosado v. Bridgeport Roman Catholic Diocesan Corp.*, 276 Conn. 168, 191, 884 A.2d 981 (2005).

NOTE: These pages (324 Conn. 637 and 638) are in replacement of the same numbered pages that appear in the Connecticut Law Journal of 14 February 2017.

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tence displayed by lawyers with ordinary training and skill in the criminal law. . . . 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.” (Internal quotation marks omitted.) *Fernandez v. Commissioner of Correction*, 291 Conn. 830, 838, 970 A.2d 721 (2009). A court can find against a petitioner, with respect to a claim of ineffective assistance of counsel on either the performance prong or the prejudice prong, whichever is easier. *Washington v. Commissioner of Correction*, 287 Conn. 792, 852–53, 950 A.2d 1220 (2008).

The following additional facts, as found by the habeas court, are relevant to the present appeal. “On the third day of deliberations, the trial court received a jury note signed by the foreperson.<sup>2</sup> The note read:

“ ‘Judge Barry—I have polled the jury [four] times after various deliberations and discussions. Votes were as follows on the charge of murder:

“ ‘10-8-97 4G 5NG 3 undecided

“ ‘10-9-97 6G 5NG 1 [abstention]

“ ‘10-9-97 7G 5NG

“ ‘10-10-97 7G 5NG

“ ‘I started discussion this [morning] with a proposal to compromise—that is, that we would find [the peti-

<sup>2</sup> “According to the habeas court, the jury did not commence deliberations on its first day of deliberations until late in the day, after hearing closing arguments and jury instructions. The jury spent the majority of its second day of deliberations discussing various prior jury notes with the court and hearing playbacks of testimony and instructions. After hearing the playbacks, the jury deliberated for approximately four hours before submitting the note at issue on appeal, which the foreperson signed at 11:50 a.m. on the morning of the third day of deliberations.” *Taylor v. Commissioner of Correction*, supra, 154 Conn. App. 712 n.17.