and the . . . lift from the side of the ammunition [box]. The latent lift identified was found to have been made by Arthur Brantley to the exclusion of all other persons. [Detective Christopher] Grice, a certified latent print examiner, verified the identification and concurred with my findings. This report will be forward[ed] to ISU for follow-up; the latent lifts will be on file in the [i]dentification [u]nit. A chart that illustrates the identification will be prepared upon request from the court." Additional facts will be set forth as necessary to address fully the petitioner's claims on appeal.

I

The petitioner first claims that the "habeas court erred in concluding that [he] was not denied due process where the state withheld crucial exculpatory evidence in violation of *Brady* v. *Maryland*, [supra, 373 U.S. 83]." The petitioner argues that the state failed to turn over to his criminal trial counsel the fingerprint analysis report that demonstrated that the fingerprints on the ammunition box found in front of a neighboring church belonged to the initial suspect in this case, Brantley. The respondent counters that the habeas court properly concluded that the petitioner failed to establish that the state had not disclosed this evidence. Furthermore, the respondent argues, even if the state did fail to disclose the evidence, the petitioner did not establish that the evidence was material, such that its absence undermines confidence in the jury's verdict. Under the facts of the present case, we conclude that even if we were to assume, without deciding, that the fingerprint analysis report was suppressed by the state and that the report would have been admissible in the criminal trial, this evidence was not material under *Brady*.

"The law governing the state's obligation to disclose exculpatory evidence to defendants in criminal cases is well established. The defendant has a right to the disclosure of exculpatory evidence under the due process clauses of both the United States constitution and the Connecticut constitution. [Id., 86]; *State* v. *Simms*, 201 Conn. 395, 405 [and] n.8, 518 A.2d 35 (1986). In order to prove a *Brady* violation, the defendant must show: (1) that the prosecution suppressed evidence after a request by the defense; (2) that the evidence was favorable to the defense; and (3) that the evidence was material." (Internal quotation marks omitted.) *State* v. *Guilbert*, 306 Conn. 218, 271–72, 49 A.3d 705 (2012).

"Under the last *Brady* prong, the prejudice that [a] defendant suffered as a result of the impropriety must have been material to the case, such that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." (Internal quotation marks omitted.) *State* v. *Ortiz*, 280 Conn. 686, 717, 911 A.2d 1055 (2006). "[T]he test for materiality under *Brady* and the test for prejudice under *Strickland* [for ineffective assistance of counsel] are the same . . . ." (Internal quotation marks omitted.) *Breton* v. *Commissioner of Correction*, 325 Conn. 640, 704, 159 A.3d 1112 (2017).

"[A] trial court's determination as to materiality under *Brady* presents a mixed question of law and fact subject to plenary review, with the underlying historical facts subject to review for clear error." *State* v. *Ortiz*, supra, 280 Conn. 720.

As to materiality, the habeas court found, inter alia, that, in the absence of this evidence, the petitioner, nonetheless, had received a fair trial. The court pointed to Silverstein's testimony at the habeas trial that, during the petitioner's criminal trial, he was using Brantley as

"kind of a red herring"; (emphasis omitted); and that he was convinced that Brantley was not the shooter because of pretrial information he had received from the prosecutor. The court also stated that it recollected that Silverstein was convinced that it would have been "impossible" for Brantley to have been the shooter.

The court stated that it had conducted a "lengthy review of the entire record of two decades of litigation, including previous court decisions, trial transcripts and numerous exhibits . . . ." Furthermore, it had reviewed the "eyewitness testimony, statements from the petitioner, and . . . reasonable inferences [that could] be drawn therefrom . . . ." On the basis of this record, the habeas court concluded, in relevant part, that its confidence in the verdict was not undermined; the petitioner had received a fair trial. We agree with that assessment.

Following our own review of the record, we conclude that the petitioner has failed to prove that the fingerprint analysis report was material. First, although Brantley had been an early suspect in the shooting, and his fingerprints were found on the ammunition box, it was known that he had been in that area hours prior to the shooting and that he engaged in a physical altercation at the crime scene. Second, there is no evidence that the shooter had with him an ammunition box at the crime scene or that the shooter had dropped or discarded such a box outside the nearby church. Third, there also was no evidence that anyone saw the shooter load a weapon while standing at or near the neighboring church. Fourth, there were two eyewitnesses to this shooting, both of whom came forward and positively identified *the petitioner* as the shooter. Fifth, the evidence at the petitioner's criminal trial demonstrated

that one of those eyewitnesses, Stanley, was approximately six feet from the shooter and that she had an unobstructed view of the shooter; when she was shown a photograph of Brantley during the police investigation, she stated that she was positive that the person depicted in that photograph *was not the shooter*.

Finally, there was evidence that tied the petitioner to the firearm that had been used in the shooting. Timothy McDonald, a former member of the "Fifth Ward" gang[5] testified that the petitioner also had been a member of that gang, and that he knew the petitioner by the name "Twenty." During the criminal trial, McDonald was shown the firearm that had been used in the shooting, and he identified it as a firearm he previously had possessed. McDonald further testified that he had sold that firearm to the petitioner for $200, months before the shooting.

In addition to McDonald's testimony, another witness at the petitioner's criminal trial, Anthony Stevenson, who also had been a member of the "Fifth Ward" gang, testified that, after the shooting, the petitioner had been in possession of the firearm used in the shooting, and that the petitioner had given him the firearm to use in an unrelated crime. It was from Stevenson that the police recovered the firearm when responding to this unrelated matter.

On the basis of our independent review of the record, we agree with the habeas court that the petitioner failed to prove that the fingerprint analysis report, which demonstrated that Brantley's fingerprints were on the

[5] The Fifth Ward gang was described at the petitioner's criminal trial as a violent "drug selling gang," involved with a "lot of guns . . . ."

ammunition box found in front of a neighboring church, was material. The existence of this report, even if improperly suppressed by the state, does not undermine our confidence in the verdict. Accordingly, we conclude that the court properly denied the habeas petition on this ground.

II

The petitioner next claims that the habeas court improperly concluded that he failed to prove that his criminal trial counsel, and his first and second habeas counsel all had provided ineffective assistance by failing to investigate adequately the existence of the fingerprint analysis report and/or to present that report. We conclude on the basis of our analysis in part I of this opinion that even if we were to assume that the petitioner is correct that counsel were deficient for failing to uncover or to present this report, the petitioner cannot establish prejudice.

Under *Strickland* v. *Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), "[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 competence displayed by lawyers with ordinary training and skill in the criminal law. . . . To satisfy the prejudice prong, [the petitioner] 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."

(Citation omitted; internal quotation marks omitted.) *Lapointe* v. *Commissioner of Correction*, 316 Conn. 225, 264–65, 112 A.3d 1 (2015). "[T]he test for materiality under *Brady* and the test for prejudice under *Strickland* [for ineffective assistance of counsel] are the same . . . ." Id., 266–67.

"As in the case of an alleged *Brady* violation, [i]n order to demonstrate such a fundamental unfairness or miscarriage of justice, the petitioner should be required to show that he is burdened by an unreliable conviction. . . . [T]he respective roles of the habeas court and the reviewing court are also the same under *Strickland* as they are under *Brady*. As a general matter, the underlying historical facts found by the habeas court may not be disturbed unless they were clearly erroneous . . . . [W]hether those facts constituted a violation of the petitioner's rights under the sixth amendment [however] is a mixed determination of law and fact that requires the application of legal principles to the historical facts of [the] case. . . . As such, that question requires plenary review by this court unfettered by the clearly erroneous standard." (Citation omitted; internal quotation marks omitted.) Id., 265.

Because we already have concluded in part I of this opinion that the petitioner failed to establish materiality under *Brady* of the fingerprint analysis report, he cannot establish that he was prejudiced by the alleged deficiency of counsel in failing to discover and/or to present the fingerprint analysis report. See id.; see also *Breton* v. *Commissioner of Correction*, supra, 325 Conn. 704. Accordingly, the habeas court properly denied the petition on this ground.

III

Finally, the petitioner claims that the habeas court improperly concluded that he failed to prove his claim