

No. 1-12-1006

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 04 CR 10613
	)	
JUAN GARCIA,	)	Honorable
	)	Lawrence Edward Flood,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HOFFMAN delivered the judgment of the court.  
Presiding Justice Connors and Justice Cunningham concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The second-stage dismissal of defendant's postconviction petition is reversed and the cause is remanded for an evidentiary hearing on the claim that trial counsel was ineffective for failing to call several witnesses to testify at trial.
- ¶ 2 Defendant Juan Garcia appeals the trial court's dismissal, on motion of the State, of his petition for postconviction relief. On appeal, defendant contends that his petition should not have been dismissed because it made a substantial showing that his trial attorney provided ineffective assistance where he failed to call four alibi witnesses and one witness who would have provided

testimony that defendant was not part of the group who committed the shooting that led to his conviction. For the reasons that follow, we reverse and remand for an evidentiary hearing.

¶ 3 Following a jury trial, defendant was convicted of the first degree murder of Anna Mateo and the attempted first degree murder of Randy Edmondson and sentenced to consecutive prison terms of 50 years and 6 years, respectively. We affirmed defendant's conviction and sentence on direct appeal. *People v. Garcia*, No. 1-07-0265 (2009) (unpublished order under Supreme Court Rule 23).

¶ 4 The underlying facts of the case are set forth at length in our order on direct appeal, but will be repeated here to some extent due to the nature of defendant's postconviction claims.

¶ 5 At trial, Maria Mateo testified that about 11 p.m. on August 19, 2003, she and her seven-year-old daughter, Anna, were outside their home when she heard a sound like firecrackers. Mateo turned and saw Anna lying on the sidewalk, unconscious and bleeding from her head. An ambulance arrived and took Anna to the hospital. A medical examiner testified that Anna died as a result of a gunshot wound to the head.

¶ 6 Lori Rincon testified that on the night in question, she was sitting on the front steps of her parents' house, talking with a man named Randy Edmondson, who was standing on the sidewalk outside the fence. Around 12 or 12:30 a.m., a car pulled up. Rincon could see three people in the car. The men in the car threw gang signs and spoke to Edmondson. Edmondson, who looked confused, told the men he did not know what they were talking about, turned, and started walking away from the car. Rincon testified that the man in the front passenger seat got out of the car. She described him as young and short, Hispanic, with a light complexion, short hair, and a thin to medium build. In court, Rincon identified defendant as the car's passenger. Rincon testified that the driver of the car told defendant to "buck at him," which she understood as a directive to shoot Edmondson. Defendant pulled a gun from his pants and started to chase after Edmondson. He shot at Edmondson about three times. Rincon went inside to call the police.

¶ 7 Rincon testified that after speaking with the police at the scene, she went to the police station, told the police what she saw, and gave them a description of the shooter. In August and September of 2003, she viewed lineups at the police station, and in November 2003, she viewed a photo array, but she did not identify anyone. Over six months after the shooting, on March 3, 2004, Rincon identified defendant in a photo array. Two days later, she identified defendant in a lineup.

¶ 8 Randy Edmondson testified that in August 2003, he "hung around" with members of the Satan Disciples street gang, but was not himself a member. Around 12:30 a.m. on the night in question, he was standing outside the gate of Lori Rincon's house, talking to her as she stood on the steps. A car pulled up. Three Hispanic men were in the car. Edmondson described the front seat passenger as short, with a shaved head and "kind of chubby face." In court, Edmondson identified defendant as the passenger. Defendant asked Edmondson if he was a member of the Satan Disciples. Edmondson responded that he was not an "SD" and did not know what defendant was talking about. Defendant asked if he was sure, and Edmondson replied that he was. At this point, the driver looked at defendant and said, "Get him." Defendant pulled out a gun and started to get out of the car. Edmondson started running toward the plaza area of a church across the street. As he ran in a zig-zag pattern, defendant shot at him eight or nine times. Edmondson stopped running when he saw defendant run back to the car.

¶ 9 Edmondson testified that when he stopped running, a man named Sergio Rojas ran up to him. Rojas, a member of the Satan Disciples, had a gun. Defendant told Rojas that he thought members of the Party People street gang had just shot at him. At some point, police officers arrived at the scene and started chasing Rojas. Edmondson, who stayed at the scene, lied to the police and told them Rojas' name was Miguel Mendez. Edmondson testified that he was going to leave, but when he found out a little girl had been shot, he stayed. Later, at the police station, Edmondson told the police that the shooter looked like Miguel Mendez, whom he knew from high school. However,

when he was shown a photo array, he was unable to identify a picture of Mendez. Edmondson then told the police he thought the shooter was affiliated with the Party People. Eventually, he told the police that the person with the gun was Sergio Rojas, but that Rojas never fired his gun.

¶ 10 Edmondson testified that in December 2003, he identified someone in a photo array that looked similar to the shooter. Over six months after the shooting, on March 4, 2004, he identified defendant in a photo array. The next day, he identified defendant in a lineup.

¶ 11 Adrian Covarrubias testified that around 5 or 6 p.m. on August 19, 2003, he and his friend Justin Chapman went to an apartment they called "the Pit" that served as a gathering spot for members of the Latin Counts street gang, of which both Covarrubias and Chapman were members. A man named Jose Arteaga lived in the apartment. Covarrubias saw defendant at the Pit, greeting people and throwing the Latin Counts hand signal. Covarrubias knew defendant as "Shorty."

¶ 12 Covarrubias testified that around midnight, he, Chapman, and defendant got into a car to drive around. Chapman drove, defendant sat in the passenger seat, and Covarrubias sat in the back. After about 20 minutes, Chapman stopped the car at a house where a man and woman were standing outside. Defendant threw the symbol of the Satan Disciples, "maybe in hopes of luring [the man] closer." When the man started walking toward the car, Chapman said "buck him," and defendant got out and started chasing him. As they ran, defendant shot at the man five or ten times. Defendant got back in the car and the group returned to the Pit. There, they listened to a police scanner. Eventually, Covarrubias went home.

¶ 13 On cross-examination, Covarrubias testified that a man named Sammy Govea rode with him and Chapman when they went to the Pit on the evening in question. He denied that Sammy Govea drove around with him and Chapman later that evening and denied that Sammy was the shooter.

¶ 14 Chicago police officer Abel Orozco that at 12:38 a.m. on the night in question, while he was on patrol with his partner, he heard a rapid succession of gunshots. As the officers headed toward

the area the shots had come from, Officer Orozco saw a Hispanic man with a handgun come out of a gangway. Officer Orozco gave chase, but the man spotted Officer Orozco, stopped, and ran back through a gangway gate that locked behind him. At that point, Officer Orozco noticed Randy Edmondson in the general vicinity. He also saw a person getting into the passenger seat of a car and noted the car driving away. A citizen approached Officer Orozco and told him a seven-year-old girl had been shot. Orozco called for an ambulance. He then spoke with Edmondson, who told him the man with the handgun was named Miguel Mendez.

¶ 15 Chicago police detective John Pellegrini testified that he showed photo arrays and lineups to Lori Rincon and Randy Edmondson. Defendant was not in any of the photo arrays or lineups where no one was identified. On March 3, 2004, Rincon identified defendant in a photo array. On March 4, 2004, Edmondson also identified defendant in a photo array. The next day, Rincon and Edmondson separately identified defendant in a lineup.

¶ 16 Defendant's mother, Diane Garcia, testified for the defense. Garcia testified that the week of the shooting, her father and his new wife had flown to Chicago for several family occasions. On the night of August 19, 2003, the family had dinner together at her apartment. Defendant was home all day. Garcia testified that she and her son Nicholas went to the mall from about 7:00 to 9:20 p.m. Some time after 9:30 p.m., defendant and his brothers Fabian and Nicholas retired to their bedroom, where they played video games. Garcia and her father watched television until about 11:20 p.m., when her father and his wife left for their hotel. Garcia then went to sleep in the front room around 11:45 p.m. Garcia testified that she did not observe defendant leave the apartment at any time. The next day, she and defendant drove her father and his wife to the airport.

¶ 17 Defendant testified that in August 2003, his grandfather and his grandfather's wife flew to Chicago to attend family events. The day before they flew back home, defendant spent all day

visiting with them at the apartment where defendant lived with his mother. Defendant testified that the next day, he and his mother took his grandfather and his grandfather's wife to the airport.

¶ 18 Defendant denied being a member of any street gang, but acknowledged that his older brother, Hector, was a member of the Latin Counts. According to defendant, he did not know a man named Jose Arteaga personally, but knew him to be one of Hector's friends and knew him to live in a place called "the Pit." Defendant denied ever having been to the Pit and denied having been involved in the shooting at issue. Defendant testified that prior to August 2003, he had seen Adrian Covarrubias around the neighborhood and seen him talking with Hector, but did not know his name. Similarly, he had seen Justin Chapman in the neighborhood and talking with Hector, but he did not know Chapman personally.

¶ 19 During a discussion outside the presence of the jury, defense counsel noted that although defendant's grandfather was present in the courthouse, the defense had decided not to call him as a witness.

¶ 20 The jury found defendant guilty of the first degree murder of Anna Mateo and the attempted first degree murder of Randy Edmondson, and the trial court entered judgment on the verdict.

¶ 21 At sentencing, defendant informed the court that counsel had failed to call his grandfather and his grandfather's wife as alibi witnesses; had failed to present his grandfather's bank records, which showed that he was in Chicago at the time of the shooting; and failed to call Jose Arteaga to testify that defendant was never at his home on the day of the shooting. The trial court asked counsel if he wished to state for the record why he did not call defendant's grandfather as a witness although he was present in court during trial. Counsel responded, "Your Honor, his grandfather Victor Martinico did fly in from the west coast, and I interviewed him prior to him possibly providing testimony in this case, and it was my trial decision not to call Mr. Martinico based on my questioning of him." When the trial court asked for more facts, counsel explained as follows:

"Your Honor, I do not wish to go into detail as to his testimony because I know that [defendant] hopes to come back before the court one day, but the reason is that his testimony in part conflicted from the testimony of Diane Garcia who is [defendant's] mother. It was my belief and still is that that would have, that attack of credibility of Miss Garcia, would have been too detrimental to [defendant's] case. In my opinion, Diane Garcia was an excellent witness, and I did not want to have the jury have now conflicting information and possibly not even believe Miss Garcia's testimony.

That's why I made the decision not to call the grandfather."

¶ 22 The trial court subsequently sentenced defendant to consecutive prison terms of 50 years and 6 years, respectively.

¶ 23 On direct appeal, defendant contended that the State failed to prove him guilty beyond a reasonable doubt, that he was deprived a fair trial based upon improper closing argument by the prosecutor, that he was denied effective assistance of trial counsel because his attorney failed to object to the prosecutor's improper comments during closing argument, that he received ineffective assistance of counsel because his attorney failed to present certain evidence and call additional witnesses in support of his alibi defense, and that the trial court erred in failing to conduct a hearing on his posttrial claim of ineffective assistance of counsel. We affirmed defendant's conviction and sentence. *People v. Garcia*, No. 1-07-0265 (2009) (unpublished order under Supreme Court Rule 23). In the course of doing so, we determined that defendant's claim of ineffectiveness for failure to call several witnesses and present other evidence in support of his alibi defense could not be evaluated on direct appeal, as the record was inadequate to permit review. We advised that the issues would be more appropriately addressed in postconviction proceedings. *Id.* at 30-31.

¶ 24 Defendant thereafter filed an attorney-drafted petition for postconviction relief. As relevant to the instant appeal, the petition included an argument that trial counsel provided ineffective assistance when he failed to interview and/or call several witnesses who would have corroborated defendant's alibi defense, namely, defendant's grandfather, Victor Martinico; his grandfather's wife, Coralia Martinico; and his brothers, Fabian and Nicholas. Defendant also argued that counsel was ineffective for failing to call Jose Arteaga, whose testimony would have impeached the testimony of Adrian Covarrubias and suggested that someone else was the shooter. Finally, defendant argued that counsel was ineffective for failing to introduce a copy of Victor Martinico's credit card statement, showing that he was in Chicago at the time of the shooting. Defendant supported his petition with affidavits executed by his mother, his brothers, his grandfather, his grandfather's wife, and Jose Arteaga, as well as a copy of Victor Martinico's credit card statement, which showed that he had made purchases in the Chicago area on August 14, 17, 18, and 20, 2003.

¶ 25 Victor Martinico stated in his affidavit that in August 2003, he and his new wife, Coralia, flew to Chicago to visit with his daughter, Diane Garcia, and her sons, defendant, Hector, Fabian, and Nicholas. On August 19, 2003, Victor and Coralia spent the day and the evening with the family. Diane and Nicholas went to the store for a few hours following dinner. About 11:30 p.m., Victor and Coralia left Diane's home to go to their hotel. Victor averred that defendant was present the entire evening. Victor further averred that he spoke with defendant's attorney, informed him he was willing to testify, and flew to Chicago for trial. He also provided counsel with a copy of his credit card statement, showing he was in Chicago during the time frame in question. Despite being present at trial and willing to testify, counsel did not call him as a witness.

¶ 26 Coralia Martinico averred in her affidavit that she was with her husband Victor's family on August 19, 2003. Coralia stated that the family spent the entire evening together and that defendant

was present at the house at 11:30 p.m., when she and Victor left for their hotel. Coralia further stated that defendant's attorney never interviewed her or asked her to testify on defendant's behalf.

¶ 27 Fabian and Nicholas Garcia, defendant's brothers, averred in separate affidavits that on August 19, 2003, they spent the entire day at home with their family, including defendant. Fabian and Nicholas stated that after their grandfather left, they and defendant played video games in their shared bedroom and went to bed about midnight. Fabian and Nicholas averred that defendant never left the house that evening. According to both Fabian and Nicholas, they would have testified, but were never contacted by defendant's attorney.

¶ 28 Diane Garcia, defendant's mother, averred in her affidavit that prior to trial, she informed defense counsel that defendant was at home at the time of the shooting, and that also present in her home were her father, his wife, and defendant's brothers. Diane stated that counsel never asked to speak with defendant's brothers.

¶ 29 Jose Arteaga averred in his affidavit that on August 19, 2003, he lived at 1610 South Loomis. On that day, George Cervantes, Justin Chapman, Adrian Covarrubias, and a man who was introduced to him as "Sammy" came to his home to hang out and drink beer. Shortly after midnight, Chapman, Covarrubias, and "Sammy" left to buy more beer. About 45 minutes later, the group returned without any beer. They asked Arteaga to turn on his police scanner, explaining that they had just shot at some "SDs," which he understood to mean Satan Disciples. Arteaga made everyone leave his home. Arteaga averred that he was familiar with defendant and stated that defendant was not at his home at any point on August 19 or 20, 2003. Arteaga stated that he spoke with the police about that evening and repeatedly told him that defendant was not at his home that night. Arteaga also stated in his affidavit that he was contacted by defendant's attorney, related to counsel that defendant was not among the group of men at his home on the night of the shooting, and was subpoenaed to

testify at defendant's trial. Although he was at the courthouse prepared to testify, he was not called to the stand.

¶ 30 The State filed a motion to dismiss the postconviction petition. The trial court granted the motion.

¶ 31 On appeal, defendant contends that his petition and attached affidavits made a substantial showing that trial counsel provided ineffective assistance by failing to call five witnesses of whom he was aware: Victor Martinico, Coralia Martinico, Fabian Garcia, and Nicholas Garcia, who would have provided alibi testimony that defendant was with them at the time of the shooting; and Jose Arteaga, an additional witness who would have testified that defendant was not part of the group that committed the shooting. Defendant argues that he was prejudiced by counsel's failure because these witnesses would have corroborated his alibi defense and discredited the State's witnesses.

¶ 32 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2010)) provides a three-stage process by which defendants may assert that their convictions were the result of a substantial denial of their constitutional rights. *People v. Bocclair*, 202 Ill. 2d 89, 99-100 (2002); *People v. Coleman*, 183 Ill. 2d 366, 378-79 (1998). The instant case involves the second stage of the post-conviction process. At this stage, dismissal is warranted when the petition's allegations, liberally construed in light of the trial record, fail to make a substantial showing of a constitutional violation. *Coleman*, 183 Ill. 2d at 382. A defendant is entitled to proceed to a third-stage evidentiary hearing on his petition only if the allegations in the petition, supported by the trial record and affidavits, make a substantial showing of a violation of constitutional rights. *Coleman*, 183 Ill. 2d at 381; *Franklin*, 167 Ill. 2d at 9. At second-stage proceedings, all factual allegations not positively rebutted by the record are considered to be true. *People v. Hall*, 217 Ill. 2d 324, 334 (2005). Our review at the second stage is *de novo*. *Coleman*, 183 Ill. 2d at 388, 389.

¶ 33 Claims of ineffective assistance of counsel are judged according to the two-prong test established in *Strickland v. Washington*, 466 U.S. 668 (1984). First, a defendant must demonstrate that counsel's representation fell below an objective standard of reasonableness. *Strickland*, 466 U.S. at 688. In order to establish this prong, the defendant must overcome the strong presumption that the challenged action or inaction may have been the product of sound trial strategy. *People v. Smith*, 195 Ill. 2d 179, 188 (2000). Second, a defendant must establish prejudice by showing "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. A "reasonable probability" is a probability sufficient to undermine confidence in the outcome. *Strickland*, 466 U.S. at 694.

¶ 34 We find that defendant is entitled to an evidentiary hearing on his claim that trial counsel was ineffective for failing to call Victor Martinico, Coralia Martinico, Fabian Garcia, Nicholas Garcia, and Jose Arteaga as witnesses. It is true that in general, an attorney's decision regarding which witnesses to call is a matter of trial strategy that is immune from claims of ineffective assistance of counsel. *People v. West*, 187 Ill. 2d 418, 432 (1999). However, counsel may be deemed ineffective for failing to present exculpatory evidence of which he is aware, including failing to call a witness whose testimony would support an otherwise uncorroborated defense. *People v. Tate*, 305 Ill. App. 3d 607, 612 (1999).

¶ 35 Here, the defense's theory of the case was that defendant was misidentified as the person who shot at Edmondson and killed Mateo. Defense counsel argued that Edmondson and Covarrubias were not credible witnesses, and suggested that a man named Sammy Govea was actually the shooter. He further argued that defendant was at home with his family at the time of the shooting. The proposed testimony of defendant's grandfather, step-grandmother, and brothers that defendant was with them on the night of the shooting would have provided defendant an alibi and, therefore, would have corroborated the defense theory of misidentification. We are mindful that defense

counsel did call one alibi witness, defendant's mother. However, her testimony only provided an alibi up to 11:45 p.m. Defendant's brothers would have extended the alibi at least through midnight, and possibly beyond that time frame.

¶ 36 Jose Arteaga's proposed testimony was that defendant was not with Justin Chapman and Adrian Covarrubias before or after the shooting, but rather, a man named "Sammy" accompanied them. This testimony would have directly contradicted Covarrubias' trial testimony that he, Chapman, and defendant were together that evening, both at "the Pit" and during the shooting. Thus, Arteaga would have corroborated the defense theory of misidentification as well.

¶ 37 We agree with defendant that the circumstances of the instant case are similar to those in *People v. Tate*, 305 Ill. App. 3d 607 (1999). In *Tate*, the defendant filed a post-conviction petition alleging ineffective assistance of trial counsel for failing to call three alibi witnesses whose affidavits placed defendant away from the scene of the shooting on the date and time in question. *Tate*, 305 Ill. App. 3d at 610. The circuit court granted the State's motion to dismiss the petition. *Tate*, 305 Ill. App. 3d at 608. On appeal, we remanded for an evidentiary hearing, finding that the affidavits supported the defense theory that the defendant was misidentified, and that there was no apparent strategic reason for not calling the alibi witnesses to testify. *Tate*, 305 Ill. App. 3d at 610, 612. We acknowledged that the defendant's attorney may have determined that the alibi witnesses would not testify truthfully or be persuasive due to their close relationship with the defendant, but we concluded that we could not say as a matter of law that was counsel's reasoning. *Tate*, 305 Ill. App. 3d at 612.

¶ 38 The instant case is also similar to *People v. Cleveland*, 2012 IL App (1st) 101631. In *Cleveland*, the defendant's initial, amended, and supplemental petitions alleged that counsel was ineffective for failing to call alibi witnesses who were ready and willing to testify on his behalf, and included supporting affidavits executed by the potential witnesses. *Cleveland*, 2012 IL App (1st) 101631, ¶¶ 14, 16, 17, 24. The State filed a motion to dismiss, which was granted by the trial court.

*Id.* at ¶¶ 28, 29. We reversed and remanded for an evidentiary hearing. *Id.* at ¶ 69. In doing so, we opined that it was "difficult to see how refusing to call several witnesses who could have provided an alibi for the defendant constituted reasonable trial strategy." *Id.* at ¶ 60. Because the record did not contain any evidence of a reasonable strategy that may have been employed by counsel in not calling the witnesses, we determined that the defendant had made a substantial showing that his constitutional rights were violated and that he was entitled to a third-stage evidentiary hearing. *Id.* at ¶¶ 60-61.

¶ 39 Here, the averments made by Victor Martinico, Coralia Martinico, Fabian Garcia, Nicholas Garcia, and Jose Arteaga in their affidavits -- which we must consider as true in this point of the proceedings -- support the defense theory that defendant was misidentified. As in *Tate and Cleveland*, the record in the instant case does not affirmatively disclose any strategic reason for not calling these alibi witnesses to testify at trial, with the exception of Victor Martinico. At sentencing, counsel indicated that he did not call Victor Martinico because he felt Victor's testimony would have conflicted with that of defendant's mother, Diane Garcia. However, the proposed testimony provided in Victor's affidavit does not contradict Garcia's trial testimony. Both stated that the family was together during the evening of August 19, 2003, that Diane and her son Nicholas went to the store for a few hours after dinner, that defendant did not leave at any time, and that Victor and his wife left around 11:20 or 11:30 p.m. Thus, the record does not support the reason given by counsel at sentencing. Moreover, we already determined on direct appeal that the record was inadequate to permit review of a claim that counsel was ineffective for failing to call alibi witnesses. See *People v. Garcia*, No. 1-07-0265 (2009) (unpublished order under Supreme Court Rule 23). To find that the record is adequate and rely upon it at this point would be inappropriate.

¶ 40 Counsel's decision not to call Victor Martinico, Coralia Martinico, Fabian Garcia, Nicholas Garcia, and Jose Arteaga may very well have been a professionally reasonable tactical decision and

not incompetence. However, the record does not reflect the nature of the decision one way or the other. See *Tate*, 305 Ill. App. 3d at 612. An evidentiary hearing will allow the circuit court to make an informed decision as to whether defendant received ineffective assistance of counsel. *Cleveland*, 2012 IL App (1st) 101631, ¶ 61; *Tate*, 305 Ill. App. 3d at 612. Accordingly, we reverse the dismissal of defendant's petition and remand for further postconviction proceedings.

¶ 41 On remand, defendant requests that his case be assigned to a different judge. There is no right to a substitution of judge at a postconviction proceeding. *People v. Hall*, 157 Ill. 2d 324, 331 (1993). Rather, the judge who presided over a defendant's criminal trial should hear his postconviction petition unless it is shown that the judge is "substantially prejudiced." *People v. Harvey*, 379 Ill. App. 3d 518, 522 (2008). A defendant must demonstrate "animosity, hostility, ill will, or distrust," or "prejudice, predilections or arbitrariness." *People v. Reyes*, 369 Ill. App. 3d 1, 25 (2006).

¶ 42 Defendant argues that substitution of judge is appropriate here because the postconviction court engaged in fact-finding and prematurely decided that it did not believe the witnesses listed in the petition when it granted the State's motion to dismiss. In making this argument, defendant relies upon the following statement made by the postconviction court:

"Once again, after reviewing the trial record, this court finds that trial counsel's decision to not call petitioner's brothers, grandmother, and Jose Arteaga as witnesses was also reasonable as a matter of trial strategy. Moreover, petitioner is unable to show prejudice such that he is entitled to a third-stage evidentiary hearing. During sentencing, the trial court specifically stated that it did not believe petitioner's version of events and did not find petitioner to be credible. Based on this finding, there is little probability that the

result of the proceedings would have been different had defense counsel called petitioner's brothers, grandmother, and Jose Arteaga as witnesses to provide support to petitioner's alibi."

¶ 43 We disagree with defendant that the postconviction court's comments justify reassignment to a different judge on remand. At most, the language quoted above shows that the court mistakenly assessed the credibility of the proposed witnesses. It does not demonstrate that the postconviction court held "animosity, hostility, ill will, or distrust" or "prejudice, predilections or arbitrariness" toward defendant. See *Reyes*, 369 Ill. App. 3d at 25. Accordingly, defendant's request for reassignment to a different judge on remand is denied.

¶ 44 For the reasons explained above, we reverse the judgment of the circuit court of Cook County and remand for an evidentiary hearing.

¶ 45 Reversed and remanded.