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IN THE

Supreme Court

OF THE

Commonwealth of the Northern Mariana Islands

JOSEPH A. CRISOSTOMO,
Petitioner-Appellant,

v.

COMMONWEALTH DEPARTMENT OF CORRECTIONS, AND WALLY VILLAGOMEZ, IN HIS OFFICIAL CAPACITY AS THE COMMISSIONER OF THE COMMONWEALTH DEPARTMENT OF CORRECTIONS,
Respondents-Appellees.

Supreme Court No. 2021-SCC-0015-CIV

OPINION

Cite as: 2022 MP 6

Decided September 2, 2022

CHIEF JUSTICE ALEXANDRO C. CASTRO
ASSOCIATE JUSTICE JOHN A. MANGLOÑA
ASSOCIATE JUSTICE PERRY B. INOS

Superior Court Civil Action No. 18-0389-CV
Judge Roberto C. Naraja, Presiding

MANGLOÑA, J.:

¶ 1 Petitioner-Appellant Joseph A. Crisostomo ("Crisostomo") appeals the trial court's order denying his writ of habeas corpus, which alleged that Crisostomo did not receive effective assistance of counsel before and during his 2013 trial, where he was found guilty of first-degree murder and sexual assault, among other offenses. For the following reasons, we AFFIRM the denial.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 The facts underlying this case have been thoroughly laid out by this Court in Crisostomo's first appeal. *See Commonwealth v. Crisostomo*, 2018 MP 5 ¶¶ 2-10. In 2013, Crisostomo was charged with multiple offenses, including the brutal kidnapping, sexual assault, and murder of Emerita Romero. The court appointed Janet King ("King") to represent Crisostomo with the aid of attorneys F. Randall Cunliffe and Jeffrey Moots.

¶ 3 The prosecution retained as an expert witness Susannah Kehl ("Kehl"), an FBI DNA analyst, to testify to the DNA taken from Romero as part of the investigation. King also retained an expert witness, Dr. David Haymer ("Haymer"), to rebut Kehl's testimony and to prepare King for Kehl's cross-examination.[1] At trial, Kehl testified that DNA taken from Romero showed the presence of DNA from two or more individuals. However, Kehl determined that within that mixture was a clear major contributor. Kehl compared the DNA of this major contributor with a known sample from Crisostomo and concluded that the profiles matched. She then concluded the chance that a random DNA profile from the Chamorro population would match in this manner was 1 in 960 million. *Commonwealth v. Crisostomo*, 2018 MP 5 ¶ 36. Accordingly, in Kehl's view, the odds that the major contributor was Crisostomo exceeded 99.999%.

¶ 4 After hearing Kehl's testimony and other evidence, including footprint morphology and testimony from several DPS detectives, the jury convicted Crisostomo of First Degree Murder, Kidnapping, Sexual Assault in the First Degree, and Robbery. *Commonwealth v. Crisostomo*, 2018 MP 5 ¶ 10. The judge convicted Crisostomo of Assault and Battery and Disturbing the Peace and later sentenced him to life imprisonment. This Court subsequently upheld all convictions. *Id.* ¶ 96.

¶ 5 After his first appeal, Crisostomo filed a petition for a writ of habeas corpus with the trial court while incarcerated. In the petition, Crisostomo argued that he had not received effective assistance of counsel at trial. After a hearing, the trial court denied Crisostomo's petition, and Crisostomo appealed.

II. JURISDICTION

¶ 6 We have appellate jurisdiction over final judgments and orders of the Commonwealth Superior Court. NMI CONST. art. IV, § 3.

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[1] Haymer was improperly excluded from testifying at trial, but this Court determined that the exclusion was a harmless error. *Commonwealth v. Crisostomo*, 2018 MP 5 ¶ 36.

III. STANDARDS OF REVIEW

¶ 7 We have previously stated that the standard of review of a denial of a writ of habeas corpus is de novo. *Commonwealth v. Miura*, 2010 MP 12 ¶ 5; *Rios v. Commonwealth*, 2022 MP 2 ¶ 9. However, both *Miura* and *Rios* turned on questions of legal and statutory interpretation; neither required us to review factual findings made by the trial court that provided the basis for the denial of the habeas petition. *See Miura*, 2010 MP 12 ¶ 18 (holding that denial of habeas petition was proper where Extradition Clause and NMI law rendered detention lawful); *Rios*, 2022 MP 2 ¶ 21 (affirming denial of habeas petition where petition was barred by laches). Accordingly, in those opinions, we did not discuss whether findings of fact are also to be reviewed de novo.

¶ 8 In contrast to *Miura* and *Rios*, this appeal requires us to evaluate findings of fact made by the trial court in its Order denying Crisostomo's petition. Other jurisdictions that have addressed this issue hold that factual findings made by the habeas court are reviewed with greater deference than are conclusions of law. California, for instance, asks whether factual findings are supported by "substantial evidence." *In re Taylor*, 343 P.3d 867, 877 (Cal. 2015). Similarly, most other states and territories look to whether the factual findings are clearly erroneous. *See, e.g.*, *Kearney v. Comm'r of Corrections*, 965 A.2d 608, 612(Conn. Ct. App. 2009) ("In a habeas appeal, this court cannot disturb the underlying facts found by the habeas court unless they are clearly erroneous"); *Burke v. Prosper*, 70 V.I. 866 ¶ 10 (V.I. 2019) ("This Court . . . evaluates [the Superior Court's] factual findings for clear error"); *Dillon v. Weber*, 737 N.W.2d 420, 424 (S. D. 2007) ("In a habeas case based on ineffective assistance of counsel…[t]he habeas court's findings of fact regarding counsel's performance are reviewed for clear error, and its conclusions of law are reviewed de novo.") (internal citations omitted); *State ex rel. Redmond v. Foster*, No. 2014AP2637, 2016 Wisc. App. LEXIS 839, at *16 (Wis. Ct. App. Apr. 27, 2016) ("On appeal of the denial of a writ of habeas corpus claiming ineffective assistance of . . . counsel, the mixed standard of review applies: findings of fact will not be disturbed unless clearly erroneous, but the legal question of whether, based on those found facts . . . counsel was ineffective is reviewed de novo.").

¶ 9 We find this deference to findings of fact appropriate and hereby adopt it in the NMI. Under this standard, the appellate court accepts those facts found by the trial court unless they are clearly erroneous. Then, the appellate court conducts its own analysis, de novo, of whether the facts constitute ineffective assistance of counsel.

IV. DISCUSSION

¶ 10 The only issue on appeal is whether Crisostomo was denied effective assistance of counsel before and during his trial. Crisostomo asserts that King's performance was ineffective at several stages. First, she did not give the defense DNA expert, Haymer, adequate time and information to review certain critical documents, including Kehl's analysis. Second, she failed to attack Kehl's DNA testimony, which Crisostomo alleges was severely flawed and did not accurately

establish the perpetrator's DNA profile. Finally, she did not request a "full" *Daubert* hearing outside the presence of the jury that would have allowed the court to further scrutinize Kehl's qualifications and methodology.

¶ 11 The Sixth Amendment to the United States Constitution and Article I of the NMI Constitution grant accused persons in criminal prosecutions the right to be assisted by an attorney. U.S. CONST. amend. VI; NMI CONST. art. I, § 4(a). Such assistance does not, however, need to be perfect or free from error. *Commonwealth v. Shimabukuro*, 2008 MP 10 ¶ 9. The right to counsel is the right to *effective* assistance of counsel. *Id*. Assistance is ineffective only where counsel's performance falls below that of a reasonably competent attorney. *Id*.

¶ 12 In *Strickland v. Washington*, 466 U.S. 668 (1984), the United States Supreme Court formulated a two-part test to determine whether counsel's assistance is ineffective. The NMI has explicitly adopted this test. *Commonwealth v. Shimabukuro*, 2008 MP 10 ¶ 14. First, the defendant must show that counsel's performance was deficient. *Strickland*, 466 U.S. at 687. Under this "performance prong," the defendant must show that counsel's performance "fell below an objective standard of reasonableness." *Id*. at 688. In determining whether a defense counsel's advice is reasonable, a court must determine whether it is "within the range of competence demanded of attorneys in criminal cases." *Id*. at 687. Furthermore, the reasonableness of counsel's conduct must be assessed according to "the facts of the particular case, viewed as of the time of counsel's conduct." *Id*. at 690. Deficiency lies only where counsel made errors so serious that he or she was not functioning as the counsel guaranteed by the Constitution. *Id*. at 687.

¶ 13 If the defendant demonstrates that counsel's performance was deficient, he or she proceeds to the second prong, which requires a showing that this performance prejudiced the defendant. *Id*. Under this "prejudice prong," "the defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id*. at 694. Therefore, the defendant must show, with reasonable probability, that the attorney's error caused the defendant to lose the case. *Id*. at 695.

¶ 14 First, we address whether King's alleged failure to provide Haymer with certain documents in a timely manner constituted ineffective assistance of counsel. The parties do not entirely agree on the facts underlying this issue. Crisostomo asserts that King first received notice of Kehl's testimony in April 2013, one year before trial. Despite the fact that the government turned over Kehl's case file during discovery in 2013, Crisostomo continues, King did not send the complete file to Haymer until a month prior to trial. Crisostomo also notes that the government provided King with over 1,000 pages of FBI lab manuals that explained the DNA testing procedures used by Kehl. These, he says, were never delivered to Haymer at all.

¶ 15 The Commonwealth, to the contrary, asserts that King transmitted Kehl's case file to Haymer immediately after receiving it from the government in 2013.

In addition, the Commonwealth argues that the record does not conclusively demonstrate that she did not submit the FBI lab manuals to Haymer. At most, the Commonwealth claims, the record is silent about whether King communicated with Haymer regarding these lab manuals, and the court should not conclude that she did not transmit them.

¶ 16 The trial court concluded that Kehl's case file was delivered to Haymer in March of 2014, only one month before trial, and that it was impossible to determine whether a copy of the FBI manual was ever delivered to Haymer. Because this conclusion is a finding of fact, our review is limited to clear error. *See supra* ¶ 9.

¶ 17 There is some indication in the record supporting the Commonwealth's contention that King sent Kehl's case file to Haymer as early as August 2013, well in advance of trial. In her declaration, King stated that she requested Kehl's file on August 23, 2013 and that "[u]pon receipt of the discovery materials concerning Ms. Kehl's case file from the Office of the Attorney General . . . I immediately sent copies of said materials directly to Dr. Haymer for his analysis and preparation." Appendix to Appellant's Br. ("App.") 130. However, there is nothing else in the record to support King's declaration, which the trial court did not ultimately credit. By contrast, several email exchanges between Haymer and King in March 2014 suggest that Kehl's case file was not transmitted until that time. For instance, on March 10, 2014, King received an automated email notifying her that Haymer had joined her online Dropbox folder titled "nDNA STUFF [sic]." App. 157. Three days later, Haymer wrote in an email to King that "I just received a call back from Susannah Kehl…[s]he said that everything we need . . . is on a CD provided to the prosecutors. A copy of all this was supposed to be provided to you as part of the discovery." App. 99. On March 16, 2014, and again on April 1, the two exchanged substantive comments about Kehl's DNA analysis over email. These communications suggest that King did not begin transmitting discovery materials to Haymer—including Kehl's case file—until March of 2014. Accordingly, we find no clear error in the trial court's determination that the case file was not delivered until that time.

¶ 18 Similarly, the trial court did not commit clear error in its conclusion that it was impossible to determine whether a copy of the FBI manual was ever delivered to Haymer. The record is silent regarding such a manual. Indeed, Crisostomo's initial habeas petition did not even allege that King failed to give the manual to Haymer. However, as Crisostomo points out, invoices submitted by Haymer show that he spent less than ten hours reviewing the materials provided to him. On its face, this amount of time seems inconsistent with the review of a 1,000-page document. However, in the habeas hearing, Crisostomo conceded that much of the manual is "redundant, repetitive or duplicate." App. 306. It may be that much of the manual described generic background information on DNA testing with which Haymer was already familiar.

¶ 19 Our caselaw is silent on the circumstances, if any, under which a failure to deliver case materials to an expert witness constitutes ineffective assistance.

However, the Ninth Circuit[2] has repeatedly addressed this issue. In *Bean v. Calderon*, 163 F.3d 1073, 1078 (9th Cir. 1998) the court upheld a finding of ineffective assistance where an attorney did not contact an expert until one or two days before the hearing, leaving him with little time to prepare his testimony. The attorney in *Bean* also did not give another testifying expert any case material outside of a single test report and did not relay any case facts to a third expert witness. *Id*. at 1078–79. In *Clark v. Chappell*, 936 F.3d 944, 976 (9th Cir. 2019), the defendant at trial, Clark, argued that trial counsel was ineffective in failing to provide an expert who testified to impulsivity with adequate medical and clinical records. The court disagreed: while the attorney could have provided the expert with additional information, there was no reason to think that the expert's testimony would have changed in light of any additional information that could have been provided. *Id*. Clark also argued that trial counsel failed to provide another expert, Dr. Raffle, with adequate information regarding Clark's background and history. *Id*. Again, the court concluded that while Dr. Raffle did not have *all* documents pertaining to the defendant's background, the attorney did provide him with "substantial background materials," such as psychological evaluations and state mental health records. *Id*. Likewise, the court concluded that the attorney did not fall below the standard of reasonable competence. *Id*. at 977.

¶ 20 Many state supreme courts have also grappled with the question of expert preparation. In *Schoenwetter v. State*, the defendant was convicted of first-degree murder and subsequently petitioned for a writ of habeas corpus. 46 So. 3d. 535, 540 (Fla. 2010). In that petition, he asserted that his trial counsel was deficient for presenting unprepared and inconsistent expert witnesses; specifically, Schoenwetter argued that his attorneys should have given defense experts copies of an interview he did with the police to bolster their testimony regarding his mental state. *Id*. at 559–560. The Florida Supreme Court concluded that attorneys were not deficient even where they failed to provide the experts with access to this interview. *Id*. at 560. Since both experts testified to their professional qualifications, had access to a wide range of other materials relating to defendant's background, and conducted interviews with the defendant, the court determined that it was "unlikely that the jury would have concluded the experts were unprepared." *Id*. Accordingly, the attorneys' performance passed constitutional muster.

¶ 21 In *In re Pers. Restraint of Gomez*, the Washington Supreme Court also found counsel's performance to withstand an ineffective assistance challenge based on incomplete expert preparation. 325 P.3d 142 (Wash. 2014). This case arose with Gomez's convictions for manslaughter and homicide by abuse. *Id*. at 147. Gomez filed a postconviction motion for discretionary review with the Washington Supreme Court, in which she argued that she had been denied

[2] Where there is no dispositive NMI authority, we may consider the law of other jurisdictions as persuasive authority. *Luan v. PRMC*, 2021 MP 8 ¶ 15 (citing *Commonwealth v. Lot No. 353 New G*, 2012 MP 6 ¶ 16.)

effective assistance of counsel, in part because her attorney did not provide an expert witness with certain materials in a timely fashion. *Id*. at 153. The Supreme Court concluded that, even if the attorney did not prepare the expert adequately, Gomez still failed to show prejudice, because the expert had received all the "necessary material, created a full report, and provided adequate medical testimony." *Id*.

¶ 22 These cases indicate that there is no single rule that dictates whether expert preparation was adequate or when case materials should be delivered to an expert. Instead, we conclude an attorney's preparation of an expert should be judged by looking at the totality of the circumstances. Particular attention should be given to when the materials were delivered, the expert's experience in handling the type of case at issue, the volume and complexity of materials that were or should have been delivered to the expert, and whether the expert represented to the attorney that he or she had adequate time and resources to prepare to testify.

¶ 23 Here, we find King's performance to be adequate. She shared the critical documentation—a copy of Kehl's report and test results—with Haymer several weeks prior to the trial. Haymer had sufficient time to review these materials, as the report and test result together amounted to only 57 pages. Moreover, Haymer never expressed that he did not have enough time to prepare for trial. While it is unclear whether Haymer received the FBI lab manuals, such manuals are public records and are available online. Indeed, at the hearing on the habeas petition, Crisostomo himself conceded that much of the information in the manuals is redundant and duplicative. The record demonstrates that King and Haymer frequently communicated via phone and email regarding the status of the case. Additionally, Haymer represented that he had adequate information to study Kehl's analysis. Indeed, he prepared and relayed several points critical of Kehl's testimony, and King pursued these points during cross-examination. Finally, Haymer, a Ph.D. in biology with a specialty in molecular genetics, had substantial experience with DNA analysis: at the time of trial, he had multiple publications in the field, held certifications in forensic DNA investigations, and had worked for nearly eight years as a DNA consultant for the Innocence Project. *Crisostomo*, 2018 MP 5 ¶ 32. King's performance certainly exceeded that of counsel in *Bean*, who transmitted documents to an expert merely two days before the proceeding. 163 F.3d at 1078. Like in *Clark*, counsel here provided the expert with substantial background materials in a reasonably prompt manner. 936 F.3d at 976. We note that our conclusion is narrowly tailored to the specific facts and circumstances presented above. While we think it would have been best practice to share the relevant materials with Haymer several weeks—or perhaps even months—earlier, the record does not demonstrate that she made errors so serious as to not be functioning as the counsel guaranteed by the Constitution. *See Strickland*, 466 U.S. at 687.

¶ 24 Crisostomo also contends that he was denied effective assistance of counsel because King did not adequately attack the substance of Kehl's

testimony, which linked Crisostomo's DNA to that taken from Romero during the investigation. Defense attorneys have an obligation to prepare to rebut opposing counsel's witnesses with known or readily available information. *Rogers v. Dzurenda*, 25 F.4th 1171, 1182 (9th Cir. 2022). However, this rebuttal need not be perfect. *See Commonwealth v. Shimabukuro*, 2008 MP 10 ¶ 9 ("[A]ssistance of counsel does not have to be perfect or free from error."); *Mendez v. Sherman*, No. 2:14-cv-1950-MCE-KJN (TEMP), 2016 U.S. Dist. LEXIS 62597, at *74 (E.D. Cal. May 11, 2016) (citing *United States v. Cronic*, 466 U.S. 648, 656–58 (1984)). Our inquiry is confined to whether the attorney's efforts fell below an objective standard of reasonableness and whether the defendant suffered prejudice as a result. *Supra*, ¶¶ 12–13; *U.S. v. Rodriguez-Vega*, 797 F.3d 781, 786 (9th Cir. 2015). Moreover, we grant a strong presumption that a rebuttal was performed effectively. *See Rogers*, 25 F.4th at 1181.

¶ 25 At trial, Kehl testified that DNA extracted from Romero's body via vaginal swabs as part of the investigation contained a mixture of DNA from two or more individuals. However, within that mixture, Kehl stated, was the presence of a clear "major contributor"—the DNA of a single individual—which she isolated according to FBI mixture interpretation guidelines. Kehl compared the DNA of this major contributor to Crisostomo's DNA and found that the profiles matched. She then determined the chances that a random DNA sample from the Chamorro population would match in this way to be 1 in every 960 million.

¶ 26 King's cross-examination of Kehl was thorough and detailed. She subjected Kehl to questioning three separate times over multiple days of trial. Her lines of questioning demonstrated that she had familiarized herself with DNA testing procedures, the terminology used in Kehl's report, and with the points of attack suggested by Haymer. In Crisostomo's prior appeal, we wrote favorably of this cross-examination, calling it "extensive" and writing that her "various" questions "tested Kehl's interpretation of the initial chart provided." *Crisostomo*, 2018 MP 5 ¶ 36. Indeed, the strength of the cross-examination provided much of the basis for our holding in that appeal that Haymer's exclusion was harmless. *Id*. Moreover, King again criticized Kehl's testimony in her closing argument, suggesting that she made human errors in her interpretation of the DNA tables.

¶ 27 We find these attempts to attack Kehl's testimony to be adequate. That the jury ultimately credited her testimony does not mean that counsel's assistance was ineffective. Again, to meet the constitutional threshold, an attorney's performance must simply be objectively reasonable. *Supra* ¶ 12. On appeal, Crisostomo fails to explain in concrete detail the specific lines of questioning that he believes should have been pursued at trial or the flaws that he believes were present in Kehl's analysis. Crisostomo's mere belief that King could have asked better questions on cross-examination does not constitute a claim for ineffective assistance. *See Hamry v. Beers*, No. 90-35656, 1991 U.S. App. LEXIS 10131, at *2 ("[The Defendant's] opinion that the cross-examination could have been more

thorough does not constitute ineffective assistance of counsel") (citing *Guam v. Santos*, 741 F.2d 1167, 1169 (9th Cir. 1984)).

¶ 28 Finally, Crisostomo contends that he was denied effective assistance of counsel because King did not pursue additional *Daubert* procedures aimed at disqualifying Kehl's testimony. The NMI has adopted the opinion of the United States Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and its progeny. *Commonwealth v. Crisostomo*, 2018 MP 5 ¶ 19. Under this line of cases, a trial judge, pursuant to NMI Rule of Evidence 702, serves a gatekeeping function to ensure that the testimony of experts is reliable. *Id*. ¶¶ 17, 20. The court must determine whether the testimony would be relevant and must also assess the reasoning and methodology underlying the expert's opinion to ensure that it is both scientifically valid and applicable to a particular set of facts. *Id*. ¶ 20. The court must allow presentation of evidence as to these issues and must make specific findings regarding its evaluation. *Id*. ¶¶ 21, 23. The *Daubert* inquiry is flexible and there is no singular, specific procedure that must be applied in all cases. *See id*. ¶ 24.

¶ 29 At trial, King did not request a full-fledged *Daubert* hearing to assess Kehl's qualifications and methodology. *Crisostomo*, 2018 MP 5 ¶ 26. The Commonwealth elicited her qualifications and King waived further questioning. *Id.* Subsequently, the court qualified Kehl as an expert. *Id*. Only thereafter was Kehl questioned about her methodology and its application to the facts of the case. *Id*.

¶ 30 Our caselaw does not have a specific standard of review for the circumstances, if any, under which counsel's failure to argue for an extensive *Daubert* evaluation would amount to ineffective assistance. However, the overarching standard used in determining whether a defense counsel's assistance is reasonable is whether it is "within the range of competence demanded of attorneys in criminal cases." *Strickland*, 466 U.S. at 687. We have held that a failure to raise a meritless objection is not deficient performance. *Commonwealth v. Taman*, 2014 MP 8 ¶ 23. Furthermore, the reasonableness of counsel's conduct must be assessed according to the facts of the particular case, viewed as of the time of counsel's conduct. *Strickland*, 466 U.S. at 690.

¶ 31 Other states have developed caselaw that is specific to *Daubert* proceedings. In *Woods v. State*, the defendant was convicted by a Wyoming jury of several counts of sexual abuse of a minor. 401 P.3d 962, 965 (Wyo. 2017). At trial, the State called a psychologist, as an expert, to testify to victim behavior. *Id*. at 969. The defendant's trial attorney did not request a pretrial *Daubert* hearing, and, on appeal, the defendant argued that this amounted to ineffective assistance of counsel. *Id*. The Supreme Court of Wyoming rejected this argument, holding that the defendant had failed to show that the evidence was objectionable and that a lack of objection was not a reasonable trial strategy. *Id.* at 970. Michigan employs a similar standard. In *People v. Juwan Knumar Deering*, the defendant was convicted of five counts of first-degree felony murder and one count of burning a dwelling house. No. 344743, 2020 Mich. App.

LEXIS 1318, at *1 (Mich. Ct. App. Feb. 20, 2020). The prosecution introduced an arson expert to testify to the cause and source of the fire, and the defendant's attorney did not seek to exclude the expert's testimony as unreliable under *Daubert*. *Id.* at *9–10. After being convicted, the defendant moved for relief from the judgment, arguing that his attorney's failure to seek to exclude the expert amounted to ineffective assistance of counsel. *Id*. The trial court denied this motion, and the court of appeals upheld, concluding that the expert's methodology was reliable, based on the scientific method, and that it was not "objectively unreasonable" for the defense attorney not to seek exclusion. *Id*. at *11.

¶ 32 On appeal, Crisostomo provides no reason to think that the decision not to challenge Kehl further under *Daubert* was objectively unreasonable or even that Kehl's testimony was objectionable. King stated in her declaration that the defense team weighed the options of a *Daubert* hearing and determined that Kehl was likely to meet the standard. In light of Kehl's credentials and experience,[3] such a determination is hardly unreasonable; indeed, this Court found no issue with the admission of Kehl as an expert witness in Crisostomo's prior appeal. *See Commonwealth v. Crisostomo*, 2018 MP 5 ¶ 26. Insisting on further *Daubert* scrutiny would have been the sort of meritless attack that *Taman* does not require of Commonwealth attorneys. *See Taman*, 2014 MP 8 ¶ 23.

¶ 33 In addition, Crisostomo fails to demonstrate that he was prejudiced by Kehl's decision. After certifying Kehl as an expert, the court subjected her to questioning about her DNA testing procedures and methodology. Therefore, any request for additional scrutiny would have been largely duplicative of the court's action at trial. Accordingly, Crisostomo cannot demonstrate a reasonable probability that Kehl would have been excluded under *Daubert* had King acted differently. *See Strickland*, 466 U.S. at 694.

V. CONCLUSION

¶ 34 We conclude that King's assistance of Crisostomo was not constitutionally deficient and AFFIRM the trial court's denial of Crisostomo's habeas petition.

SO ORDERED this 2nd day of September, 2022.

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[3] At the time of trial, Susannah Kehl had been employed as an FBI DNA examiner in an independently-accredited laboratory for four years and previously for six years as a DNA examiner with the New York City Office of Chief Medical Examiner. These positions required her to pass a variety of training programs and oral and written examinations. She testified that she had performed DNA analysis in "approximately a thousand cases" involving "thousands and thousands of DNA examinations." Moreover, she had testified as an expert in DNA analysis in federal and state courts across the country, including all five boroughs of New York City, Maryland, the District of Columbia, the Eastern District of New York, the U.S. Virgin Islands, and Guam. Her academic qualifications included a Bachelor's Degree in Chemistry with a concentration in Biochemistry and a Master's Degree in Forensic Science.

/s/
ALEXANDRO C. CASTRO
Chief Justice

/s/
JOHN A. MANGLOÑA
Associate Justice

/s/
PERRY B. INOS
Associate Justice

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