THE ARKANSAS SUPREME COURT HOLDS THAT, ALTHOUGH APPELLANT'S COUNSEL AT TRIAL WERE INEFFECTIVE FOR FAILING TO INTERVIEW AND CALL SPECIFIC MITIGATIONWITNESSES, APPELLANT WAS NOT PREJUDICED WHEN THERE WAS NO EVIDENCE THE TESTIMONY WOULD HAVE LED THE JURY TO A DIFFERENT OUTCOME.

In *Springs v. State*, Appellant, Thomas Springs , "collided his car head-on into a [vehicle] in which his estranged wife, Christina Springs, was a passenger," along with her three-year-old niece and her sister, Kelly Repking, who was driving the vehicle.[1] After ramming the vehicle, "Appellant got out of his car, [broke] the passenger-side window of . . . Repking['s] [car], and . . . beat Christina's face into the dashboard."[2] He then returned to his vehicle and retrieved a knife, which he used to stab and kill Christina.[3] Appellant was convicted of capital murder and two counts of aggravated assault and sentenced to death for the capital murder conviction.[4]

Thereafter, Appellant filed a petition and an amended petition for post-conviction relief, claiming ineffective assistance of counsel.[5] A hearing on his petitions was held in 2009, at which the circuit court heard testimony from Appellant's trial counsel, John Joplin and Cash Haaser, and Appellant's son, Matthew Mooring.[6] The circuit court denied Appellant's request for post-conviction relief, and this case resulted from his appeal of the lower court's denial of his petitions.[7]

The Arkansas Supreme Court reverses the circuit court's decision regarding post-conviction relief only after a finding that the lower court's decision is clearly erroneous.[8] When a petitioner appeals a denial of a Rule 37 petition, the question is whether, based on all of the evidence, "the circuit court clearly erred in holding that counsel's performance was not ineffective."[9] On appeal, the Court uses the two-prong test set forth in *Strickland v. Washington*.[10] First, the petitioner must show that his trial counsel made errors so serious that the petitioner did not receive his right to counsel guar-

1. 2012 Ark. 87, at 1, 387 S.W.3d 143 (2012).
2. *Id.* at 1–2, 387 S.W.3d at 147.
3. *Id.* at 2, 387 S.W.3d at 147.
4. *Id.*
5. *Id.*
6. *Id.*
7. *Springs*, 2012 Ark. 87, at 2, 387 S.W.3d at 147.
8. *Id.*
9. *Id.* at 3, 387 S.W.3d at 147 (citing Anderson v. State, 2011 Ark. 488, 385 S.W.3d 783).
10. *Id.*, 387 S.W.3d at 147.

anteed by the Sixth Amendment.[11] Second, the petitioner is required to show that his trial counsel's deficient performance prejudiced the petitioner, such that he was deprived of his right to a fair trial.[12] The petitioner must show that counsel's performance did not meet an objective standard of reasonableness and that there is a reasonable probability that, had counsel's performance not been deficient, there would have been a different outcome.[13]

The Court noted that the right to effective assistance of counsel applies in the penalty phase of a criminal trial and that the failure to present any testimony during the mitigation phase of sentencing falls short of this constitutional guarantee.[14] However, the Court also pointed out that it has consistently held that the decision not to offer certain mitigating testimony or evidence after a full investigation of the facts is a question of trial strategy.[15]

Appellant cited to multiple cases to support his claim that his counsel was ineffective by not interviewing and calling Matthew as a mitigation witness, but the Court distinguished those cases from the instant case.[16] Appellant cited to *Wiggins v. State*,[17] in which the United States Supreme Court held that counsel was ineffective for failing to present any mitigating evidence regarding the defendant's dysfunctional background and physical and sexual abuse he had suffered.[18] Appellant also cited *Sanford v. State*,[19] in which the Arkansas Supreme Court held that counsel was ineffective because "counsel conducted virtually no investigation regarding mitigation evidence."[20]

In the instant case, however, the Court noted that Appellant's trial counsel did not totally fail to investigate and introduce mitigation evidence; rather, counsel produced fourteen mitigation witnesses.[21] The issue then, the Court stated, was whether counsel's failure to interview and call a specific witness, Matthew, prejudiced the Appellant, such that there was a reasonable probability that there would have been a different outcome at the trial.[22]

Joplin and Haaser, Appellant's trial counsel, did not contact any of Appellant's older children in preparation for the penalty phase of the trial, and

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11. *Id.*, 387 S.W.3d at 148 (citing Williams v. State, 369 Ark. 104, 251 S.W.3d 290 (2006)).
12. *Id.*, 387 S.W.3d at 148.
13. *Springs*, 2012 Ark. 87, at 4, 387 S.W.3d at 148.
14. *Id.* at 5–6, 387 S.W.3d at 149 (citing Coulter v. State, 343 Ark. 22, 29, 31 S.W.3d 826, 830 (2000)).
15. *Id.* at 6, 387 S.W.3d at 149.
16. *Id.* at 7, 387 S.W.3d at 149–50.
17. 539 U.S. 510 (2003).
18. *Springs*, 2012 Ark. 87, at 6, 387 S.W.3d at 149.
19. 342 Ark. 22, 25 S.W.3d 414 (2000).
20. *Springs*, 2012 Ark. 87, at 7, 387 S.W.3d at 149.
21. *Id.* at 7, 387 S.W.3d at 150.
22. *Id.* at 7–8, 387 S.W.3d at 150.

they were aware of Matthew, but decided not to interview him or call him as a witness.[23] Matthew stated that his testimony would have been that his father was a good man, that Matthew and his siblings would not want to lose their father, and that they were never without a home and "never needed anything."[24] Appellant contended that Matthew's testimony would have counterbalanced the testimony of Appellant's younger son, Jacob.[25]

Jacob read his statement to the jury, explaining how his mother's death (and his father's involvement) had affected him.[26] He testified that he and his siblings have been separated since his siblings were put into the DHS system.[27] He stated, "I loved my mom so much and I miss her."[28] He explained that he was adopted by his aunt and uncle, he had to attend a new school where he received daily therapy, and he began taking medicine due to his depression after his mother's death.[29] Jacob asked Appellant why he had killed his mom and asked, "Will you tell me when I grow up?"[30] He closed by saying, "If I could have one wish in the whole wide world it would be for my mom to come back."[31]

The Court concluded that Appellant's trial counsel were ineffective for failing to interview Appellant's other children and for failing to call Matthew to testify as a mitigation witness.[32] However, the Court held that no prejudice resulted from these errors, "such that there was a reasonable probability the jury would have imposed a different sentence."[33] In support of its holding, the Court stated first that Matthew's testimony was not remotely comparable to that of Jacob.[34] Although Matthew would have testified that Appellant was a good father, his testimony was largely cumulative.[35] Secondly, the Court agreed with the State's contention that "it could have impeached Matthew's testimony by [offering] evidence that . . . the family was living in a shelter" when the murder occurred and that DHS had an existing case file on the family.[36]

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23. *Id.* at 8, 387 S.W.3d at 150.
24. *Id.* at 8–9, 387 S.W.3d at 151.
25. *Id.* at 9, 387 S.W.3d at 151.
26. *Springs*, 2012 Ark. 87, at 9–10, 387 S.W.3d at 151–52.
27. *Id.* at 9, 387 S.W.3d at 151.
28. *Id.* at 10, 387 S.W.3d at 151.
29. *Id.*, 387 S.W.3d at 151–52.
30. *Id.*, 387 S.W.3d at 151.
31. *Id.*, 387 S.W.3d at 152.
32. *Springs*, 2012 Ark. 87, at 10–11, 387 S.W.3d at 152.
33. *Id.*
34. *Id.* at 11, 387 S.W.3d at 152.
35. *Id.*
36. *Id.*

Finally, the Court considers the "effect having only one child testify for Appellant . . . had on the jury."[37] The Court looks to its holding in *Rankin v. State*,[38] in which the Court held that "calling only one relative, [the appellant's] aunt, as a witness would have been less than convincing, especially when immediate family members . . . were not called to testify."[39] The issue in this case, then, is how compelling Matthew's testimony would have been considering the number of Appellant's children who did not testify on his behalf.[40]

The Court ruled that Appellant had not demonstrated that there was a reasonable probability the result would have been different had Matthew been called as a witness.[41] The Court notes that the jury found both aggravating and mitigating factors and determined that the mitigating factors did not outweigh the aggravators.[42] The Court therefore ruled that the circuit court's denial of Appellant's petition was not in error.[43]

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37. *Id.* at 11–12, 387 S.W.3d at 152.
38. 365 Ark. 255, 227 S.W.3d 924 (2006).
39. *Springs*, 2012 Ark. 87, at 11–12, 387 S.W.3d at 152 (quoting *Rankin*, 365 Ark. at 260, 227 S.W.3d at 928).
40. *Id.* at 12, 387 S.W.3d at 152.
41. *Id.*
42. *Id.*, 387 S.W.3d. at 152–53.
43. *Id.*, 387 S.W.3d at 153.