

ROBERT WHITMORE

v.

STATE OF MAINE

Argued March 12, 2008  
Decided March 18, 2008

Panel: SAUFLEY, C.J., and CLIFFORD, ALEXANDER, LEVY, MEAD,  
SILVER, and GORMAN, JJ.

MEMORANDUM OF DECISION

The State appeals from a judgment entered in the Superior Court (Kennebec County, *Mills, J.*) granting Robert Whitmore's petition for post-conviction review based on ineffective assistance of counsel. Deference is given to the post-conviction court's findings; such findings will not be overturned unless no competent evidence exists in the record to support them. *McGowan v. State*, 2006 ME 16, ¶ 15, 894 A.2d 493, 498. The record supports the post-conviction court's findings that trial counsel failed to adequately prepare the defendant, did not provide him with the option to testify, and did not contact or investigate other

potential witnesses, and that no evidence was presented to rebut the State's case-in-chief. Thus, it was not clear error for the post-conviction court to find that trial counsel's performance fell below that of the ordinarily fallible attorney and that this may have affected the outcome of the case. *See id.* ¶¶ 11-13, 894 A.2d at 496-97; *see also Whitmore v. State*, 670 A.2d 394, 396 (Me. 1996) (holding duty to conduct "reasonable investigation").

The entry is:

Judgment affirmed.

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