IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN CROWLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48768

FILED

OCT 16 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order denying a post-conviction petition for a writ of habeas corpus. First Judicial District Court, Carson City; William A. Maddox, Judge.

Appellant John Crowley was convicted, pursuant to a jury verdict, of sexual assault of a child under the age of 14, sexual assault of a child under the age of 16, and two counts of open or gross lewdness. The district court sentenced Crowley to serve two life terms in prison with the possibility of parole for the sexual assault convictions and twelve-month prison terms for each of the open or gross lewdness convictions. This court affirmed in part, reversed in part and remanded the judgment of conviction on direct appeal.[1] Crowley filed a post-conviction petition for a writ of habeas corpus, which the district court denied after conducting an evidentiary hearing. This appeal followed.

[1]Crowley v. State, 120 Nev. 30, 83 P.3d 282 (2004). Crowley was also convicted of lewdness with a child under the age of 14 and sentenced to serve a life term in prison with the possibility of parole. However, we reversed that conviction as being redundant with his conviction for sexual assault on a child under the age of 14.

Crowley's convictions stem from events involving two victims: his stepdaughter, L.W. and a 12-year-old neighbor boy, J.M.

Crowley argues that the district court erred in denying his claim that counsel was ineffective for not seeking a severance of the charges involving L.W. At the evidentiary hearing, counsel explained that he refrained from seeking a severance because he believed such a motion would have been unsuccessful. Specifically, counsel stated that he believed the charges were sufficiently similar and that trying the weaker charges involving L.W. along with the stronger ones respecting J.M. would increase the likelihood of an acquittal on at least some of the charges.

Noting that it would have granted a severance motion, the district court nonetheless concluded that counsel's performance was not deficient. The district court also stated that even assuming counsel's performance was deficient, Crowley had not shown prejudice because the evidence concerning all of the charges was cross-admissible and counsel's reason for not seeking a severance was "not a bad tactical decision." The cross-admissibility of the evidence here is tenuous,[2] but even so we conclude that relief is not warranted.[3] The district court also found that counsel exercised a sound tactical decision in not moving for a severance. Such decisions are "'virtually unchallengeable absent extraordinary circumstances.'"[4] To establish any prejudicial impact from improper

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[2]See Tabish v. State, 119 Nev. 293, 307-09, 72 P.3d 584, 593-94 (2001).

[3]See Wyatt v. State, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).

[4]Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996)

joinder, Crowley must show more than that severance of the charges made acquittal more likely.[5] Crowley's assertion that he would have been acquitted of some of the charges had counsel sought a severance is mere speculation. As discussed below, the record before us shows that sufficient evidence supports each conviction.[6] Even assuming counsel should have moved for severance, we conclude that Crowley has not shown prejudice.

Crowley next argues that his appellate counsel was ineffective for not challenging the sufficiency of the evidence to support his convictions. We conclude, however, that he failed to show that such a challenge had a reasonable probability of success on appeal.[7] J.M. and L.W. testified with sufficient particularity that Crowley committed the acts with which he was charged.[8] Additionally, members of J.M.'s family testified about J.M.'s demeanor immediately following Crowley's assault and that they observed physical evidence of the assault shortly after it occurred. A mental health professional testified that L.W.'s incorrigibility following Crowley's abuse was consistent with the behavior of a sexually abused child. Based on the record before us, we conclude that a challenge to the sufficiency of the evidence would have been unsuccessful on appeal

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[5]Marshall v. State, 118 Nev. 642, 56 P.3d 376, 379 (2002).

[6]We note that a complete trial transcript was not included in the appendix on appeal and therefore, all the evidence presented at trial is not before us. Crowley bears the burden of providing an adequate record on appeal. See Greene v. State, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980).

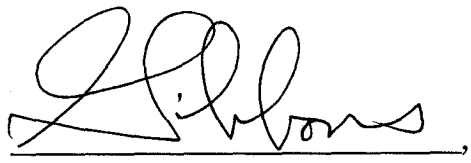
[7]Doleman v. State, 112 Nev. 843, 848, 921 P.2d 278, 280 (1996) (quoting Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990)).

[8]See LaPierre v. State, 108 Nev. 528, 531, 836 P.2d 56, 58 (1992).

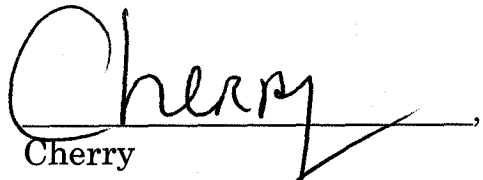
despite Crowley's unpersuasive claims that the State relied on coerced testimony and the absence of corroborative or physical evidence. Consequently, we conclude that the district court did not err in denying this claim.

Having considered Crowley's claims and concluded that no relief is warranted, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Gibbons



_____, J.
Cherry

_____, J.
Saitta

cc: Hon. William A. Maddox, District Judge
Kay Ellen Armstrong
Attorney General Catherine Cortez Masto/Carson City
Carson City District Attorney
Carson City Clerk