IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIE J. WILTZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51772

FILED

JAN 07 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S.Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Willie J. Wiltz's timely, first post-conviction petition for a writ of habeas corpus asserting ineffective assistance of trial counsel. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge. We give deference to the court's factual findings if they are supported by substantial evidence and not clearly erroneous but review the court's application of the law to those facts de novo. See Lader v. Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

For ineffective assistance of trial counsel to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness, and that counsel's errors were so severe that there was a reasonable probability that the outcome of the trial would have been different. See Strickland v. Washington, 466 U.S. 668, 687 (1984); Warden v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984). Both must be shown. Strickland, 466 U.S. at 697. "[A] habeas corpus petitioner must prove the disputed factual allegations underlying his ineffective-assistance claim by a preponderance of the evidence." Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).

First, Wiltz contends that counsel was ineffective for failing to retain expert witnesses in accident reconstruction, biomechanics, and causes of death to prove that the victim's failure to yield to oncoming traffic was the sole cause of the accident and that her failure to wear a seatbelt was the cause of her death. We disagree. The State's certified accident reconstructionist, a Metro Police Officer, testified favorably for the defense by stating that the victim's left-hand turn and failure to yield to oncoming traffic was the primary cause of the accident. Wiltz failed to demonstrate that counsel's failure to call an additional accident reconstructionist on behalf of the defense was objectively unreasonable and would have altered the outcome of the trial. See Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990) (the tactical decisions of counsel are "virtually unchallengeable absent extraordinary circumstances"), abrogated on other grounds by Harte v. State, 116 Nev. 1054, 1072 n.6, 13 P.3d 420, 432 n.6 (2000). Further, because the seatbelt evidence was properly excluded, see Etcheverry v. State, 107 Nev. 782, 785, 821 P.2d 350, 351 (1991), Wiltz cannot demonstrate that counsel was ineffective for failing to present experts in biomechanics and causes of death to address the effects of the victim's failure to wear a seatbelt. Therefore, we conclude that the district court did not err by rejecting this claim. Cf. Hallmark v. Eldridge, 124 Nev. ___, ___, 189 P.3d 646, 653-54 (2008) (court has rejected use of biomechanical experts).

Second, Wiltz contends that counsel was ineffective for pursuing a "seatbelt defense despite the district courts [sic] ruling that the defense was precluded during the granting of the State's Motion in Limine." Although counsel improperly attempted to raise the subject of the victim's failure to wear a seatbelt before the jury on several occasions, the trial record also clearly indicates that the overall defense was based on

the theory that the victim was the sole cause of the accident when she made the left-hand turn and failed to yield to oncoming traffic—a line of defense which followed recognized case law. See id. at 785, 821 P.2d at 351. Therefore, we conclude that Wiltz has failed to demonstrate that counsel was ineffective in this regard or that the district court erred by rejecting this claim.

Third, Wiltz contends that counsel was ineffective for failing to interview and subsequently present witnesses who would have (1) supported the defense theory that the victim's injuries were caused by her failure to yield to oncoming traffic, (2) testified that Wiltz attempted to avoid the collision, and (3) "assisted the jury in determining whether [he] was speeding."

Defense counsel testified that he interviewed two of the witnesses and made a tactical decision not to call them as witnesses because it was likely that they would have provided damaging testimony regarding Wiltz's speed and alcohol intake prior to the accident. Wiltz did not call any of the witnesses to testify in support of his habeas petition at the evidentiary hearing. We conclude that Wiltz failed to demonstrate that there was a reasonable probability that the outcome of the trial would have been different had the witnesses testified on his behalf. Therefore, we conclude that the district court did not err by rejecting this claim. See Howard, 106 Nev. at 722, 800 P.2d at 180.

Fourth, Wiltz contends that counsel was ineffective for communicating a plea offer made by the State after the start of trial and "only after [he] asked [counsel] to get an offer from the State." Wiltz's claim consists of a single sentence in the fast track statement and lacks any cogent argument in support of his allegation. See Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to

present relevant authority and cogent argument; issues not so presented need not be addressed by this court."). And despite Wiltz's assertions to the contrary, counsel testified at the evidentiary hearing that he promptly communicated two plea offers made by the State and that Wiltz rejected the offers. Therefore, we conclude that the district court did not err by rejecting this claim.

Finally, Wiltz contends that counsel was ineffective for failing to appear at a hearing and quash a bench warrant for his arrest. Wiltz provides no argument and fails to demonstrate that counsel's alleged error was so severe that there was a reasonable probability that the outcome of the trial would have been different had he appeared at the hearing. Therefore, we conclude that Wiltz is not entitled to relief.

Having considered Wiltz's contentions and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.

/ , J.
Hardesty

, J.
Douglas

, J.
Pickering

cc: Hon. Michelle Leavitt, District Judge
Christiansen Law Offices
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk