IN THE SUPREME COURT OF THE STATE OF NEVADA

RAHEEM DEMAR TAYLOR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52602

FILED

FEB 03 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Raheem Demar Taylor's amended post-conviction petition for a writ of habeas corpus filed pursuant to Lozada v. State, 110 Nev. 349, 359, 871 P.2d 944, 950 (1994).[1] Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

First, Taylor contends that the Lozada remedy is inadequate as a matter of law. We disagree and conclude that Taylor has failed to demonstrate that the Lozada remedy is inadequate. See Evitts v. Lucey, 469 U.S. 387, 399 (1985) (expressing approval of a state court's use of a "post-conviction attack on the trial judgment as the appropriate remedy for frustrated right of appeal" (internal quotation marks omitted)); Gebers v. State, 118 Nev. 500, 505, 50 P.3d 1092, 1095 (2002) (approving of the Lozada remedy for meritorious appeal deprivation claims); Lozada, 110

[1]Because the Lozada remedy is the functional equivalent of a direct appeal, we review Taylor's claims de novo.

Nev. at 359, 871 P.2d at 950 (requiring the appointment of counsel to assist a petitioner in raising direct appeal issues).

Second, Taylor contends that the prosecutor committed misconduct during closing arguments by improperly quantifying reasonable doubt, aligning the jury with the State, and disparaging him and his defense. Taylor concedes that he did not object to any of the challenged statements and we conclude that he has demonstrated error but failed to demonstrate that any such error affected his substantial rights. See NRS 178.602; Valdez v. State, 124 Nev. 97, ___, 196 P.3d 465, 477 (2008); see also Knight v. State, 116 Nev. 140, 144-45, 993 P.2d 67, 71 (2000) ("A prosecutor's comments should be viewed in context, and 'a criminal conviction is not to be lightly overturned on the basis of a prosecutor's comments standing alone.'" (quoting United States v. Young, 470 U.S. 1, 11 (1985))). We further conclude that the district court did not err by denying, without conducting an evidentiary hearing, his claim that counsel was ineffective for failing to object to the alleged prosecutorial misconduct because the claim did not have a reasonable probability of success on appeal. See Strickland v. Washington, 466 U.S. 668, 687-88 (1984) (establishing two-part test for ineffective assistance of counsel); see also Lader v. Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005) (when reviewing the district court's resolution of an ineffective assistance of counsel claim, we give deference to the court's factual findings if supported by substantial evidence and not clearly wrong but review the court's application of the law to those facts de novo).

Third, Taylor contends that the district court erred by allowing LVMPD Officer Howard Crosby to testify regarding the voluntary statements of two witnesses who identified Taylor as the perpetrator

because the witnesses' statements constituted inadmissible hearsay and violated his constitutional right to confrontation. We disagree. We review a district court's decision to admit or exclude evidence for an abuse of discretion. Mclellan v. State, 124 Nev. ___, ___, 182 P.3d 106, 109 (2008). Officer Crosby's testimony did not constitute impermissible hearsay because it was offered to impeach the witnesses' trial testimony that they could not identify the individual who fired the weapon. See NRS 51.035(2)(a); Kaplan v. State, 99 Nev. 449, 451-52, 663 P.2d 1190, 1192-93 (1983). Accordingly, we conclude that the district court did not abuse its discretion by overruling Taylor's objection.

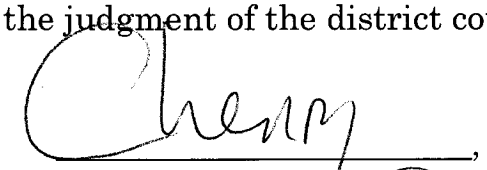
Fourth, Taylor contends that insufficient evidence was adduced to support the jury's verdict because "[n]o one identified [him] at trial as the shooter." This claim lacks merit because the evidence, when viewed in the light most favorable to the State, is sufficient to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. See Mitchell v. State, 124 Nev. ___, ___, 192 P.3d 721, 727 (2008); Jackson v. Virginia, 443 U.S. 307, 319 (1979). In particular, the victim testified that Taylor threatened to shoot her and her son in the head; minutes later, an individual was firing shots at her and she heard the individual say, "I told you, bitch, I was going to kill you." Although both the victim and another witness testified that they were unable to identify the shooter, Officer Crosby testified that both witnesses immediately identified Taylor as the shooter when he arrived at the scene and that they both provided voluntary statements. It was for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict. See Bolden v. State, 97 Nev. 71, 73, 624

P.2d 20, 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992); Buchanan v. State, 119 Nev. 201, 217, 69 P.3d 694, 705 (2003) (circumstantial evidence alone may sustain a conviction).

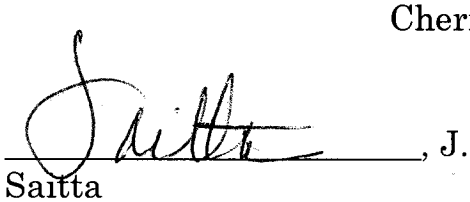
Finally, Taylor contends that cumulative error denied him his right to a fair trial. Because Taylor has failed to demonstrate any error, we reject his contention. See Pascua v. State, 122 Nev. 1001, 1008 n.16, 145 P.3d 1031, 1035 n.16 (2006).

Having considered Taylor's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Cherry



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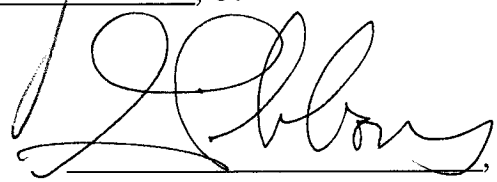

_____, J.
Gibbons

cc: Hon. Jackie Glass, District Judge
Susan D. Burke
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk