

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIE D. SAMPSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54135

FILED

DEC 10 2010

FRANCIS K. LINDEMAN
CLERK OF SUPREME COURT
BY [Signature]
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant argues that his trial counsel was ineffective for failing to investigate and present testimony from Dr. A. Racoma concerning the victim's treatment for Oppositional Defiant Disorder (ODD). To prove ineffective assistance of counsel, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability that, but for counsel's errors, the outcome of the proceedings would have been different. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in Strickland). Both components of the inquiry must be shown, Strickland, 466 U.S. at 697, and the petitioner must demonstrate the underlying facts by a preponderance of the evidence, Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). We give deference to the district court's factual findings regarding ineffective assistance of counsel but review the court's application of the law to those

facts de novo. Lader v. Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

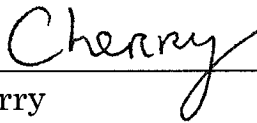
We conclude that substantial evidence supports the district court's finding that appellant failed to demonstrate that he was prejudiced by the failure to present Dr. Racoma's testimony at trial. At the evidentiary hearing, Dr. Racoma testified that persons with ODD act defiant and may lie more often to authority figures, such as parents and teachers. However, Dr. Racoma also testified that he was unaware of anyone with ODD fabricating a story about sexual abuse and could not tell if the victim was untruthful regarding his testimony in this case. Further, the victim's testimony at trial was corroborated by evidence found in appellant's home. In addition, while ODD was not explained in detail at trial, the jury was informed that the victim was prescribed medication for behavioral issues and a doctor who examined the victim shortly after the sexual assault was asked if ADHD and ODD could have affected the victim's ability to be truthful. Given this information, appellant fails to demonstrate a reasonable probability of a different outcome had counsel investigated and presented Dr. Racoma's testimony concerning the victim's treatment for ODD. Therefore, appellant fails to demonstrate that the district court erred in denying this claim.

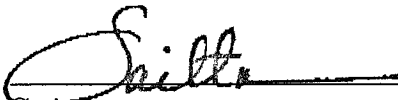
Appellant also argues that he was prejudiced by the failure to present Dr. Racoma's testimony because Dr. Racoma could have refuted the victim's mother's statement that the victim had only been diagnosed with ADHD. The victim's mother did not discuss her son's diagnoses in detail and appellant fails to demonstrate a reasonable probability of a different outcome had counsel presented testimony to refute her brief


discussion of the victim's behavioral issues. Therefore, appellant fails to demonstrate that the district court erred in denying this claim.

Having considered appellant's contentions and concluding that they are without merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Michelle Leavitt, District Judge
Attorney General/Carson City
Clark County District Attorney
Eighth Judicial District Court Clerk
Christopher Oram