

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATTHEW WHITE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54991

FILED

SEP 29 2010

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

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant's November 6, 2002, post-conviction petition for a writ of habeas corpus. First Judicial District Court, Carson City; James E. Wilson, Jr., Judge.¹

Appellant argues on appeal that he received ineffective assistance of trial counsel. To prove ineffective assistance of counsel, a petitioner must demonstrate that counsel's performance was (a) deficient in that it fell below an objective standard of reasonableness and (b) 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

¹Judge Wilson signed the written order denying the petition. Judge William A. Maddox presided over the hearing on the petition and orally denied the petition.

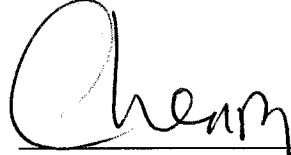
by a preponderance of the evidence, Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). We give deference to the district court's factual findings regarding ineffective assistance of counsel but review the court's application of the law to those facts de novo. Lader v. Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).


Appellant first argues that counsel was ineffective in failing to adequately investigate alternative explanations as to how the weapon could have gotten into appellant's toilet bowl. Appellant fails to demonstrate prejudice. Although appellant speculates as to different theories, he has presented no evidence that the weapon was placed in his toilet other than by his own hand. Appellant has therefore failed to demonstrate a reasonable probability of a different outcome at trial had counsel investigated other explanations.


Appellant also argues that counsel was ineffective for not investigating the existence and credibility of a confidential informant. This argument was raised for the first time at the evidentiary hearing, where the district court judge sustained the State's objection to the relevant line of questioning. While the court's order, written by a different judge, reached the new argument on its merits, this was improper because the procedures established in Barnhart v. State, 122 Nev. 301, 303-04, 130 P.3d 650, 651-52 (2006), were not followed. Accordingly, we deny appellant relief on this basis. Moreover, as a separate and independent ground to reject this argument, appellant fails to demonstrate prejudice. He has presented no competent evidence as to the identity of the informant or what bearing the existence of an informant would have had on his knowledge of the weapon.

For the foregoing reasons, we conclude that the district court did not err in denying appellant's petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. James E. Wilson, Jr., District Judge
Carson City Court Clerk
Attorney General/Carson City
Kaempfer Crowell Renshaw Gronauer & Fiorentino