

IN THE SUPREME COURT OF THE STATE OF NEVADA

WARDEN, JACK PALMER,
Appellant,
vs.
GEORGE TRAVIS HALL,
Respondent.

No. 55206

FILED

SEP 29 2010

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

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court granting a post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

First, the State argues that the district court abused its discretion by conducting an evidentiary hearing because Hall's claims were not pleaded with enough specificity. We disagree. After reviewing Hall's petition filed in the district court, we conclude that Hall raised specifically pleaded claims that, if true, would warrant relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Therefore, the district court did not abuse its discretion in determining that an evidentiary hearing was necessary. NRS 34.770.

Next, the State argues that the district court erred in granting relief on Hall's claims of ineffective assistance of counsel. 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

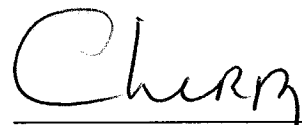
U.S. 668, 687-88 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in Strickland). Both components of the inquiry must be shown, Strickland, 466 U.S. at 697, and the petitioner must demonstrate the underlying facts by a preponderance of the evidence, Means v. 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).


The State first argues that the district court erred in granting relief on Hall's claim that his trial counsel was ineffective in the cross-examination of the victim because Hall failed to demonstrate prejudice. At the evidentiary hearing, counsel testified that she was ill-prepared for cross-examination and the trial overwhelmed her. Trial counsel and the trial judge, District Court Judge Janet Berry, both testified that the questions counsel posed to the victim actually worked to undercut Hall's defense. Following the post-conviction evidentiary hearing, the district court determined that the cross-examination from counsel was deficient as it provided support for the victim's allegations, rather than challenge the victim's credibility. The district court found that the victim had initially denied that any sexual acts had taken place and had changed her version of events following several interrogations by the police, and therefore, Hall had demonstrated prejudice due to the deficient cross-examination because there was a reasonable probability of a different outcome at trial had counsel questioned the victim effectively. After reviewing the testimony from the evidentiary hearing, we conclude that substantial evidence supports the district court's decision to grant relief on this claim.

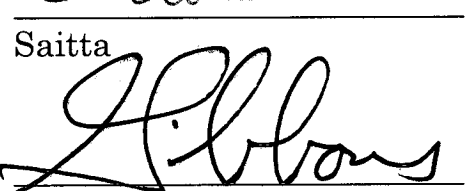
The State also argues that the district court erred in granting relief on Hall's additional claims of ineffective assistance of counsel. Due to our decision for the above claim, we need not consider the State's remaining claims. Nevertheless, we note that the record before this court is insufficient to demonstrate that the district court erred in concluding that Hall's trial counsel was ineffective with respect to the remaining claims. The State's appendix before this court includes only a small portion of the trial transcript. It is the State's burden as the appellant to provide this court with an adequate record for review. McConnell v. State, 125 Nev. ___, ___ n.13, 212 P.3d 307, 316 n.13 (2009). Therefore, the State fails to demonstrate that the district court erred in granting relief on these claims.

Having considered the State'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. Connie J. Steinheimer, District Judge
Washoe County District Attorney
Marc Picker
Washoe District Court Clerk