

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIE RAY LEWIS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 55305

**FILED**

JUN 09 2010

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

In his petition, filed on October 16, 2007, appellant claimed that his trial counsel was ineffective in failing to interview and present certain character witnesses and in not properly preparing the single defense witness.<sup>2</sup> To prove a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance fell below an objective standard of

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<sup>1</sup>This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

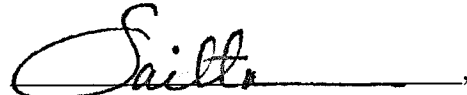
<sup>2</sup>Appellant's remaining claims were rejected in a prior order of this court. See Lewis v. State, Docket No. 50872 (Order Affirming in Part, Reversing in Part and Remanding, June 18, 2009).


reasonableness and that counsel's errors were so severe that they rendered the jury's verdict unreliable. See 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. Appellant had the burden of establishing the facts underlying his claims by a preponderance of the evidence. See Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). This court will defer to the district court's factual findings if supported by substantial evidence and not clearly erroneous, but it reviews the district 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 failed to demonstrate deficiency or prejudice. At the evidentiary hearing, counsel testified that appellant provided invalid contact information for some potential witnesses and that others who were contacted were unwilling to aid in the defense. Counsel further testified that she would have neither interviewed nor called to testify those whom appellant identified as simple character witnesses because, for tactical reasons, she was unwilling to put on a character defense. See Doleman v. State, 112 Nev. 843, 848, 921 P.2d 278, 280-81 (1996) (noting that whom to call as a witness "is a tactical decision that is 'virtually unchallengeable absent extraordinary circumstances'" (quoting Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990), abrogated on other grounds by Harte v. State, 116 Nev. 1054, 1072, 13 P.3d 420, 432 (2000))). Counsel also testified to extensive trial preparation with the defense witness and stated that she was surprised when the witness changed her story under oath. We therefore conclude that the district court's findings of fact were supported by substantial evidence such that the district court did not err

in denying appellant's petition. Moreover, appellant failed to demonstrate a reasonable probability of a different outcome at trial had counsel called the witnesses to testify. Accordingly, we

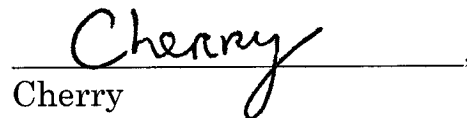
ORDER the judgment of the district court AFFIRMED.<sup>3</sup>

  
Saitta \_\_\_\_\_, J.

  
Gibbons \_\_\_\_\_, J.

CHERRY, J., dissenting:

I dissent because I would reverse and remand for the appointment of post-conviction counsel. NRS 34.750.

  
Cherry \_\_\_\_\_, J.

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<sup>3</sup>We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Michelle Leavitt, District Judge  
Willie Ray Lewis  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk