

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRED D. GEORGE, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57464

FILED

JUN 13 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *R. Malone*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

On appeal from the denial of his May 15, 2008, petition, appellant Fred George, Jr., argues that the district court erred in denying his claim that trial counsel was ineffective for failing to investigate and present his alibi defense at trial. 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).


George contends that the evidence at the evidentiary hearing did not refute his claim that he informed his counsel about an alibi. George failed to demonstrate that counsel was deficient. At the evidentiary hearing, George's wife testified that she told trial counsel approximately a week before trial that she and George had been at the North Las Vegas Housing Authority at the time of the offense, and that she had a document from the Housing Authority that demonstrated his presence there.¹ George testified that he also told counsel before trial that he had been at the Housing Authority at the time of the offense, although George did not inform counsel about the document or the location of the building. Trial counsel, however, testified that he met with George at least three times before trial and did not recall discussing an alibi with George or George's wife. Counsel further asserted that there was no mention of an alibi witness in the case file and that he would have investigated the alibi defense and included it in the file had he known about it. While George also claimed that he had informed counsel about his alibi again in court and the trial court stated on the record that the trial would be continued to allow counsel to locate his alibi witness, the transcript indicates only that a continuance was granted and does not contain any reference to an alibi witness.

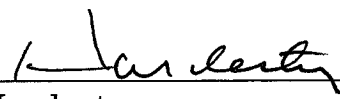
¹This document is not included in the record, but the parties do not dispute the district court's finding that the document did not contain any time stamp or indication as to what time George and his wife were present at the Housing Authority.

Based on the testimony and evidence presented at the hearing, the district court found that George did not inform counsel about his potential alibi, and thus counsel could not have been ineffective for failing to investigate it. We conclude that the district court's factual findings are supported by substantial evidence and are not clearly wrong, and therefore the district court did not err in denying the petition.² See Lader, 121 Nev. at 686, 120 P.3d at 1166. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Saitta


_____, J.
Pickering


_____, J.
Hardesty

²George also argues that his counsel was ineffective for (1) failing to speak to the State's witnesses before trial, (2) failing to file pretrial motions to limit prejudicial testimony or clarify substantive legal issues, (3) waiving opening statement, (4) failing to call expert witnesses, (5) stipulating to prejudicial evidence, and (6) conceding George's guilt during closing arguments. In a prior appeal, we affirmed the district court's denial of his post-conviction habeas petition as to all claims other than his claims regarding ineffective assistance of trial counsel for failure to investigate an alibi defense, and we remanded to the district court to conduct an evidentiary hearing only on the ineffective-assistance claims relating to an alibi defense. George v. State, Docket No. 52791 (Order Affirming in Part, Reversing in Part and Remanding, August 24, 2009). Thus, our prior order precludes George from rearguing claims unrelated to his alibi defense. We also decline to consider any claims that were not raised below. See McNelton v. State, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

cc: Hon. Valerie Adair, District Judge
Justice Law Center
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk