

IN THE SUPREME COURT OF THE STATE OF NEVADA

RODERICK RENARD DAVIDSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 57680

**FILED**

DEC 12 2012

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

ORDER OF AFFIRMANCE

This is an appeal from an order by the district court denying appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

On appeal from the denial of his petition filed on October 16, 2009, and his supplemental petition filed on September 30, 2010, appellant argues that the district court erred in denying his claims of ineffective assistance of trial counsel. To prove ineffective assistance of counsel, a petitioner must demonstrate (1) that his counsel's performance was deficient in that it fell below an objective standard of reasonableness, and (2) 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—deficiency and prejudice—must be shown. Strickland, 466 U.S. at 697.

First, appellant argues that trial counsel was ineffective for failing to object to the admission of inmate request/grievance forms. He contends that these forms were more prejudicial than probative and were evidence of other bad acts that should not have been admitted without a

Petrocelli<sup>1</sup> hearing and a limiting instruction. Appellant failed to demonstrate prejudice. The inmate request/grievance forms were introduced into evidence for the purpose of comparing appellant's handwriting to the handwriting of apology letters sent to the victims, as appellant was unwilling to provide a natural handwriting sample. While counsel's failure to redact the forms may constitute deficient performance, appellant could not demonstrate that he was prejudiced in light of the overwhelming evidence of guilt. One of the victims positively identified appellant, who was his neighbor, and the other victim and a witness gave descriptions that matched him closely. Appellant confessed to the police that he committed the crimes, and he wrote letters of apology to the victims. Therefore, given this overwhelming evidence, we conclude that the district court did not err in denying this claim.

Second, appellant argues that trial counsel was ineffective for failing to object to the jury instruction regarding flight, as appellant voluntarily turned himself in to law enforcement and did not flee the jurisdiction. Appellant failed to demonstrate that trial counsel's performance was deficient or that he was prejudiced. A witness testified that she saw someone who looked like appellant leave the victim's house in the victim's car at the time the victim was attacked and robbed. Thus, the flight instruction was supported by evidence, and counsel was not deficient for failing to object to the instruction. See Weber v. State, 121 Nev. 554, 581-82, 119 P.3d 107, 126 (2005). Moreover, in light of the overwhelming evidence against him, appellant failed to demonstrate prejudice. Therefore, the district court did not err in denying this claim.

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<sup>1</sup>Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985).

Third, appellant argues that trial counsel was ineffective for failing to object to the jury instruction regarding reasonable doubt because it minimized the State's burden of proof. Appellant failed to demonstrate that counsel's performance was deficient or that he was prejudiced, as he received the instruction required by NRS 175.211. Thus, we conclude that the district court did not err in denying this claim.

Fourth, appellant argues that trial counsel was ineffective for failing to object to the prosecutor's improper vouching during closing argument. Appellant failed to demonstrate that his trial counsel's performance was deficient because the prosecutor did not improperly vouch for the credibility of the witnesses. Browning v. State, 120 Nev. 347, 359, 91 P.3d 39, 48 (2004) (recognizing that the prosecutor improperly vouches for a witness when the prosecutor "places the prestige of the government behind the witness" (internal quotations omitted)). Further, appellant failed to demonstrate that there was a reasonable probability of a different outcome at trial given the overwhelming evidence of guilt. Therefore, we conclude that the district court did not err in denying this claim.

Appellant also argues that the district court erred in denying his claims of ineffective assistance of appellate counsel. To state a claim of ineffective assistance of appellate counsel, a petitioner must demonstrate (1) that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and (2) resulting prejudice such that "the omitted issue would have a reasonable probability of success on appeal." Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). Appellant argues that appellate counsel was ineffective for failing to challenge the jury instructions on flight and reasonable doubt, and for failing to argue that the State improperly vouched for witnesses during closing arguments. Appellant failed to demonstrate that counsel's


performance was deficient or that he was prejudiced for the reasons discussed previously. Therefore, we conclude that the district court did not err in denying these claims.

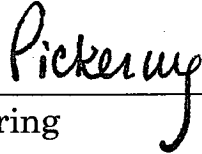
Next, appellant argues that his convictions must be reversed due to the cumulative effect of ineffective assistance of counsel. We disagree, as he has not demonstrated prejudice resulting from the cumulative effect of any deficiencies in counsel's representation. See McConnell v. State, 125 Nev. 243, 259 n.17, 212 P.3d 307, 318 n.17 (2009).


Appellant also argues that the district court erred by declining to hold an evidentiary hearing on his claims. Because appellant failed to provide any factual allegations that, if true and not repelled by the record, would entitle him to relief, no evidentiary hearing was required. See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

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

ORDER the judgment of the district court AFFIRMED.

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

  
Pickering \_\_\_\_\_, J.

  
Hardesty \_\_\_\_\_, J.

cc: Hon. Kathy A. Hardcastle, District Judge  
Christopher R. Oram  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk