

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,  
Appellant,  
vs.  
THOMAS M. HARDIN,  
Respondent.

No. 58323

**FILED**

JUL 27 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Tracie K. Lindeman*  
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; Jerome Polaha, Judge.

The State argues that the district court erred in granting respondent's May 15, 2006, post-conviction petition because the district court used the wrong standard to evaluate respondent's claims that he received ineffective assistance of trial counsel at the sentencing hearing. To prove ineffective assistance of counsel, respondent had to have demonstrated (a) that counsel's performance was 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 respondent had to 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).

First, the State argues that the district court relied on a subjective standard in finding trial counsel deficient. The district court cited and applied the appropriate objective standard. It recognized that objectively reasonable counsel "must make a sufficient inquiry into the information that is pertinent to his client's case" and then "make a reasonable strategy decision on how to proceed." Doleman v. State, 112 Nev. 843, 848, 921 P.2d 278, 280 (1996) (citing Strickland, 466 U.S. at 690-91). It also recognized that reasonable strategy decisions are "virtually unchallengeable absent extraordinary circumstances." Id. at 848, 921 P.2d at 281 (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 n.6, 13 P.3d 420, 432 n.6 (2000)). Further, the district court's key findings—that counsel made no effort to investigate respondent's kidnapping claims or the effect of the kidnapping on respondent and that there was thus no basis for counsel's decision not to present that evidence—are supported by substantial evidence in the record. We therefore conclude the district court did not err in determining that counsel was deficient.


Second, the State argues that the district court applied the incorrect standard in finding that respondent was prejudiced by trial counsel's deficiency. Specifically, the State argues that the proper standard is whether any other reasonable jurist would have found that the new mitigating evidence was of the sort generally recognized as reducing the moral culpability of the respondent. The State cites no support for its


novel proposition that the proper measuring stick is that of “other reasonable jurists.” See Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (holding that we need not consider claims unsupported by authority and cogent argument). The correct standard is whether there is a reasonable probability of a different outcome at sentencing had the evidence been presented. Here, the habeas court, which was also the trial and sentencing court, concluded that it was not only reasonably probable but that the court “knows” that there would have been a different outcome had the evidence been presented. We therefore conclude the district court did not err in determining that respondent was prejudiced by counsel’s deficiency.

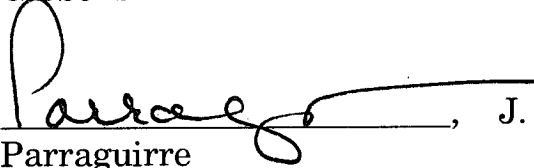
The State requests that the case be reassigned to a different district court judge for decision. In light of our disposition of this case, the request is moot.

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Douglas

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

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Jerome Polaha, District Judge  
Attorney General/Carson City  
Washoe County District Attorney  
Mary Lou Wilson  
Washoe District Court Clerk