

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUAN MANUEL ALCARAZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 58949

**FILED**

**MAY 10 2012**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY [Signature]  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Juan Alcaraz's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

First, Alcaraz argues that the district court erred by denying his claim that trial counsel was ineffective for eliciting highly prejudicial gang evidence during trial. To prove ineffective assistance of counsel, a petitioner must demonstrate that his counsel's performance was deficient and that the petitioner was prejudiced by his counsel's performance. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 31-32 (2004) (explaining the Strickland test). When reviewing the district court's resolution of an ineffective-assistance claim, we give deference to the court's factual findings if supported by substantial evidence and not clearly erroneous 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).

Here, the district court conducted an evidentiary hearing, during which defense counsel testified that he made a strategic decision to elicit testimony that Alcaraz was in a gang that controlled the

neighborhood where the shooting took place in order to provide context for Alcaraz's state of mind and his statements and behavior surrounding the shooting. The district court found that counsel's strategy was "risky" but that counsel had "very little to work with" given that the jury was shown a videotape of the shooting in which gang involvement was apparent, and Alcaraz could not show prejudice because he was found guilty of second-degree murder rather than first-degree murder. We conclude that the district court's findings were based upon substantial evidence and were not clearly wrong. See id. As described by this court on direct appeal, the videotape of the incident showed that "the victim 'punched' Alcaraz, but Alcaraz did not appear to be injured. Alcaraz then stepped back from the victim, inhaled on his cigarette, pulled a handgun from his waistband, and shot the victim six times. Alcaraz then fled the scene and disposed of his clothes and the weapon." Alcaraz v. State, Docket No. 48642 (Order of Affirmance, March 10, 2008, at 2). In light of the videotape, Alcaraz could not demonstrate that there was a reasonable probability of a different outcome at trial had counsel not elicited testimony about gang involvement. See Strickland, 466 U.S. at 687-88; Means, 120 Nev. at 1012, 103 P.3d at 33 (petitioner bears the burden of proving ineffective assistance). Therefore, we conclude that the district court did not err in denying this claim.


Second, Alcaraz argues that the district court erred by denying his claim that his right to equal protection was violated by his trial counsel's ineffective assistance. Because Alcaraz did not demonstrate ineffective assistance of counsel, we conclude that this claim lacks merit.

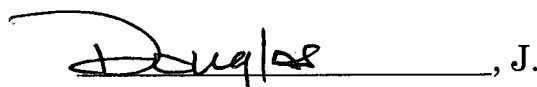
Finally, Alcaraz argues that the district court erred by denying his claim of ineffective assistance of appellate counsel without

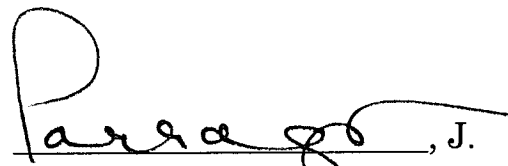
holding an evidentiary hearing. In his petition, Alcaraz claimed that appellate counsel was ineffective for failing to “investigate and raise substantive issues on appeal” to show that he had been provoked into shooting and killing the victim. Because Alcaraz did not provide any specific factual allegations that would have entitled him to relief, an evidentiary hearing was not required. See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984) (holding that “bare” or “naked” claims are insufficient to grant relief). Notably, counsel argued on appeal that there was insufficient evidence to support Alcaraz’s conviction for second-degree murder because the victim provoked the attack, and Alcaraz failed to state what counsel should have done differently. Accordingly, the district court did not err in denying this claim.

For the reasons stated above, we

ORDER the judgment of the district court AFFIRMED.

  
Gibbons, J.  
Gibbons

  
Douglas, J.  
Douglas

  
Parraguirre, J.  
Parraguirre

cc: Chief Judge, Eighth Judicial District Court  
Law Offices of Cynthia Dustin, LLC  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk