

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT STEVEN YOWELL,
Appellant,
vs.
WARDEN, NORTHERN NEVADA
CORRECTIONAL CENTER,
Respondent.

No. 63006

FILED

FEB 13 2014

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Robert Steven Yowell's post-conviction petition for a writ of habeas corpus. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

Yowell contends that the district court erred by denying his habeas petition because trial counsel was ineffective for failing to (1) move to preclude and object to the admission of the photographic lineup used to identify him, and (2) present an expert to discuss various aspects of the photographic lineup and witness identification in general. We disagree.¹


When reviewing the district court's resolution of an ineffective-assistance claim, we give deference to the court's factual findings if they are supported by substantial evidence and not clearly wrong 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, heard testimony from

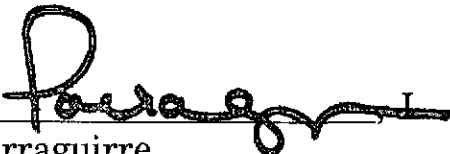
¹After a three-day jury trial, Yowell was convicted of robbery with the use of a deadly weapon, first-degree kidnapping with the use of a deadly weapon, and sexual assault with the use of a deadly weapon.

Yowell's trial counsel, a defense expert on photographic lineups and eyewitness identification, the detective who presented the photographic lineup to the victim, and the victim. The district court determined that Yowell's trial counsel, Harvey Kuehn, "was ineffective for not utilizing the expert he had specifically been granted the funding to employ, and for failure to thereafter seek to have the lineup precluded from admission by pretrial motion." The district court also concluded that Yowell failed to demonstrate that he was prejudiced by counsel's deficient performance because Kuehn's failure "to investigate and object to the admission of the lineup at trial had no effect on the outcome." In reaching this conclusion, the district court noted that even if counsel successfully objected and precluded the admission of the photographic lineup, "the jury would still have heard the unequivocal and uncontradicted identification of [Yowell] as the man that had abducted the victim from Wal-Mart and raped her." The district court found, among other things, that the victim's identification had a "strong indicia of reliability," and quoted from our order affirming the judgment of conviction on direct appeal, where we noted that "[t]he victim in this case was with Yowell for roughly four hours, [and] had initially given a description of Yowell so accurate that the officers immediately thought of him." *Yowell v. State*, Docket No. 55083 (Order of Affirmance, November 8, 2010), at 3. We conclude that the district court's findings are supported by substantial evidence, see *Riley v. State*, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994), and the district court did not err by rejecting Yowell's ineffective-assistance claim, see *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984); *Kirksey v. State*, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996); see also *Cullen v. Pinholster*, 563 U.S. ___, ___, 131 S. Ct. 1388, 1408 (2011) ("We have


recently reiterated that [s]urmounting *Strickland's* high bar is never an easy task." (quotation marks omitted) (alteration in original)). Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, J.
Pickering



Parraguirre


_____, J.
Saitta

cc: Hon. Robert W. Lane, District Judge
David H. Neely, III
Nye County District Attorney
Attorney General/Carson City
Nye County Clerk
Robert Steven Yowell

²Yowell's opening brief does not comply with NRAP 32(a)(4) because the text in the body of the brief is not double-spaced. The State's answering brief does not comply with NRAP 32(a)(4) because it does not contain 1-inch margins on all four sides. Further, the State's answering brief uses a typeface in both the body of the brief and the footnotes which is smaller than that allowed by NRAP 32(a)(5)(A). Counsel for the parties are cautioned that the failure to comply with the briefing requirements in the future may result in the imposition of sanctions. See NRAP 28(j).