

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

REGINALD L. HOLLIMON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 66939

**FILED**

**MAR 17 2015**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
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.<sup>1</sup> Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

In his June 18, 2014, post-conviction petition for a writ of habeas corpus, appellant claimed that his trial counsel was ineffective. 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

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<sup>1</sup>This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See *Lockett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

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.

First, appellant claimed that his trial counsel was ineffective during the preliminary hearing for conceding that he committed robbery. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Counsel did not concede during the preliminary hearing that appellant had committed robbery. The discussion appellant highlights occurred because counsel had objected to the State's attempt to add an additional charge of battery. Counsel merely asserted that an additional battery charge would not be appropriate based upon the evidence presented at the preliminary hearing regarding the robbery charge. Because the State presented sufficient evidence at the preliminary hearing to support a probable cause finding for robbery, see *Sheriff, Washoe Cnty. v. Hodes*, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980), appellant failed to demonstrate a reasonable probability of a different outcome had counsel made different arguments at the preliminary hearing. Therefore, the district court did not err in denying this claim.

Second, appellant claimed that his trial counsel was ineffective for failing to question the arresting police officers regarding the victims' prior inconsistent statements regarding the incident. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Counsel cross-examined the victims regarding their previous statements and challenged their version of events.

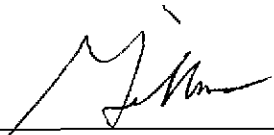
Appellant failed to demonstrate a reasonable probability of a different outcome had counsel sought to introduce the victims' prior statements through the arresting officers' testimony. Therefore, the district court did not err in denying this claim.

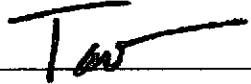
Third, appellant claimed that his trial counsel was ineffective for failing to present a defense of voluntary intoxication. Appellant failed to demonstrate either deficiency or prejudice for this claim. Robbery is a general intent crime, and therefore, appellant would not have been shielded from liability for robbery due to an assertion of voluntary intoxication. See *Daniels v. State*, 114 Nev. 261, 269, 956 P.2d 111, 116 (1998). Therefore, the district court did not err in denying this claim.

Fourth, appellant claimed that his trial counsel acted under a conflict of interest. Appellant asserted that the Clark County Public Defender's Office had represented a State's witnesses during an unrelated matter a number of years prior to appellant's criminal proceeding. In the context of an ineffective assistance of counsel claim based on an alleged conflict of interest, "[p]rejudice is presumed only if the defendant demonstrates that counsel 'actively represented conflicting interests' and that 'an actual conflict of interest adversely affected his lawyer's performance.'" *Strickland*, 466 U.S. at 692 (quoting *Cuyler v. Sullivan*, 446 U.S. 335, 350, 348 (1980)); see also *Clark v. State*, 108 Nev. 324, 326, 831 P.2d 1374, 1376 (1992). Under the circumstances of this case, the fact that the Clark County Public Defender's Office represented a State witness in a distant unrelated matter did not demonstrate that appellant's

trial counsel actively represented conflicting interests. Therefore, the district court did not err in denying this claim.

Having concluded that appellant is not entitled to relief, we  
ORDER the judgment of the district court AFFIRMED.

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

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Valerie Adair, District Judge  
Reginald L. Hollimon  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk