

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBIN LEE BENJAMIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68167

FILED

NOV 19 2015

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 denying a postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.


Appellant Robin Benjamin claims the district court erred by denying her ineffective-assistance-of-counsel claim. Specifically, she claimed trial counsel were ineffective for failing to ensure that she could hear during the trial. 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 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 petitioner must 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 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).

Benjamin fails to demonstrate trial counsel were deficient or resulting prejudice. The district court held an evidentiary hearing on this issue. Benjamin testified she could not hear well even with the amplification device provided to her by the district court. Trial counsel testified Benjamin was a very active participant in her defense, discussed the evidence presented during trial, and appeared to understand the proceedings. The district court found trial counsel to be credible, and we conclude substantial evidence supports the decision of the district court.

Further, we conclude Benjamin fails to demonstrate prejudice because she fails to demonstrate a reasonable probability of a different outcome at trial had trial counsel done more to ensure she could hear the proceedings. Benjamin fails to allege specific facts that, if true, would entitle her to relief regarding how the outcome at trial would have been different had she been able to hear better. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Therefore, the district court did not err in denying this claim, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Janet J. Berry, District Judge
Story Law Group
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk