

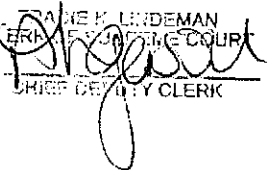
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KENNETH W. HATLEN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 67057

FILED

DEC 18 2015

WANE K. LEIDEMAN  
CLERK OF THE COURT  
BY  CHIEF 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. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

On appeal from his November 4, 2013, petition and March 31, 2014, supplemental petition, appellant Kenneth Hatlen claims the district court erred in denying his claims of ineffective assistance of counsel. 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

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application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

First, Hatlen claims counsel was ineffective for failing to adequately argue or file a motion in limine to preclude the use of Hatlen's prior conviction for burglary. Hatlen fails to demonstrate counsel was deficient or resulting prejudice. Counsel orally moved to preclude the use of Hatlen's prior conviction for burglary. To the extent Hatlen claims counsel should have argued based on *Warren v. State*, 121 Nev. 886, 894-95, 124 P.3d 522, 527-28 (2005), this case would not have provided relief. The standard espoused in *Warren* deals with whether an appellate court can review a claim of whether the threat of using a prior conviction to impeach a defendant impacted his right to testify. *See id.* It does not demonstrate that Hatlen would have won this issue in the district court. *Id.* Further, the prior conviction would have been properly admitted under NRS 50.095 had Hatlen testified. Therefore, Hatlen failed to demonstrate a reasonable probability of a different outcome for the motion had counsel presented this additional argument.<sup>1</sup> Accordingly, the district court did not err in denying this claim.

Second, Hatlen claims counsel was ineffective for failing to investigate the possibility Jerry Henderson committed the burglary. Hatlen fails to demonstrate counsel was deficient. At the evidentiary hearing, counsel testified he did not recall Hatlen ever telling him he

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<sup>1</sup>To the extent that Hatlen claimed the prior conviction could have been "sanitized," he failed to cite to any case law to support this contention. "It's appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court." *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987). Therefore, we do not address this claim.

knew Henderson or that he witnessed Henderson at the church in the early morning hours the day of the burglary. The district court found counsel to be credible and specifically found Hatlen was not credible. Further, Hatlen's claim Henderson stopped working there the day of the burglary was based on inadmissible hearsay presented through Hatlen's investigator. See NRS 51.035. Therefore, the district court did not err in denying this claim.

Third, Hatlen claims counsel was ineffective for failing to investigate whether the window was large enough for a person to fit through. Hatlen fails to demonstrate counsel was deficient or resulting prejudice. Evidence was presented at the evidentiary hearing that a person could fit through the window when it was open. Further, there was testimony presented at trial to support his claim without additional investigation. The office manager of the church testified she believed the hole in the window was so small a midget could not have fit through the window. Therefore, he failed to demonstrate counsel should have further investigated or a reasonable probability of a different outcome at trial. Accordingly, the district court did not err in denying this claim.

Fourth, Hatlen claims counsel was ineffective for failing to move to exclude Mr. Henderson as a witness because the State failed to give notice he would testify.<sup>2</sup> Hatlen fails to demonstrate counsel was deficient or resulting prejudice. The testimony elicited from Henderson was helpful in developing Hatlen's defense at trial that Henderson may have been the person who committed the burglary. Henderson testified he


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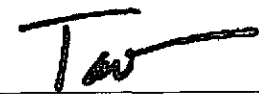
<sup>2</sup>Hatlen also claims the State failed to notice the office manager of the church, a police officer, and a crime scene analyst. This claim is belied by the record because these witnesses were properly noticed by the State.


found the broken window and noticed the stereo equipment was missing. He also testified that he had keys to the church and the alarm code. Further, given the evidence presented at trial and the fact Hatlen's blood was found on the blinds of the broken window, Hatlen failed to demonstrate a reasonable probability of a different outcome at trial had Henderson not testified. Therefore, the district court did not err in denying this claim.

Fifth, Hatlen claims the cumulative errors of counsel entitle him to relief. Because Hatlen failed to demonstrate any error, he necessarily failed to demonstrate cumulative error. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Elissa F. Cadish, District Judge  
Jonathan E. MacArthur  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk