

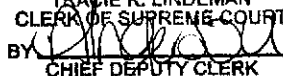
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT WILLIAM LAWVER,  
Appellant,  
vs.  
WARDEN ROBERT LEGRAND,  
Respondent.

No. 68701

**FILED**

FEB 17 2016

TRACIE K. LINDEMAN  
CLERK OF SUPREME 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. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Appellant Robert William Lawver argues the district court erred in denying his claim of ineffective assistance of counsel as raised in his March 5, 2013, petition. 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). To warrant an evidentiary hearing, a petitioner must raise claims that are supported by specific factual allegations that



are not belied by the record and, if true, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Lawver argues his counsel was ineffective for failing to discover a statement his ten-year-old son made to a social worker. Lawver's son allegedly informed the social worker he had sexually abused his sister and that Lawver had not abused her. Lawver fails to demonstrate his counsel's performance was deficient or resulting prejudice. The record reveals that during the initial investigation of this matter, Lawver's daughter informed police officers Lawver had sexually abused her. Lawver then confessed to sexually abusing his daughter and his confession included specific details regarding his actions. Subsequent to his confession, Lawver informed the authorities his son had actually committed the abuse and his confession had been an attempt to protect his son. Despite Lawver's assertion his son had committed the sexual abuse, Lawver later chose to accept a plea offer from the State and to enter a guilty plea. In light of those circumstances, Lawver fails to demonstrate an objectively reasonable counsel would have made further efforts to discover Lawver's son's alleged statement. Moreover, given Lawver's detailed confession, Lawver fails to demonstrate a reasonable probability of a different outcome had counsel discovered this statement. Therefore, the district court did not err in denying this claim without conducting an evidentiary hearing.

Next, Lawver argues the State committed prosecutorial misconduct by failing to disclose the statement Lawver's son allegedly made to his social worker. Lawver asserts the failure to disclose the statement to the defense violated *Brady v. Maryland*, 373 U.S. 83 (1963).


“To prove a *Brady* violation, the accused must make three showings: (1) the evidence is favorable to the accused, either because it is exculpatory or impeaching; (2) the State withheld the evidence, either intentionally or inadvertently; and (3) prejudice ensued, i.e., the evidence was material.” *State v. Huebler*, 128 Nev. \_\_\_, \_\_\_, 275 P.3d 91, 95 (2012) (internal quotation marks omitted). However, our review of the record reveals Lawver cannot establish the second and third elements.

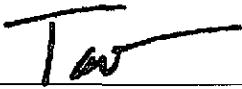
First, Lawver fails to demonstrate the State actually withheld this evidence as he does not demonstrate information obtained by his son’s social worker was actually in the possession of the State. Moreover, Lawver fails to demonstrate his own son’s statement could not have been independently obtained by the defense. *See Steese v. State*, 114 Nev. 479, 495, 960 P.2d 321, 331 (1998).

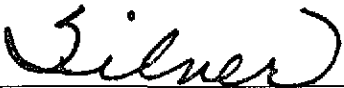
Second, Lawver does not demonstrate this evidence was material. *See Huebler*, 128 Nev. at \_\_\_, 275 P.3d at 98-99. As discussed previously, Lawver’s daughter told the police Lawver had sexually abused her and Lawver made a detailed confession regarding sexually abusing his daughter. Lawver does not demonstrate his young son’s statement exonerates him of these crimes, Lawver stated he chose to plead guilty due to the compelling nature of his confession, and Lawver received a substantial bargain by entry of his guilty plea. *See id.* at \_\_\_, 275 P.3d at 99 (discussing factors which may be considered when applying the materiality test). Therefore, Lawver fails to demonstrate a reasonable probability the outcome of his criminal proceedings would have been different had he possessed the statement. Accordingly, the district court

properly denied relief for this claim without conducting an evidentiary hearing.

Having concluded Lawver is not entitled to relief, we  
ORDER the judgment of the district court AFFIRMED.<sup>1</sup>

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

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

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

cc: Hon. Connie J. Steinheimer, District Judge  
David Kalo Neidert  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk

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<sup>1</sup>The State asserts Lawver did not properly present the claims raised on appeal before the district court. However, a review of the record reveals Lawver sufficiently raised these claims below and are appropriately raised on appeal.