

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VLADIMIR LAGEREV,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68867

FILED

APR 20 2016

FRANCIE K. LINDEMANN
CLERK OF SUPREME COURT
BY *[Signature]*
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; Jessie Elizabeth Walsh, Judge.

Appellant Vladimir Lagerev claims the district court erred by denying his ineffective-assistance-of-counsel claims raised in his petition filed on February 5, 2015, and his supplemental petitions filed on March 25, 2015, and July 13, 2015, without holding an evidentiary hearing.

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

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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). A petitioner is only entitled to an evidentiary hearing on claims supported by specific facts not belied by the record, which if true, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Lagerev claims counsel was ineffective for failing to secure an expert to testify regarding the blood draw, his blood alcohol level, or highway design. Lagerev fails to demonstrate counsel was deficient or resulting prejudice because he fails to allege what these experts would have testified to, *id.*, or a reasonable probability of a different outcome at trial had the experts testified. Therefore, the district court did not err in denying this claim without holding an evidentiary hearing.

Second, Lagerev claims counsel was ineffective for failing to conduct an adequate pretrial investigation. Lagerev claims counsel did next to nothing to investigate, met with Lagerev without an interpreter, and did not interview any of the lay or expert witnesses that were going to be called at trial. Lagerev fails to demonstrate counsel was deficient or resulting prejudice because he fails to support this claim with specific facts, which if true, would entitle him to relief. *Id.* He fails to specify what a more thorough investigation would have uncovered, what information counsel did not get from Lagerev as a result of not using an interpreter, or what information counsel could have gleaned from the witnesses had he talked to them before trial. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) (a petitioner claiming counsel did not conduct an adequate investigation must specify what a more thorough

investigation would have uncovered). Therefore, the district court did not err in denying this claim without holding an evidentiary hearing.

Third, Lagerev claims counsel was ineffective for failing to extensively question potential jurors and he left three jurors on the jury that should have been challenged. Lagerev fails to demonstrate counsel was deficient or resulting prejudice. The district court extensively canvassed the potential venire. The three jurors identified by Lagerev indicated they could be fair and impartial. Further, Lagerev fails to demonstrate further questioning by counsel would have had a reasonable probability of a different outcome at trial given the strength of the evidence presented at trial including Lagerev's admission he drank alcohol prior to driving that day. Therefore, the district court did not err in denying this claim without holding an evidentiary hearing.

Fourth, Lagerev claims counsel was ineffective for giving an inadequate opening statement because he did not tell the jury what the theory of defense was, stated what he "hoped" witnesses would testify to, and he told the jury he was not asking them to convict or acquit Lagerev. Lagerev fails to demonstrate counsel was deficient or resulting prejudice. Counsel's opening statement was adequate and he fails to demonstrate a reasonable probability of a different outcome at trial had counsel done his opening statement differently. Therefore, the district court did not err in denying this claim without holding an evidentiary hearing.

Fifth, Lagerev claims counsel was ineffective for inadequately cross-examining witnesses and for presenting character witnesses. Lagerev fails to demonstrate counsel was deficient or resulting prejudice. Lagerev fails to provide specific facts, which if true, would entitle him to relief regarding counsel's alleged inadequacy in cross-examining witnesses

and presenting character witnesses. He fails to allege what further cross-examination would have produced or how presenting character witnesses was deficient or how they negatively affected the outcome at trial. Therefore, the district court did not err in denying this claim without an evidentiary hearing.

Sixth, Lagerev claims counsel was ineffective in his closing argument. Lagerev fails to demonstrate counsel was deficient or resulting prejudice. Counsel's closing argument was adequate and Lagerev fails to demonstrate a reasonable probability of a different outcome had counsel done his closing argument differently. Therefore, the district court did not err in denying this claim without an evidentiary hearing.

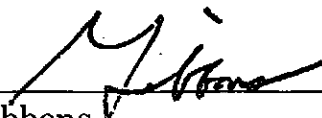
Seventh, Lagerev claims counsel was ineffective for failing to invoke the exclusionary rule. Lagerev fails to demonstrate he was prejudiced because he fails to demonstrate a reasonable probability of a different outcome had counsel invoked the exclusionary rule. Therefore, the district court did not err in denying this claim without holding an evidentiary hearing.

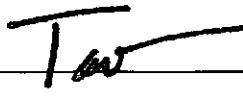
Eighth, Lagerev claims counsel was ineffective for failing to effectively communicate a plea offer to him. Lagerev fails to demonstrate counsel was deficient or resulting prejudice because he fails to support this claim with specific facts, which if true, entitle him to relief. *Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225. He fails to demonstrate a plea offer was ever made or that it was communicated ineffectively. Therefore, the district court did not err in denying this claim without holding an evidentiary hearing.


Finally, Lagerev claims the cumulative effect of ineffective assistance warrants relief. Because Lagerev's ineffective-assistance-of-

counsel claims lack merit, he fails to demonstrate any cumulative error. Therefore, the district court did not err in denying this claim without an evidentiary hearing.

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


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Jessie Elizabeth Walsh, District Judge
Nobles & Yanez Law Firm
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk