

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTOINE VALENTIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70258

FILED

JAN 19 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellant Antoine Valentin appeals from an order of the district in denying his January 15, 2015, postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jennifer P. Togliatti, Judge.

Valentin argues 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).

First, Valentin argued his trial counsel was ineffective for failing to assert that a police report containing the victim's out-of-court

statements was admitted at the preliminary hearing in violation of the Confrontation Clause. Valentin failed to demonstrate trial counsel's performance was deficient or resulting prejudice. "[T]here is no Sixth Amendment confrontation right at a preliminary examination." *Sheriff v. Witzenburg*, 122 Nev. 1056, 1061, 145 P.3d 1002, 1005 (2006). As there is no Sixth Amendment right to confrontation at a preliminary hearing, Valentin cannot demonstrate objectively reasonable counsel would have raised this claim or a reasonable probability of a different outcome had counsel raised this issue. Therefore, the district court did not err in denying this claim.

Second, Valentin argued his trial counsel was ineffective for failing to request a sequestered individual voir dire of potential jurors. Valentin asserted the jury panel may have been prejudiced when potential jurors discussed their histories involving domestic violence. Valentin failed to demonstrate his counsel's performance was deficient or resulting prejudice. The record reveals that the jurors who discussed prior experiences with domestic violence and represented they would have difficulty with this case were excused from jury service. Valentin merely speculates the remaining jurors could have been prejudiced against him, but mere speculation is insufficient to establish counsel acted in an objectively unreasonable manner or a reasonable probability of a different outcome had counsel requested a sequestered individual voir dire of potential jurors. *See Leonard v. State*, 117 Nev. 53, 64, 17 P.3d 397, 404 (2001) (stating absent "a showing of prejudice to the defendant," a district court's decision to decline a request for individual voir dire will not be disturbed); *see also Harrington v. Richter*, 562 U.S. 83, 112 (2011) (explaining that under the *Strickland* prejudice standard, "[t]he likelihood

of a different result must be substantial, not just conceivable.”). Therefore, the district court did not err in denying this claim.

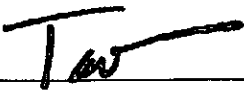
Third, Valentin argued his trial counsel was ineffective for failing to request a psychological examination of the victim. Valentin failed to demonstrate his counsel’s performance was deficient or resulting prejudice. Although Valentin cites to cases providing the standard for when a district court may order a psychological examination in a matter involving the sexual abuse of a child, he provides no authority to support his contention that counsel should have requested a psychological examination of a victim in a matter involving domestic violence. An unsupported claim, such as this one, is insufficient to demonstrate a petitioner is entitled to relief. *See Hargrove v. State*, 100 Nev. 498, 502-03 686 P.2d 222, 225 (1984). In addition, counsel cross-examined the victim at length regarding her version of events and the possibility she had a motive to fabricate her testimony due to jealousy and mental difficulties stemming from Valentin’s infidelity. Under these circumstances, Valentin fails to demonstrate a reasonable probability of a different outcome had counsel sought a psychological examination of the victim and then questioned her regarding the findings of that examination. Therefore, the district court did not err in denying this claim.


Fourth, Valentin argued his trial counsel was ineffective for failing to ensure bench conferences were transcribed. Valentin failed to demonstrate trial counsel’s performance was deficient or resulting prejudice. Bench conferences should be memorialized, “either contemporaneously or by allowing the attorneys to make a record afterward,” but the appellant must demonstrate meaningful appellate review of any alleged error was precluded by the failure to memorialize

the bench conference. *Preciado v. State*, 130 Nev. ___, ___, 318 P.3d 176, 178 (2014). Here, counsel made a record regarding a number of issues that had previously been discussed at a bench conference, which were the actions of objectively reasonable counsel. Further, assuming there were issues that were discussed at a bench conference that were not later memorialized, Valentin speculated he suffered prejudice, but that is insufficient to demonstrate he is entitled to relief. In addition, Valentin made no attempt to demonstrate that meaningful appellate review was precluded by any failure to memorialize a bench conference. Accordingly, Valentin failed to demonstrate a reasonable probability of a different outcome had counsel memorialized every bench conference. Therefore, the district court did not err in denying this claim.

Having concluded Valentin is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

¹The district court also concluded Valentin's petition was procedurally barred. It is not clear whether NRS 34.810(1)(b) applies to this case, but we need not consider whether it applies. Because Valentin's claims lack merit, they would necessarily fail to demonstrate actual prejudice sufficient to overcome the procedural bar at NRS 34.810(1)(b). *See Hogan v. Warden*, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993).

cc: Hon. Jennifer P. Togliatti, District Judge
Terrence M. Jackson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk