

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FRANCISCO ANTONIO LARA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69253

FILED

JAN 19 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellant Francisco Lara appeals from the denial of his postconviction petition for a writ of habeas corpus filed on July 25, 2012, and his supplemental petition filed on May 21, 2015. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Lara claims the district court erred by 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

17-900095

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).

First, Lara claims the district court erred by denying his claim that his counsel were ineffective for failing to investigate the letters he wrote to his wife and son while he was in jail. He claims he was coerced into writing the letters by his cellmate and his cellmate may have been working on behalf of the police. Lara failed to demonstrate counsel were deficient or resulting prejudice. Lara failed to demonstrate below what a more thorough investigation would have discovered. *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 show what an adequate investigation would have uncovered). Lara provides mere speculation his cellmate was an agent of the State and he fails to demonstrate a reasonable probability of a different outcome at trial had counsel done further investigation. Accordingly, the district court did not err by denying this claim.

Second, Lara claims the district court erred by denying his claim that his counsel were ineffective for failing to adequately advise him regarding the State's plea offer. Lara claims counsel spoke to him about the plea offer without an interpreter and did not explain he was facing a minimum of 35 years if he was convicted at trial. Lara claims had an interpreter been used and had he been informed of the minimum sentence, he would have taken the offer. Lara failed to demonstrate counsel were deficient or resulting prejudice.

The district court held an evidentiary hearing and found trial counsel to be credible. Trial counsel testified she went and spoke with Lara about the offer without an interpreter. She testified he appeared to understand the conversation they had. Lara's other trial counsel testified he had conversations in English with Lara often and he did not find Lara was unable to understand. Counsel explained the offer, the potential penalties he faced, and the likelihood he would get convicted if he went to trial. Lara rejected the offer. A few days later during trial, while the offer was still available, both trial counsel and an interpreter spoke with Lara about the offer. Again the offer was explained, the potential penalties he faced were discussed, and the likelihood he would be convicted. Lara again rejected the offer. The district court determined Lara's claim was without merit because he had a Spanish interpreter during at least one of the discussions and the potential penalties were discussed. Substantial evidence supports the decision of the district court, and we conclude the district court did not err by denying this claim.

Third, Lara claims the district court erred by denying his claim that counsel were ineffective for failing to zealously cross-examine the minor victim regarding inconsistencies in her various interviews regarding what happened between her and Lara. Lara claims counsel spent too much time asking the victim questions not related to the case, failed to challenge her regarding why she recanted all but one of the allegations to a defense investigator, and failed to challenge how Lara could have committed the conduct in a house full of people. The district court concluded Lara failed to demonstrate counsel were deficient because


it was a reasonable trial strategy to not vigorously cross-examine the victim. The district court also concluded Lara failed to demonstrate a reasonable probability of a different outcome at trial because there were several witnesses who were able to corroborate the victim told them about Lara's sexual acts committed against her.


Lara failed to provide this court with a complete copy of the trial record in this case. "Appellant has the ultimate responsibility to provide this court with portions of the record essential to determination of issues raised in appellant's appeal." *Thomas v. State*, 120 Nev. 37, 43 n.4, 83 P.3d 818, 822 n.4 (2004) (internal quotation marks omitted); *see also* NRAP 30(b)(3). Because pertinent portions of the record were not provided to this court, we decline to consider this claim on appeal.

Finally, Lara claims the district court erred by denying his claim that counsel were ineffective at sentencing for failing to present mitigation evidence. Lara claims counsel should have called witnesses who could have attested to Lara's character, failed to elaborate on assertions counsel made regarding Lara's skills, employment, and age, and failed to have Lara evaluated. Lara fails to demonstrate the district court erred because he failed to demonstrate a reasonable probability of a different outcome at sentencing had further mitigation evidence been presented. Lara fails to specify which witnesses would have testified or what their testimony would have been. He also fails to specify what further information regarding Lara's employment and skills could have been presented. He also fails to allege what Lara would have been evaluated for or how the results of an evaluation would have changed the

outcome of the proceedings. Therefore, the district court did not err in denying this claim. See *Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984) (a petitioner must support his claims with specific facts that, if true, would entitle him to relief). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Ronald J. Israel, District Judge
Law Offices of Martin Hart, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk