

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CARLOS ALONSO SALCIDO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 70621

**FILED**

MAR 23 2017

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

*ORDER OF AFFIRMANCE*

Appellant Carlos Alonso Salcido appeals from a district court order denying the postconviction petition for a writ of habeas corpus he filed on December 15, 2014. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Salcido claims the district court erred in finding his habeas petition was procedurally barred because it was successive. We agree. NRAP 4(c)(5) provides in relevant part, "A habeas corpus petition filed after a direct appeal conducted under this Rule shall not be deemed a 'second or successive petition' under NRS 34.810(2)." Because Salcido's direct appeal was conducted under NRAP 4(c), the district court erred in finding his petition was successive and procedurally barred. *See Salcido v. State*, Docket No. 63989 (Order of Affirmance, July 22, 2014).

Salcido also claims the district court erred in finding his ineffective-assistance-of-counsel claims were without merit. We disagree. To prevail on a claim of ineffective assistance of counsel, a petitioner must show (1) counsel's performance was deficient because it fell below an objective standard of reasonableness and (2) the deficiency prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Both prongs

of the ineffective-assistance inquiry must be shown. *Id.* at 697. We review the district court's resolution of ineffective-assistance claims de novo, giving deference to the court's factual findings if they are supported by substantial evidence and not clearly wrong. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

First, Salcido claimed defense counsel was ineffective for failing to move to sever the counts involving victim Diaz from the counts involving victims Pedraza and Salazar because the offenses occurred at different times and involved unrelated victims. The district court found any attempt by defense counsel to sever the counts would have been futile because "the three attacks were within a few hours of each other, within the same proximity, the attacker had the same description, and was yelling similar things." The record supports the district court's finding, and we conclude the district court did not err by rejecting this claim. See NRS 173.115; *Ennis v. State*, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006).

Second, Salcido claimed defense counsel was ineffective for failing to preserve the record for appeal. Salcido argued defense counsel should have made a record of what transpired during a bench conference when the district court ruled on his objection to evidence he made threatening gestures towards a witness during the preliminary hearing. The district court found Salcido could not show the omitted objection would have changed the outcome of the trial and the evidence of Salcido's threatening gestures was neither a bad act nor presumptively inadmissible. The record supports the district court's finding, and we conclude the district court did not err by rejecting this claim. See NRS 48.045(2); *Evans v. State*, 117 Nev. 609, 628, 28 P.3d 498, 512 (2001)

“Evidence that after a crime a defendant threatened a witness with violence is directly relevant to the question of guilt. Therefore, evidence of such a threat is neither irrelevant character evidence nor evidence of collateral acts requiring a hearing before its admission.” (internal footnote omitted)), *overruled on other grounds by Lisle v. State*, 131 Nev. \_\_\_, \_\_\_ n.5, 351 P.3d 725, 732 n.5 (2015).

Third, Salcido claimed defense counsel was ineffective for failing to object to improper expert witness testimony. Salcido argued Police Officer Stovall’s criminal-gangs testimony invaded the province of the jury, the State failed to ask the district court to recognize Officer Stovall as an expert, and Officer Stovall lacked the qualifications necessary to be an expert. The district court found defense counsel’s performance was not deficient because the Nevada Supreme Court had determined there was no error in allowing the expert to testify and therefore any effort to limit the expert’s testimony would have been futile. The record supports the district court’s finding, and we conclude the district court did not err by rejecting this claim. *See Ennis*, 122 Nev. at 706, 137 P.3d at 1103; *Salcido*, Docket No. 63989 (Order of Affirmance, July 22, 2014), p. 6.

Fourth, Salcido claimed defense counsel was ineffective for failing to object to evidence regarding gang affiliation and request a hearing pursuant to *Butler v. State*, 120 Nev. 879, 102 P.3d 71 (2004). The district court found Salcido’s association with a criminal gang was an element of the charged offense, it was not a prior bad act that must be proven by clear and convincing evidence before it could be admitted into evidence, and any objection to this evidence would have been futile. The record supports the district court’s finding, and we conclude the district

court did not err by rejecting this claim. See NRS 193.168(1); *Ennis*, 122 Nev. at 706, 137 P.3d at 1103; *Butler*, 120 Nev. at 889, 102 P.3d at 78-79 (discussing the admission of gang-affiliation evidence to prove motive).

Fifth, Salcido claimed defense counsel was ineffective for failing to present expert testimony regarding the unreliability of eyewitness testimony. Salcido's claim focused on victim Diaz's testimony. The district court found Salcido could not demonstrate prejudice because the jury heard testimony that Diaz was only 60% sure Salcido was his attacker and the additional testimony would not have changed the outcome of the trial. The record supports the district court's finding, and we conclude the district court did not err by rejecting this claim. See *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004) (petitioner bears the burden of proving ineffective assistance by a preponderance of the evidence).


Sixth, Salcido claimed defense counsel was ineffective for failing to object to the district court's participation in the plea negotiation process. The district court found Salcido could not demonstrate defense counsel's performance was prejudicial because the Nevada Supreme Court had previously determined Salcido failed to show actual prejudice or a miscarriage of justice. The record supports the district court's finding, and we conclude the district court did not err by rejecting this claim. See *Means*, 120 Nev. at 1012, 103 P.3d at 33; *Salcido*, Docket No. 63989 (Order of Affirmance, July 22, 2014), p. 1-2.

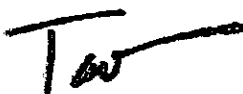
Seventh, Salcido claimed defense counsel was ineffective for failing to properly advise him about a proposed plea negotiation. Salcido argued defense counsel failed to explain the difference between concurrent and consecutive time and failed to explain the difference between the

amount of time he could receive under the proposed plea negotiation and the amount of time he could receive if found guilty at trial. The district court found Salcido's claim was a bare allegation without any factual support. The district court noted Salcido had been canvassed regarding the State's plea offer on the first day of the trial, he acknowledged the district court had discretion to impose consecutive sentences, and he did not have any questions. The record supports the district court's finding, and we conclude the district court did not err by rejecting this claim. See *Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984) (a petitioner is not entitled to postconviction relief if his claims are bare and lack specific factual allegations).

We conclude the district court did not err in rejecting Salcido's ineffective-assistance-of-counsel claims without the benefit of an evidentiary hearing, and, because the ineffective-assistance-of-counsel claims were without merit, the district court did not err in denying Salcido's postconviction habeas petition. See NRS 34.770(2); *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (this court will affirm the judgment of a district court if it reached the right result albeit for a wrong reason). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Valerie Adair, District Judge  
Oronoz, Ericsson & Gaffney, LLC  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk