

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KYLE ADRIAN WILSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 71480

**FILED**

SEP 13 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Kyle Adrian Wilson appeals from an order of the district court denying his May 15, 2016, postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

The district court held the petition was procedurally barred and Wilson failed to overcome the bar because he could not demonstrate prejudice since his substantive claims lacked merit. We affirm.

Wilson first argues the district court erred in finding his 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 Wilson's direct appeal was conducted under NRAP 4(c), the district court erred in finding his petition was successive and procedurally barred.

Wilson next argues the district court erred in concluding his ineffective-assistance-of-trial-counsel claim lacked merit, specifically contesting the district court's conclusion that counsel's concessions in closing arguments to some elements of the crime were reasonable. To

demonstrate ineffective assistance of counsel, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that there was a reasonable probability of a different outcome absent counsel's errors. *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. Even if Wilson is correct that counsel's actions were objectively unreasonable and thus deficient, he does not challenge the district court's conclusion that he was not prejudiced by counsel's concessions and thus fails to demonstrate the district court erred in denying this claim.<sup>1</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 C.J.

Silver

 J.

Tao

 J.

Gibbons

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<sup>1</sup>Even if Wilson did challenge the district court's no-prejudice conclusion, he failed to provide this court with an adequate appendix, including all relevant trial transcripts, precluding us from reviewing whether there was a reasonable probability of a different outcome at trial absent counsel's alleged errors. *See Greene v. State*, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980) ("The burden to make a proper appellate record rests on appellant.").

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