

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARCUS SHAAN FINLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72479

FILED

DEC 29 2017

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

ORDER OF AFFIRMANCE

Marcus Shaan Finley appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on May 23, 2015, and supplemental pleadings. Eighth Judicial District Court, Clark County; Jennifer P. Togliatti, Judge.


Finley contends the district court erred by denying his claim that trial counsel was ineffective for failing to obtain the services of a homelessness expert. To demonstrate ineffective assistance of trial 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*); see also *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996) (applying *Strickland* to claims of ineffective assistance of appellate counsel). Both components of the inquiry must be shown. *Strickland*, 466 U.S. at 697. For the deficiency prong, counsel is strongly presumed to have provided adequate assistance and exercised reasonable professional judgment in all significant decisions. *Id.* at 690.

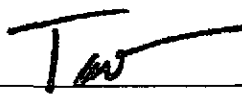
Finley argues counsel should have obtained the services of a homelessness expert to testify at trial as to the daily struggles and mental state of the homeless in general in order to rebut the State's argument that

Finley, who appears to have been homeless, must have been attempting to enter the victims' homes with the intent to commit larceny therein. In support, Finley presented the declaration of Jerry Fest, a consultant who specializes in services for homeless and runaway youth. Fest summarized difficulties the homeless have in finding adequate hygiene facilities and shelter from the elements, as well as explained why the actions of the homeless are not necessarily the result of deliberative, rational, and calculated thought processes.

During his summation, trial counsel urged the jury to use its common sense to understand the life of the homeless and argued the gist of Fest's information to the jury. Further, Fest's declaration is not evidence that a homeless person who faces both the physical and mental challenges Fest describes could not enter a home with the intent to commit larceny. Finley has thus not demonstrated counsel was objectively unreasonable in not seeking out someone to testify to such common knowledge or a reasonable probability of a different outcome at trial had the jury heard such testimony. We therefore conclude the district court did not err in denying Finley's petition, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

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