

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHARLES EDWARD MCDONALD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73733-COA

FILED

NOV 06 2018

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

ORDER OF AFFIRMANCE

Charles Edward McDonald appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on February 6, 2013, and a supplemental petition filed on October 7, 2015. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

McDonald argues the district court erred by denying his claim counsel was ineffective for failing to investigate his mental health issues and for failing to request a competency evaluation. McDonald claimed he and his girlfriend repeatedly told counsel about his mental health issues and requested counsel to get his mental health records and to have his competency evaluated. Further, McDonald claimed he was incompetent at the time of trial because he was found incompetent six months after trial and a doctor who examined him during the postconviction proceedings found he was likely incompetent at the time of trial. He claims had counsel investigated, he would not have gone to trial while incompetent, he may have been able to pursue an insanity defense, or he may have been able to plead guilty but mentally ill.

To prove ineffective assistance of counsel, a petitioner must demonstrate 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, 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 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).


The district court held an evidentiary hearing on this issue, and found counsel was not deficient. Specifically, the district court found McDonald failed to demonstrate counsel should have known McDonald was incompetent or should have done further investigation into McDonald's mental health issues. McDonald appeared to understand counsel during meetings, was able to discuss strategies, and gave appropriate responses to counsel's questions. Further, counsel testified McDonald understood the gravity of the situation, he understood the evidence against him, and offered information to assist in his defense. The district court found McDonald acted and responded appropriately in court.


The district court also found McDonald failed to demonstrate prejudice because McDonald failed to demonstrate he was incompetent at the time of trial. The district court found the subsequent finding of incompetency did not demonstrate he was incompetent during this trial. Further, the doctor who examined him during the postconviction


proceedings could not draw a conclusion "either way whether [McDonald] was competent or not competent at the time of trial."

Substantial evidence supports the decision of the district court. McDonald failed to demonstrate counsel should have known he did not have sufficient ability to consult with counsel with a reasonable degree of understanding or that he did not have a rational or factual understanding of the proceedings against him. See NRS 178.400(2); *Dusky v. United States*, 362 U.S. 402, 402 (1960); see also *Martin v. State*, 96 Nev. 324, 325, 608 P.2d 502, 503 (1980) (a history of mental illness, without evidence the defendant was unable to assist his counsel or understand the nature of the charges or proceedings against him, does not raise a reasonable doubt as to competence). Further, McDonald failed to demonstrate he was incompetent at the time of trial, see *id.*, or had counsel investigated his mental health, he would have been able to pursue an insanity defense or a plea of guilty but mentally ill, see NRS 174.035(5); *Miller v. State*, 112 Nev. 168, 172, 911 P.2d 1183, 1185 (1996). Therefore, we conclude the district court did not err by denying the petition, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Michelle Leavitt, District Judge
Gaffney Law
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk