

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RODGER ORLIN EVANS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74103

FILED

OCT 25 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Rodger Orlin Evans appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on May 24, 2017.¹ Tenth Judicial District Court, Churchill County; Thomas L. Stockard, Judge.

Evans appears to claim the district court erred by denying his petition because he was deprived of effective assistance of counsel. To establish ineffective assistance of counsel, a petitioner must demonstrate counsel's performance was deficient because it fell below an objective standard of reasonableness, and resulting prejudice in 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 (1984). The petitioner must demonstrate both components of the ineffective-assistance inquiry—deficiency and prejudice. *Id.* at 697. We give deference to the district court's factual findings if supported by substantial evidence and not clearly erroneous but review the court's

¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

Evans claimed defense counsel provided ineffective assistance during a pretrial hearing by discussing the contents of a letter he had sent to counsel.² Evans asserted his letter explained why he did not think he could get a fair trial. And Evans argued counsel's actions violated his attorney/client privilege and had the effect of tainting the district court to the extent where he could not receive a fair trial.

The district court found the letter made accusations against defense counsel, the district attorney, and the district court. Counsel was concerned that Evans' allegations may have created a conflict of interest and thought he should withdraw his representation. The district court determined counsel was prepared to cross-examine the State's witnesses and present some of the evidence Evans felt strongly should be presented. The district court denied counsel's motion to withdraw. The district court further found counsel did an "able job" of representing Evans and Evans was not prejudiced by counsel's discussion of the letter.

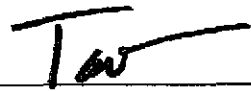
We conclude the district court's factual findings are supported by substantial evidence and are not clearly wrong, Evans' failed to demonstrate he was prejudiced by counsel performance, and the district court did not err by denying Evans' postconviction habeas petition. *See*


²To the extent Evans claims the district court should have recused itself and erred by allowing defense counsel to present inappropriate information during a pretrial proceeding, we decline to address these claims because they were not raised in his habeas petition or considered by the district court in the first instance. *See Davis v. State*, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991), *overruled on other grounds by Means*, 120 Nev. 1001, 103 P.3d 25.

Means v. State, 120 Nev. 1001, 1012-13, 103 P.3d 25, 33 (2004) (petitioner bears the burden of proving ineffective assistance). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Thomas L. Stockard, District Judge
Rodger Orlin Evans
Attorney General/Carson City
Churchill County District Attorney/Fallon
Churchill County Clerk