

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARK CLAYTON HOLLAND,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 73384

FILED

SEP 11 2018

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

*ORDER OF AFFIRMANCE*

Mark Clayton Holland appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; Richard Scotti, Judge.

Holland argues the district court erred by denying the claims of ineffective assistance of counsel raised in his April 4, 2017, petition. 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

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<sup>1</sup>This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

demonstrate the underlying facts by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).

First, Holland argued his counsel was ineffective for falling asleep during the preliminary hearing. Holland failed to demonstrate his counsel's performance was deficient or resulting prejudice. This claim is belied by the record, which demonstrates counsel actively participated in the preliminary hearing. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). A review of the record also demonstrates the evidence presented against Holland at the preliminary hearing was sufficient to support a probable cause finding. *See Sheriff, Washoe Cty. v. Middleton*, 112 Nev. 956, 961, 921 P.2d 282, 286 (1996) (explaining the State need only present slight or marginal evidence to demonstrate probable cause to support a criminal charge). In addition, Holland was ultimately found guilty beyond a reasonable doubt, demonstrating there was probable cause supporting the charge. *See Lisle v. State*, 114 Nev. 221, 224-25, 954 P.2d 744, 746-47 (1998) (citing *United States v. Mechanik*, 475 U.S. 66, 70 (1986)). Therefore, we conclude the district court did not err by denying this claim.

Second, Holland argued his counsel was ineffective for advising him to decline a plea offer and failing to negotiate a fair sentence. Holland failed to demonstrate his counsel's performance was deficient or resulting prejudice. Holland appeared to assert counsel should have been able to obtain a more favorable plea deal, but he provided no argument as to how counsel could have reasonably obtained concessions from the State during plea negotiations. Holland's claim was thus bare and unsupported, which was insufficient to demonstrate he was entitled to relief. *See Hargrove*, 100

Nev. at 502-03, 686 P.2d at 225. Accordingly, Holland failed to demonstrate his counsel's performance fell below an objective standard of reasonableness. Moreover, Holland did not demonstrate "a reasonable probability that the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time," *Missouri v. Frye*, 566 U.S. 134, 147 (2012), and accordingly failed to meet his burden to demonstrate he was prejudiced by counsel's actions regarding the plea negotiations. Therefore, we conclude the district court did not err by denying this claim.

Third, Holland argued his counsel was ineffective for failing to investigate additional surveillance video depicting additional angles of his altercation with the victim. Holland failed to demonstrate his counsel's performance was deficient or resulting prejudice. A surveillance video recording depicting the altercation was admitted during the trial and Holland merely speculates counsel could have uncovered additional, favorable recordings had counsel undertaken such an investigation. See *Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) (a petitioner claiming counsel did not conduct an adequate investigation must specify what a more thorough investigation would have uncovered). Accordingly, Holland failed to demonstrate his counsel's performance fell below an objectively unreasonable standard or a reasonable probability of a different outcome had counsel undertaken such an investigation. Therefore, we conclude the district court did not err by denying this claim.

Fourth, Holland argued his counsel was ineffective for failing to visit him or provide discovery. Holland failed to demonstrate either deficiency or prejudice for these claims because he made only bare and

unsupported allegations regarding these issues. *See Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225. Therefore, we conclude the district court did not err by denying these claims.

Fifth, Holland argued his counsel was ineffective for failing to call defense witnesses to testify. Holland failed to demonstrate his counsel's performance was deficient or resulting prejudice. Holland did not explain or support this claim with any factual assertions regarding any witnesses' potential testimony. A bare claim, such as this, is insufficient to demonstrate a petitioner is entitled to relief. *See id.* Therefore, we conclude the district court did not err by denying this claim.

Sixth, Holland argued his counsel was ineffective for failing to object to the admission of a photograph depicting him in handcuffs. Holland failed to demonstrate his counsel's performance was deficient or resulting prejudice. In his petition, Holland wrote he requested his counsel to object to admission of the photograph, but his counsel refused because counsel believed the handcuffs were not noticeable in the photograph. This was a tactical decision, and such decisions "are virtually unchallengeable absent extraordinary circumstances," *Ford v. State*, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989), which Holland did not demonstrate. The record also demonstrates the State presented strong evidence of Holland's guilt, given the victim's testimony and the surveillance video recording depicting Holland punching the victim. In light of the strong evidence of Holland's guilt presented at trial, Holland failed to demonstrate a reasonable probability of a different outcome at trial had counsel objected to the admission of the photograph. Therefore, we conclude the district court did not err by denying this claim.

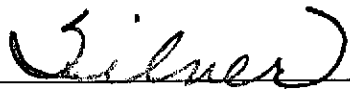
Seventh, Holland argued his counsel was ineffective for failing to move to suppress the surveillance video recording because Holland asserted it was altered. Holland failed to demonstrate his counsel's performance was deficient or resulting prejudice. During the trial, the victim testified the surveillance video was an accurate depiction of the altercation. A police officer also testified he reviewed the surveillance footage with casino security, obtained a copy of that footage, and asserted the recording played during the trial was that same footage. Given this trial testimony, Holland failed to demonstrate objectively reasonable counsel would have sought to suppress the recording or a reasonable probability of a different outcome had counsel done so. Therefore, we conclude the district court did not err by denying this claim.

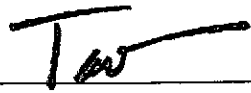
Next, Holland argued the State committed prosecutorial misconduct by attempting to shift the burden of proof during closing arguments. This court already considered and rejected this claim on direct appeal. *Holland v. State*, Docket No. 69883 (Order of Affirmance, February 24, 2017). The doctrine of the law of the case prevents further litigation of these issues and "cannot be avoided by a more detailed and precisely focused argument." *Hall v. State*, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975). Therefore, the district court properly denied relief for this claim.


Finally, Holland argued the State committed prosecutorial misconduct by altering the surveillance video and the sentencing court improperly sentenced him to serve flat time in the county jail as a condition of probation. These claims could have been raised on direct appeal and Holland failed to demonstrate cause for the failure to do so and actual

prejudice. *See* NRS 34.810(1)(b). Therefore, the district court did not err in denying relief for these claims. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

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

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

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

cc: Hon. Richard Scotti, District Judge  
Mark Clayton Holland  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>2</sup>We also conclude this matter was not sufficiently complex so as to warrant the appointment of postconviction counsel and, therefore, the district court did not abuse its discretion by declining to appoint postconviction counsel. *See Renteria-Novoa v. State*, 133 Nev. \_\_\_, \_\_\_, 391 P.3d 760, 760-61 (2017).