

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHNNY WILLIAM JOHNSON, III,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 71924

**FILED**

JUL 17 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Johnny William Johnson, III, appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on May 26, 2015, and a supplemental habeas petition filed on March 8, 2016. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Johnson argues the district court erred by denying his claims of ineffective assistance of counsel and not conducting an evidentiary hearing. 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 application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

A petitioner is entitled to an evidentiary hearing only if he has asserted specific factual allegations that are not belied or repelled by the record and, if true, would entitle him to relief. *Nika v. State*, 124 Nev. 1272, 1300-01, 198 P.3d 839, 858 (2008). We review a district court's determination that a petitioner is not entitled to an evidentiary hearing for abuse of discretion. *Berry v. State*, 131 Nev. 957, 969, 363 P.3d 1148, 1156 (2015).

First, Johnson claimed defense counsel was ineffective for failing to object to gang-affiliation evidence because it was unnecessary, disparaged the defendant, and frightened the jury. The district court found the actual evidence of gang affiliation was very limited. It was necessary to explain the prior inconsistent statements of some of the State's witnesses. And it was not offered to disparage Johnson or frighten the jury. We conclude the district court's factual findings are supported by substantial evidence and are not clearly wrong, Johnson failed to demonstrate counsel was deficient and that he was prejudiced by counsel's performance, and the district court did not err by rejecting this claim without an evidentiary hearing. See NRS 48.015; NRS 48.025; *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984) (petitioner has the burden of pleading specific facts that show he is entitled to relief).

Second, Johnson claimed defense counsel was ineffective for failing to review discovery from the search of the Lynnwood residence, which was evident when he cross-examined Detective Darin Cook. The district court found that defense counsel was well aware of the circumstances of the Lynnwood residence search. The search was made during the investigation of a different case. Some of the evidence from the search was relevant to this case. And defense counsel cross-examined the

detective in a way that would not open the door to evidence of Johnson's other crime. We conclude the district court's factual findings are supported by substantial evidence and are not clearly wrong, Johnson failed to demonstrate counsel was deficient and that he was prejudiced by counsel's performance, and the district court did not err by rejecting this claim without an evidentiary hearing. *See Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225.


Third, Johnson claimed defense counsel was ineffective for failing to effectively cross-examine the State's witnesses regarding their identification of the shooter. The district court found that defense counsel performed an adequate, thorough cross-examination of the witnesses. He cross-examined the witnesses about their identifications of the shooter and inconsistencies regarding the height of the shooter. And he specifically cross-examined Allen Griffin, Monique Traylor, and Deborah Traylor regarding their identifications of the shooter. We conclude the district court's factual findings are supported by substantial evidence and are not clearly wrong, Johnson failed to demonstrate counsel was deficient and that he was prejudiced by counsel's performance, and the district court did not err by rejecting this claim without an evidentiary hearing. *See id.*


Fourth, Johnson claimed defense counsel was ineffective for failing to consult with and present the testimony of an expert in shooting reconstruction. The district court found that Johnson failed to identify any new evidence that a shooting reconstruction expert would have uncovered with further investigation. We conclude the district court's factual findings are supported by substantial evidence and are not clearly wrong, Johnson failed to demonstrate counsel was deficient and that he was prejudiced by counsel's performance, and the district court did not err by rejecting this

claim without an evidentiary hearing. *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); *Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225.

Having concluded Johnson is not entitled to relief, we  
ORDER the judgment of the district court AFFIRMED.

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

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

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

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