

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JASON LYNN PROFFITT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 75273-COA

**FILED**

DEC 04 2018

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

*ORDER OF AFFIRMANCE*

Jason Lynn Proffitt appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on December 14, 2016, and a supplemental petition for a writ of habeas corpus filed on May 30, 2017. Third Judicial District Court, Lyon County; John Schlegelmilch, Judge.

Proffitt claims the district court erred by denying his petition because he received ineffective assistance of trial and appellate counsel. To establish ineffective assistance of trial 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). Similarly, to establish ineffective assistance of appellate counsel, a petitioner must demonstrate counsel's performance was deficient because it fell below an objective standard of reasonableness, and resulting prejudice in that the omitted issue had a reasonable probability of success on appeal. *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996).

The petitioner must demonstrate both components of the ineffective-assistance inquiry—deficiency and prejudice. *Strickland*, 466 U.S. at 697. We give deference to the district court’s factual findings if supported by substantial evidence and not clearly wrong 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).

Proffitt argues trial counsel was ineffective for failing to file a pretrial motion to dismiss the charge based on law enforcement’s failure to collect critical exculpatory evidence. The record reveals Proffitt failed to demonstrate the missing evidence would have exonerated him or the district court would have dismissed the charge if the motion had been filed. *See Proffitt v. State*, Docket No. 68256 (Order of Affirmance, November 19, 2015); *Donovan v. State*, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978). Therefore, Proffitt failed to establish counsel was ineffective, and we conclude the district court did not err by rejecting this claim.

Proffitt further claims trial and appellate counsel were ineffective due to the existence of a conflict of interest.<sup>1</sup> The district court conducted an evidentiary hearing and made the following findings. There was some friction between Proffitt and counsel, but there was no evidence a personal disagreement affected counsel’s representation in this matter or prejudiced the case in any way. Proffitt’s primary reason for seeking counsel’s removal was his belief he did not receive all of the discovery—this


---


<sup>1</sup>Proffitt was represented by the same attorney during his trial and his appeal. To the extent he claims the district court did not adequately investigate his pretrial attorney-client-conflict claim, his claim is procedurally barred because it could have raised on direct appeal, *see* NRS 34.810(1)(b)(2), and he has not shown good cause and actual prejudice to overcome the procedural bar, *see* NRS 34.810(1)(b).

belief is belied by the record. And Proffitt failed to demonstrate deficiency in counsel's performance. The record supports the district court's findings, we conclude Proffitt failed to demonstrate the existence of an actual conflict of interest, and we conclude the district court did not err by rejecting this claim. *See Strickland*, 466 U.S. at 692 (to demonstrate a conflict of interest rendered counsel's performance deficient, defendant must show "that counsel actively represented conflicting interests and that an actual conflict of interest adversely affected his lawyer's performance" (internal quotation marks omitted)).

Having concluded Proffitt is not entitled to relief, we  
ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

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

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

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

cc: Hon. John Schlegelmilch, District Judge  
Karla K. Butko  
Attorney General/Carson City  
Lyon County District Attorney  
Third District Court Clerk

---

<sup>2</sup>To the extent Proffitt claims the district court erred by refusing to consider the testimony he gave during the evidentiary hearing on his postconviction allegations, we conclude his claim is belied by the record.