

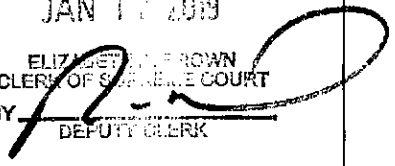
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

YADHIR RUIZ GONZALES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74869-COA

FILED

JAN 17 2019

ELIZABETH BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Yadhir Ruiz Gonzales appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Gonzales argues the district court erred by denying the claims of ineffective assistance of trial counsel raised in his August 25, 2016, petition and later-filed supplement. 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).

First, Gonzales argued his counsel was ineffective for failing to question Jackelina Acosta as to whether photographs taken of her vehicle

depicted it as it was on the day the crimes were committed. Gonzales also argued his counsel was ineffective for failing to question Detective Hestand about the date he took photographs of Acosta's vehicle. Gonzales contended such questions could have clarified that Acosta's vehicle was missing a license plate when the crimes were committed, another man possessed Acosta's license plate when the crimes were committed, and that man's vehicle could have been the one at the victim's apartment. Gonzales failed to demonstrate his counsel's performance was deficient or resulting prejudice.

The record reveals that witnesses saw two men at the victim's apartment. One witness viewed one of those men drive away in a red vehicle with license plate number 955 LTW. Detective Hestand testified he discovered Acosta was the registered owner of the vehicle matching the license plate number and he then talked to Acosta about her vehicle. During her testimony, Acosta viewed photographs and testified the photographs fairly and accurately depicted her vehicle. Acosta acknowledged she was the owner of the car and permitted Gonzales to use her vehicle. The police obtained a photograph of Gonzales, showed the two witnesses photo line-ups containing Gonzales' picture, and both witnesses identified Gonzales as one of the perpetrators of the crimes.

Acosta also testified that, prior to the commission of these crimes, she had loaned a license plate for her vehicle to a man who owned a similar car. Acosta testified the man did not return the license plate to her until after the commission of these crimes. During closing argument, Gonzales contended the other man with Acosta's license plate could have been the one who committed these crimes.

The trial record reveals Gonzales' counsel presented testimony that a different person could have been the person driving a vehicle with Acosta's license plate. In his petition, Gonzales speculated counsel could have posed further questions concerning this information, but he did not provide specific factual support to show that such questions would have provided favorable evidence beyond what was already presented at trial. Accordingly, Gonzales failed to demonstrate his counsel's performance fell below an objective standard of reasonableness. In addition, the two witnesses identified Gonzales as one of the two perpetrators of the crime and, therefore, Gonzales did not demonstrate a reasonable probability of a different outcome had counsel undertaken further efforts to demonstrate another man drove a car containing Acosta's license plate. We conclude the district court did not err by denying this claim.

Second, Gonzales argued his counsel was ineffective for failing to object to admission of photographs depicting Acosta's vehicle because they did not fairly and accurately depict her vehicle on the date the crimes occurred. Gonzales failed to demonstrate his counsel's performance was deficient or resulting prejudice. Acosta testified that the photographs of her vehicle were what they were "claimed to be." See NRS 52.025. Given Acosta's testimony, Gonzales did not demonstrate reasonable counsel would have objected to admission of the photographs 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.

Third, Gonzales argued his counsel was ineffective for failing to investigate whether Acosta had loaned her license plate to Maike Hernandez. Gonzales also argued his counsel was ineffective for failing to investigate Hernandez in an effort to demonstrate Hernandez may have

actually committed the crimes. Gonzales failed to demonstrate his counsel's performance was deficient or resulting prejudice. Acosta testified she loaned a license plate to Hernandez, and Gonzales did not demonstrate further investigation would have revealed additional evidence concerning the license plate. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). In addition, as stated previously, two witnesses identified Gonzales as one of the perpetrators of the crimes and, therefore, he failed to demonstrate a reasonable probability of a different outcome had counsel investigated Hernandez and whether he used Acosta's license plate. Therefore, we conclude the district court did not err by denying this claim.

Fourth, Gonzales argued his counsel was ineffective for failing to object during the State's closing argument when it asserted that the two eyewitnesses had no motive to lie and implied Acosta was lying to protect Gonzales. Gonzales failed to demonstrate his counsel's performance was deficient. A prosecutor "enjoys wide latitude in arguing facts and drawing inferences from the evidence," *Greene v. State*, 113 Nev. 157, 177, 931 P.2d 54, 67 (1997) (internal quotation marks omitted), and may use inferences to demonstrate that a witness' testimony is untrue, *Ross v. State*, 106 Nev. 924, 927, 803 P.2d 1104, 1106 (1990). The record reveals the State noted the eyewitness did not have a reason to fabricate their version of events in contrast to Acosta, who was motivated to help Gonzales because he was her husband. The State also asserted the evidence showed Acosta had changed her version of events over time and urged the jury to take that into account when weighing her credibility. Recognizing the State is allowed "reasonable latitude" to argue concerning the credibility of witnesses, *Rowland v State*, 118 Nev. 31, 39, 39 P.3d 114, 119 (2002), Gonzales failed to demonstrate reasonable counsel would have objected during closing argument 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.

Having concluded Gonzales is not entitled to relief, we ORDER the judgment of the district court AFFIRMED.¹


_____, A.C.J.
Douglas


_____, J.
Gibbons

cc: Hon. Ronald J. Israel, District Judge
Gaffney Law
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹The Honorable Jerome T. Tao did not participate in the decision in this matter.