

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JASON KYNOLL OWENS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 73034-COA

**FILED**

FEB 12 2019

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

*ORDER OF AFFIRMANCE*

Jason Kynoll Owens appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on September 1, 2015, and supplemental petition filed on April 25, 2016. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

Owens contends the district court erred by denying several of his claims of ineffective assistance of trial counsel. To demonstrate ineffective assistance of counsel, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that there was a reasonable probability of a different outcome absent counsel's errors. *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).

We give deference to the district court's factual findings that are 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).

First, Owens claimed counsel should have objected to a law enforcement witness's narration of a surveillance video. Owens did not raise this claim below, and we therefore decline to consider it on appeal in the first instance. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999). To the extent Owens challenges the district court's denial of his claim that appellate counsel should have raised the narration issue on appeal, he presents no authority or cogent argument in support of that claim. Accordingly, we decline to consider it on appeal. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987). Further, Owens' underlying claim was belied by the record because appellate counsel did raise the claim on direct appeal. *See Owens v. State*, Docket No. 65963 (Order of Affirmance, April 15, 2015).

Second, Owens claimed counsel failed to conduct an adequate pretrial investigation, which would have turned up additional witnesses to bolster Owens' assertions of self-defense and would have contradicted the evidence at trial. Owens failed to demonstrate deficiency or prejudice. Owens' bare claim failed to identify what witnesses counsel should have investigated or what their testimony would have been. We therefore conclude the district court did not err by denying this claim. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) (petitioner claiming counsel did not conduct adequate investigation must specify what a more thorough investigation would have uncovered).

Third, Owens claimed counsel failed to explain the maximum penalty Owens could receive if he lost at trial. Owens failed to demonstrate deficiency or prejudice. Owens failed to demonstrate by a preponderance of the evidence that counsel did not fully explain his sentencing exposure. Nothing in the record contradicts counsel's testimony at the evidentiary hearing on the instant petition that she explained to Owens how much time he was facing for each sentence and the possibility of consecutive terms. We therefore conclude the district court did not err by denying this claim.

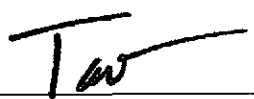
Fourth, Owens claimed counsel should have moved for a mistrial without prejudice after law enforcement witnesses improperly alluded to prior contact with Owens and referenced the gang unit. Owens failed to demonstrate deficiency or prejudice. The district court's finding that counsel's decision was a matter of strategy was supported by substantial evidence in the record. Counsel testified it was a weak case, the victim performed poorly on the witness stand, and a mistrial without prejudice would give the State time to find additional witnesses whose testimony would not be favorable to Owens. We therefore conclude the district court did not err by denying this claim. *See Lara v. State*, 120 Nev. 177, 180, 87 P.3d 528, 530 (2004) (“[C]ounsel’s strategic or tactical decisions will be virtually unchallengeable absent extraordinary circumstances.” (internal quotation marks omitted)).


Finally, Owens claimed the cumulative error of counsel warranted relief. Even assuming any such errors could be cumulated, *see McConnell v. State*, 125 Nev. 243, 259, 212 P.3d 307, 318 (2009) (noting the Nevada Supreme Court has never adopted a standard to evaluate such claims in postconviction proceedings), Owens failed to demonstrate any

error such that there was nothing to cumulate. We therefore conclude the district court did not err by denying this claim, and we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, A.C.J.  
Douglas

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

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

cc: Hon. Elizabeth Goff Gonzalez, District Judge  
Legal Resource Group  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk