

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LARRY HARDNETT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 75775-COA

**FILED**

APR 16 2019

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

*ORDER OF AFFIRMANCE*

Larry Hardnett appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on January 9, 2018.<sup>1</sup> Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Hardnett claimed his trial and appellate counsel were ineffective. 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).

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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).

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).

First, Hardnett claimed trial counsel was ineffective for failing to investigate. He asserted he learned about his codefendant's confession for the first time at trial. And he argued if he had known about the confession earlier he could have moved for a severance or presented other arguments. The district court found Hardnett was not inculcated by the codefendant's confession. The detective who testified about the confession testified only that the codefendant admitted to committing the robbery on the day in question. The State did not argue the confession applied to Hardnett, and the codefendant did not attempt to inculcate Hardnett. The district court's findings are supported by substantial evidence and are not clearly wrong. We conclude Hardnett failed to demonstrate he was prejudiced by counsel's performance and the district court did not err by rejecting this claim. *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 show how a better investigation would have made a more favorable outcome probable).

Second, Hardnett claimed trial counsel was ineffective for refusing to let him testify on his own behalf. The district court found this claim was belied by the record, which demonstrated Hardnett was thoroughly canvassed on his right to testify, acknowledged he had the right to testify, and chose not to testify on his own behalf. The district court's

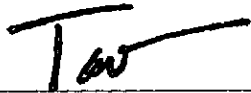
findings are supported by substantial evidence and are not clearly wrong. We conclude Hardnett failed to demonstrate trial counsel was ineffective and the district court did not err by rejecting this claim. *See Hargrove v. State*, 100 Nev. 498, 503, 686 P.3d 222, 225 (1984) (a petitioner is not entitled to postconviction relief if his claims are belied by the record).

Third, Hardnett claimed appellate counsel was ineffective for failing to challenge the identification made by one of the victims. He argued that victim Cruz-Cuizon identified him based on what victim Hashimoto said he looked like. The district court found Hashimoto told Cruz-Cuizon that Hardnett looked like Snoop Dog and no longer had dreads or braids. Nothing in the record indicated Cruz-Cuizon asked Hashimoto to describe Hardnett or that she was unable to describe him before her conversation with Hashimoto. And Hardnett was not prejudiced by this conversation because the jury heard impeachment evidence regarding the conversation and still decided that Cruz-Cuizon's identification was credible. The district court's findings are supported by substantial evidence and are not clearly wrong. We conclude Hardnett failed to demonstrate that appellate counsel was ineffective and the district court did not err by rejecting this claim. *See Means v. State*, 120 Nev. 1001, 1012-13, 103 P.3d 25, 33 (2004) (petitioner bears the burden of proving ineffective assistance).

Hardnett also claimed there was insufficient evidence to support the jury's finding that a deadly weapon was used in the commission of his crimes. The district court found that this claim was waived because it was not raised on direct appeal. We agree and conclude the district court did not err by rejecting this claim. *See NRS 34.810(1)(b)(2); Franklin v. State*, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) ("[C]laims that are appropriate for a direct appeal must be pursued on direct appeal, or they

will be considered waived in subsequent proceedings.”), *overruled on other grounds by Thomas v. State*, 115 Nev. 148, 150, 979 P.2d 222, 223-24 (1999).

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

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

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

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Michael Villani, District Judge  
Larry Hardnett  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

