

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES ADRIAN BAIRD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68056

FILED

NOV 19 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant James Baird's December 7, 2012, postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

First, Baird claims the district court erred by denying his habeas petition because he was deprived of effective assistance of trial counsel. Baird argues trial counsel was ineffective for failing to produce Elizabeth Reiger at trial because "[she] was the only neutral witness that could have provided testimony that would have made a difference in the ultimate verdict in this case."

To prevail on a claim of ineffective assistance of counsel, a petitioner must show that (1) counsel's performance was deficient because it fell below an objective standard of reasonableness and (2) the deficiency prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Both prongs of the ineffective-assistance inquiry must be shown. *Id.* at 697. We review the district court's resolution of ineffective-

assistance claims de novo, giving deference to the court's factual findings if they are supported by substantial evidence and not clearly wrong. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

The district court conducted an evidentiary hearing and found that "counsel's attempts to find Reiger were objectively reasonable" and "even if counsel had filed a motion to continue trial for Reiger, it would not have changed the outcome of the case." The court's factual findings are supported by the record and are not clearly wrong, and we conclude Baird has not demonstrated trial counsel's performance was deficient in this regard.

Second, Baird claims the district court erred by denying his habeas petition because he was deprived of effective assistance of appellate counsel. Baird asserts "appellate counsel was ineffective for failing to raise on direct appeal the district court's abuse of discretion in denying [his] challenges of prospective jurors 174 and 186." Baird had challenged prospective juror 174 for cause because she and his stepmother worked in the same place and his stepmother's son was the State's principal witness against him. And Baird had challenged prospective juror 186 for cause because she indicated she was more likely to believe the testimony of a law enforcement officer.

"A claim of ineffective assistance of appellate counsel is reviewed under the 'reasonably effective assistance test' set forth in *Strickland v. Washington*." *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1113 (1996). "To establish prejudice based on the deficient assistance of appellant counsel, the [petitioner] must show that the

omitted issue would have a reasonable probability of success on appeal. In making this determination, a court must review the merits of the omitted claim.” *Id.* at 998, 923 P.2d at 1114 (internal citations omitted).


The district court found that prospective juror 174 testified she did not personally know Baird’s stepmother and she would not be influenced by the stepmother simply because they worked at the same place. Prospective juror 186 ultimately concluded she could wait to form her opinions until the evidence was presented, she could base her decisions on the evidence presented in this case, and she could be fair and render a verdict based on the evidence. And Baird failed to show that his juror claims had a reasonable probability of success on appeal. The court’s factual findings are supported by the record and are not clearly wrong. We conclude Baird has not demonstrated the court’s denials of his challenges for cause resulted in an “unfair empaneled jury,” and, therefore, he has not shown the omitted issue had a reasonable probability of success on appeal. *See Preciado v. State*, 130 Nev. ___, ___, 318 P.3d 176, 178 (2014); *see generally Snow v. State*, 101 Nev. 439, 446, 705 P.2d 632, 637-38 (1985) (removal for cause is not necessary when a prospective juror unequivocally states she can put aside her previous opinions and impartially reach a verdict).

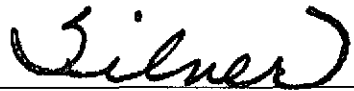
Third, Baird claims the district court erred by denying his habeas petition because the cumulative errors of trial and appellate counsel deprived him of a fair trial. However, even assuming that multiple deficiencies in counsel’s performance may be cumulated to find prejudice under the *Strickland* test, *see McConnell v. State*, 125 Nev. 243,

259 n.17, 121 P.3d 307, 318 n.17 (2009), the district court did not find any such deficiencies, so there was nothing to cumulate.

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


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Elissa F. Cadish, District Judge
Nguyen & Lay
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk