

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICHARD JAY KRAVETZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 77101-COA

FILED

JUL 17 2019

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

ORDER OF AFFIRMANCE

Richard Jay Kravetz appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

Kravetz argues the district court erred by denying the claims of ineffective assistance of counsel raised in his February 15, 2018, petition. 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.

First, Kravetz argued his trial counsel was ineffective for failing to conduct sufficient investigation into the victim's medical information. Kravetz contended his counsel should have obtained additional expert witness testimony concerning the victim's injuries and cause of death. Kravetz failed to demonstrate his counsel's performance was deficient or

resulting prejudice. During trial, the defense presented expert witness testimony concerning the victim's cause of death and the expert testified the victim's head injury contributed to her death, but she likely sustained the injury from an accidental fall. Kravetz supported his postconviction claim with a report from a new medical expert and the new report was consistent with the testimony presented by the defense at trial. As the new report was consistent with the testimony Kravetz presented at trial, he did not demonstrate his counsel's investigation into the medical evidence fell below an objectively reasonable standard.

In addition, there was strong evidence of Kravetz' guilt presented at trial, including the victim's statements prior to her death where she informed others Kravetz became angry with her and caused the fall that resulted in her head injuries. Given the strong evidence of Kravetz' guilt, he failed to demonstrate a reasonable probability of a different outcome at trial had counsel conducted further investigation into the victim's medical records. Therefore, we conclude the district court did not err by denying this claim.

Second, Kravetz argued his trial counsel was ineffective for failing to request a proximate cause jury instruction. Kravetz failed to demonstrate resulting prejudice. The Nevada Supreme Court has explained that "a criminal defendant can only be exculpated where, due to a superseding cause, he was in no way the proximate cause of the result." *Etcheverry v. State*, 107 Nev. 782, 785, 821 P.2d 350, 351 (1991) (internal quotation marks omitted). Furthermore, "[a] defendant will not be relieved of criminal liability for murder when his action was a substantial factor in bringing about the death of the victim." *Lay v. State*, 110 Nev. 1189, 1192-93, 886 P.2d 448, 450 (1994). Here, the evidence produced at trial

established Kravetz' act of causing the victim's fall was a substantial factor in her death. Due to that evidence, Kravetz failed to demonstrate a reasonable probability of a different outcome had his counsel requested a proximate cause jury instruction. Therefore, the district court did not err by denying this claim.

Third, Kravetz argued his trial counsel was ineffective for failing to object to the introduction of prior-bad-act evidence. Kravetz failed to demonstrate resulting prejudice. Kravetz challenged the admission of the prior-bad-act evidence on direct appeal. The Nevada Supreme Court concluded Kravetz was not entitled to relief as the evidence of prior bad acts only constituted a small portion of the State's case and there was strong evidence of Kravetz' guilt produced at trial. *Kravetz v. State*, Docket No. 67240 (January 25, 2017). Given the Nevada Supreme Court's conclusions concerning the prior bad acts and the victim's statements indicating Kravetz caused her injuries, Kravetz did not demonstrate a reasonable probability he would not have been convicted had counsel successfully objected to introduction of the prior-bad-act evidence. Therefore, we conclude the district court did not err by denying this claim.


Fourth, Kravetz argued he was entitled to a new trial due to the cumulative effect of counsel's errors. In light of the strong evidence of guilt presented at trial, Kravetz failed to demonstrate he was entitled to relief even considering any errors cumulatively. Therefore, we conclude the district court did not err by denying this claim.


Fifth, Kravetz claims the district court erred by denying the petition without conducting an evidentiary hearing. To warrant an evidentiary hearing, a petitioner must raise claims supported by specific allegations not belied by the record, and that if true, would entitle him to

relief. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). The district court concluded Kravetz' claims failed to meet that standard and the record before this court reveals the district court's conclusions in this regard were proper. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. William D. Kephart, District Judge
Law Office of Christopher R. Oram
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk