

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PATRICK EDWARD WILCOCK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69810

FILED

FEB 23 2017

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

ORDER OF AFFIRMANCE

Appellant Patrick Edward Wilcock appeals from an order of the district court denying his October 26, 2015, postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Wilcock argues the district court erred in denying his claim of ineffective assistance of trial counsel. To prove ineffective assistance of counsel, a petitioner must demonstrate that 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 that, 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

¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).

Wilcock argued his trial counsel were ineffective for failing to interview potential witnesses who could have testified that a State's witness, Todd House, had represented he was an attorney to fellow inmates at the Clark County Detention Center. Prior to trial, Wilcock asked House, a fellow inmate, for legal help and, during the course of their incarceration, Wilcock made admissions about his involvement in the murder and subsequent events. Wilcock asserted the witnesses at issue would have demonstrated he believed House was an attorney when he discussed this case and their communications should have been privileged. Wilcock failed to demonstrate his attorneys' performances were deficient or resulting prejudice.


Wilcock's trial counsel filed a motion in limine asserting these communications should not be admitted at trial due to House's statements that he was an attorney and Wilcock's reliance upon those statements when communicating with House regarding this matter. At the hearing concerning that motion, counsel provided a list of fellow inmates who Wilcock asserted would testify to their belief that House was an attorney. The district court denied counsel's motion in limine, concluding Wilcock could not have had a reasonable belief that House was actually an attorney given the circumstances of their communications, a conclusion affirmed by the Nevada Supreme Court on direct appeal. *Wilcock v. State*, Docket No. 62804 (Order of Affirmance, May 29, 2015).


As counsel was aware of the substance of the potential testimony of these witnesses, Wilcock failed to demonstrate counsel acted in an objectively unreasonable manner in this regard. Further, as the

Nevada Supreme Court has already concluded the district court properly found Wilcock could not have reasonably believed House was an attorney given the circumstances surrounding the nature of the communications regarding this case and their mutual incarceration, Wilcock failed to demonstrate a reasonable probability of a different outcome had counsel interviewed potential witnesses regarding this issue. Therefore, the district court did not err in denying this claim.

Next, Wilcock argues the district court erred in declining to appoint postconviction counsel to represent him. The appointment of postconviction counsel was discretionary in this matter. See NRS 34.750(1). After a review of the record, we conclude the district court did not abuse its discretion in this regard as this matter was not sufficiently complex so as to warrant the appointment of postconviction counsel.

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

, C.J.
Silver

, J.
Tao

, J.
Gibbons

cc: Hon. Douglas W. Herndon, District Judge
Patrick Edward Wilcock
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk