


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JERAMIE RAYMOND CARLSSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69433

FILED

JUN 21 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Elliott A. Sattler, Judge.

Appellant Jeramie Carlsson argues the district court erred by denying his ineffective assistance of counsel claims raised in his February 28, 2014, petition and his July 3, 2014, supplemental petition. 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 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 if supported by substantial evidence and not clearly erroneous but review the court's

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application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

First, Carlsson claims counsel was ineffective for failing to preserve in writing his right to appeal whether there was sufficient evidence to support the grand jury's probable cause determination regarding the use of a deadly weapon. Carlsson fails to demonstrate he was prejudiced. While counsel failed to preserve the right to appeal in writing, Carlsson was able to appeal the issue and the Nevada Supreme Court issued a merit determination on that issue. *See Carlsson v. State*, Docket No. 63506 (Order of Affirmance, December 16, 2013). Therefore, the district court did not err in denying this claim.

Second, Carlsson claims counsel was ineffective for failing to present witnesses in mitigation of sentence. Carlsson claims several family members would have testified about his character when he was not using methamphetamine. Carlsson fails to demonstrate prejudice because he fails to show there was a reasonable probability of a different outcome at sentencing had the witnesses been presented given the serious nature of the crimes and his prior criminal history. Therefore, the district court did not err in denying this claim.

Next, Carlsson claims appellate counsel was ineffective for failing to argue the State breached the plea agreement by noting in the fast track response on direct appeal that Carlsson had not preserved for appeal the issue of whether there was sufficient evidence to support the grand jury's probable cause determination regarding the use of a deadly weapon. Carlsson claims the breach required specific performance of the term violated. Carlsson fails to demonstrate counsel was deficient or resulting prejudice. *See Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d

1102, 1114 (1996) (to prove ineffective assistance of appellate 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 the omitted issue would have a reasonable probability of success on appeal). While the State did note the issue was not preserved, the Nevada Supreme Court made a determination on the merits as though it was preserved. *See Carlsson v. State*, Docket No. 63506 (Order of Affirmance, December 16, 2013). Therefore, the term of the guilty plea agreement was specifically performed, and the district court did not err in denying this claim.

Carlsson also claims trial counsel was ineffective for failing to object to the State's addition of an accomplice liability theory regarding the deadly weapon enhancement. Additionally, he claims appellate counsel was ineffective for failing to object to the Nevada Supreme Court's review of the deadly weapon enhancement under the "slight or marginal test" when the court should have reviewed the claim under the "reasonable doubt" standard.¹ Carlsson did not raise either of these claims below. Because Carlsson does not demonstrate cause for his failure to raise these claims before the district court, we decline to consider them

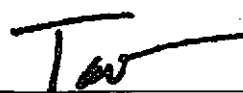
¹We note the Nevada Supreme Court correctly applied the slight or marginal standard because the claim raised on appeal was a challenge to the probable cause determination. *See* NRS 172.155(1); *Sheriff v. Hodes*, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980). To the extent Carlsson argues a claim should have been raised to the sufficiency of the evidence produced at sentencing to support the deadly weapon enhancement, he relieved the State of its burden to prove sufficiency beyond a reasonable doubt by pleading guilty.

in the first instance in this appeal. See *McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

Having reviewed Carlsson's contentions on appeal and concluded he is not entitled to relief, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Elliott A. Sattler, District Judge
Karla K. Butko
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk