

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

QUAVAS JAMAL WILLIAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70284

FILED

FEB 23 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *AW*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellant Quavas Jamal Williams appeals from an order of the district court denying his November 14, 2013, postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Richard Scotti, Judge.

Williams argues the district court erred in denying his claims 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 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 application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

First, Williams argued his counsel was ineffective for failing to present cell phone records to corroborate testimony regarding a phone call between Williams and a defense witness. Williams failed to demonstrate his counsel's performance was deficient or resulting prejudice. At the evidentiary hearing, counsel stated he obtained the records merely as an "insurance policy" if a witness did not recall the phone call during the trial. Counsel testified Williams and the defense witness testified regarding the phone call, he did not need to use the records to help them remember the phone call, and counsel did not believe the records would add to their testimony because the records would not reveal the nature of their conversation. Tactical decisions such as this one "are virtually unchallengeable absent extraordinary circumstances," *Ford v. State*, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989), which Williams did not demonstrate. As Williams and the defense witness testified regarding the phone call during trial, Williams failed to demonstrate a reasonable probability of a different outcome had further evidence regarding the phone call been presented to the jury. Therefore, we conclude the district court did not err in denying this claim.


Second, Williams argued his counsel was ineffective for failing to present Moniqua Johnson's testimony at trial. Johnson was not available to testify at trial due to complications stemming from childbirth, but counsel did not request a continuance of the trial. Williams asserted counsel should have sought a continuance in order to present her testimony because she would have bolstered his alibi defense. Williams failed to demonstrate his counsel's performance was deficient or resulting


prejudice. At the evidentiary hearing, counsel testified he did not pursue a continuance due to Johnson's medical issues out of concern he would lose the availability or cooperation of the other defense witnesses. Counsel further testified he believed the four defense witnesses and Williams presented the defense theory of the case in a sufficient manner. The district court concluded counsel made a reasonable tactical decision to decline to pursue a continuance and substantial evidence supports that conclusion. *See id.* Moreover, Williams speculated Johnson would have provided favorable testimony, but mere speculation is insufficient to demonstrate there is a reasonable probability of a different outcome at trial had Johnson testified. *See Browning v. State*, 120 Nev. 347, 357, 91 P.3d 39, 47 (2004). Therefore, we conclude the district court did not err in denying this claim.

Third, Williams argued counsel was ineffective for failing to investigate and present testimony from Detravion Johnson. Williams asserted Detravion Johnson would have provided further testimony regarding Williams' alibi defense. Williams failed to demonstrate his counsel's performance was deficient or resulting prejudice. Preliminarily, we note Williams did not question his trial counsel at the evidentiary hearing regarding counsel's investigations or decisions relating to Detravion Johnson. As Williams failed to pursue this claim at the evidentiary hearing, he did not meet his burden to demonstrate that counsel was deficient with respect to investigating Detravion Johnson. *See Means*, 120 Nev. at 1012, 103 P.3d at 33 (explaining a petitioner has the burden to establish the factual allegations underlying a claim of ineffective assistance of counsel); *see also Strickland*, 466 U.S. at 690 (recognizing "counsel is strongly presumed to have rendered adequate

assistance"). Because Williams did not present information regarding this claim at the evidentiary hearing, he also failed to demonstrate a reasonable probability of a different outcome at trial had counsel pursued an investigation of Detravion Johnson. Therefore, we conclude the district court did not err in denying this claim.

Having concluded Williams is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.¹


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Richard Scotti, District Judge
Oronoz, Ericsson & Gaffney, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹The Honorable Abbi Silver, Chief Judge, did not participate in the decision in this matter.