

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSH SPEARMAN, A/K/A JOSHUA
SPEARMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 77408-COA

FILED

FEB 11 2020

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

ORDER OF AFFIRMANCE

Josh Spearman appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

Spearman argues the district court erred by denying the claims of ineffective assistance of trial counsel he raised in his May 24, 2017, petition and later-filed supplement. 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, 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, Spearman argued his trial counsel was ineffective for advising him to reject a plea offer and proceed to trial. At the evidentiary hearing, Spearman testified that he asked counsel whether counsel would accept an offer of three to eight years in prison. Spearman testified counsel responded that he would not accept that offer. Spearman stated that counsel told him that he had reviewed the case and, based on his evaluation of the case, believed it would be more favorable to Spearman to reject the offer and proceed to trial. The district court found that counsel's advice to reject the plea offer and proceed to trial was reasonable under the circumstances in this case. Substantial evidence supports the district court's decision. *See Ford v. State*, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989) ("Tactical decisions are virtually unchallengeable absent extraordinary circumstances."). Therefore, we conclude the district court did not err by denying this claim.


Second, Spearman argued his trial counsel was ineffective for failing to move for acquittal on the coercion charge after the State failed to present sufficient evidence to sustain a conviction. This court concluded on direct appeal that there was sufficient evidence presented to support Spearman's coercion conviction. *Spearman v. State*, Docket No. 68414 (Order of Affirmance, April 20, 2016). In light of this court's conclusion that there was sufficient evidence presented at trial to support the coercion conviction, Spearman failed to demonstrate his counsel's performance fell below an objectively reasonable standard when he did not move for an acquittal on the coercion charge. Spearman also failed to demonstrate a reasonable probability of a different outcome had counsel moved for an acquittal on the coercion charge. Therefore, the district court did not err by denying this claim.

Third, Spearman argued he was entitled to relief due to the cumulative errors of counsel. However, Spearman failed to demonstrate any errors and, accordingly, he was not entitled to relief. Therefore, the district court did not err by denying this claim.

Next, Spearman argued there was insufficient evidence presented to support the jury's finding of guilt for coercion. As explained previously, this court already concluded on direct appeal that there was sufficient evidence presented to support Spearman's coercion conviction. *Spearman v. State*, Docket No. 68414 (Order of Affirmance, April 20, 2016). The doctrine of the law of the case prevents further consideration of these claims and "cannot be avoided by a more detailed and precisely focused argument." *Hall v. State*, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975). Therefore, the district court did not err by denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Stefany Miley, District Judge
Roy L. Nelson, III
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk