

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAQUAN BRYANT COOK, A/K/A  
DAQUAN BROWN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 77326-COA

**FILED**

FEB 11 2020

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

*ORDER OF AFFIRMANCE*

Daquan Bryant Cook appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Cook argues the district court erred by denying the claim of ineffective assistance of counsel he raised in his July 11, 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, Cook argued his trial counsel was ineffective for failing to conduct pretrial investigation. Cook contended his counsel should have interviewed the first arriving police officer and Jake Spencer, a person that was in a group with the victims. Cook also asserted counsel did not follow Cook's direction regarding pretrial investigations, did not keep Cook informed of matters prior to trial, and did not permit him to play an active role in his defense.

At the evidentiary hearing, counsel testified that he had no reason to believe that the first responding officer would have provided helpful information and did not attempt to talk to that officer for that reason. Counsel further testified that his investigator attempted to locate Spencer, but was unable to. Counsel testified that he had voluntary statements from the pertinent witnesses and those statements were sufficient for him to be prepared to question those witnesses at trial. Counsel also testified that he met with Cook ahead of trial, discussed potential strategies with him, and formulated the trial strategy in consultation with him. The district court found counsel's testimony was credible and that Cook failed to demonstrate his counsel's performance fell below an objective standard of reasonableness. The district court also found Cook failed to demonstrate a reasonable probability of a different outcome had counsel conducted further pretrial investigation. The record supports the district court's findings and we conclude the district court did not err by denying this claim.

Second, Cook argued his trial counsel was ineffective for forcing him to decline to testify at trial. Cook did not raise this claim in his petition

or supplement, but rather attempted to raise it during the evidentiary hearing. However, the district court rejected Cook's request to raise this issue at the evidentiary hearing. The district court has the discretion as to whether to allow a petitioner to raise additional claims that were not raised in his initial or supplemental petitions. See NRS 34.750(5); *Barnhart v. State*, 122 Nev. 301, 303-04, 130 P.3d 650, 651-52 (2006). "An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). Based on the record before this court, Cook does not demonstrate the district court's exercise of its discretion to decline his request to raise an additional claim during the evidentiary hearing was arbitrary or capricious.

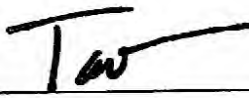
In its order denying the petition, the district court also addressed the merits of Cook's claim concerning his trial counsel's actions regarding Cook's potential trial testimony "out of an abundance of caution" and concluded the claim lacked merit. The district court found Cook was properly canvassed regarding his right to testify and Cook declined the opportunity to testify. Because the record demonstrated that Cook was responsible for rejecting his opportunity to testify at trial, the district court found Cook failed to demonstrate his counsel's performance regarding this issue fell below an objective standard of reasonableness.

In addition, Cook testified at the evidentiary hearing and offered his version of the altercation with the victims. The district court found Cook's testimony at the evidentiary hearing concerning the altercation contradicted the video evidence produced at trial. Because Cook's testimony contradicted the video evidence, the district court found Cook did not demonstrate a reasonable probability a different outcome

would have occurred at trial had he testified during the trial. The record supports the district court's findings. Therefore, we conclude Cook is not entitled to relief based upon this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Ronald J. Israel, District Judge  
Gregory & Waldo, LLC  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk