

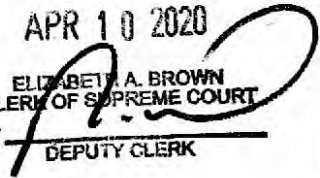
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JONATHAN CARRINGTON DONNER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78142-COA

FILED

APR 10 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jonathan Carrington Donner appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on October 10, 2017, and supplemental petition filed on May 31, 2018. Eighth Judicial District Court, Clark County; David M. Jones, Judge.

Donner contends the district court erred by denying a claim that trial-level counsel was ineffective for advising him that he would not have a valid proximate-cause defense if he went to trial. To demonstrate ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that, but for counsel's errors, there is a reasonable probability petitioner would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Kirksey v. State*, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown, *Strickland v. Washington*, 466 U.S. 668, 697 (1984), 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).


Donner theorizes that the bus fire that erupted after his vehicle struck the bus was exacerbated by a faulty bus floor and, thus, the faulty floor was the proximate cause of the victims' injuries and/or death. He claims that, but for trial-level counsel's assurance that proximate cause was not a plausible defense, he would not have pleaded guilty and would have insisted on going to trial. "[A] criminal defendant can only be exculpated where, due to a superseding cause, he was in no way the 'proximate cause' of the result." *Etcheverry v. State*, 107 Nev. 782, 785, 821 P.2d 350, 351 (1991). "[A]n intervening cause must be a superseding cause, or the sole cause of the injury in order to completely excuse the prior act." *Id.*


Donner failed to demonstrate counsel was deficient. Although the district court conducted an evidentiary hearing in this matter, Donner did not present any evidence that the victims' injuries or deaths were caused by the fire and not by the impact of Donner's vehicle on the bus.¹ Further, because the allegedly faulty bus floor was a preexisting condition, it could not have constituted an intervening or superseding cause so as to relieve Donner of criminal liability. *See Williams v. State*, 118 Nev. 536, 551, 50 P.3d 1116, 1126 (2002). For either reason independently, Donner failed to

¹The accident report Donner cites to in support of his assertion does not indicate the causes of the victims' injuries or deaths. It did note the impact was behind the driver, the driver's compartment suffered a "severe deformity," and the driver's seat and the first set of passenger's seats on the left side were pushed toward the center of the vehicle.

demonstrate counsel's advice was objectively unreasonable. We therefore conclude the district court did not err by denying this claim, and we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. David M. Jones, District Judge
Zaman & Trippiedi, PLLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²To the extent Donner argues counsel prevented him from exercising his right to a jury trial, this is new argument not raised below, and we decline to consider it on appeal in the first instance. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).