

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TIMOTHY LEE HOBBS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 79227-COA

FILED

JUN 05 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Timothy Lee Hobbs appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on October 25, 2017. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Hobbs claimed he received ineffective assistance from trial counsel. To demonstrate ineffective assistance of trial counsel, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that there was a reasonable probability of a different outcome absent counsel's errors. *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. We give deference to the district court's factual findings that are supported by substantial evidence and not clearly wrong 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, Hobbs claimed counsel should have argued that the State failed to timely file a notice of intent to seek habitual criminal treatment. The State had until two days before trial to file a timely notice. See NRS

207.016(2). The district court found that the State included the notice of habitual criminal treatment in the information, which was filed nearly six months prior to the start of trial. The district court's findings are supported by substantial evidence in the record before this court. Hobbs thus failed to demonstrate counsel was deficient or he was prejudiced. We therefore conclude the district court did not err by denying this claim.

Next, Hobbs claimed counsel should have called a witness at trial who would have testified that she gave Hobbs a \$100 bill the day before the robbery and that Hobbs told her it was the bill he was accused of taking from the victim. The district court found that the victim positively identified Hobbs as the man who robbed him shortly after the robbery and again at trial. The district court further found that the victim had accurately described Hobbs' clothing. These findings are supported by substantial evidence in the record before this court. Hobbs thus failed to demonstrate he was prejudiced by counsel's failure to call a witness. We therefore conclude 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

