

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

AMY DENISE BESSEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78611-COA

FILED

OCT 16 2020

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

ORDER OF AFFIRMANCE

Amy Denise Bessey appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on June 6, 2017, and a supplemental petition filed on October 20, 2017. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

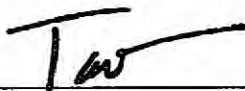
Bessey claims the district court erred by denying her claims that counsel were ineffective. To demonstrate ineffective assistance of trial counsel, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that there 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 687, 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). "The

burden to make a proper record rests on appellant." *Greene v. State*, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980); *see also* NRAP 30(b)(3).

Bessey claimed counsel were ineffective prior to and during her trial. Bessey has failed to provide this court with a copy of the trial transcripts or copies of the transcripts from pertinent pretrial hearings. Therefore, even if counsel were deficient, we could not determine whether Bessey was prejudiced by it. Accordingly, we are unable to conclude the district court erred by finding counsel were effective, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. William D. Kephart, District Judge
Gregory & Waldo, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk