

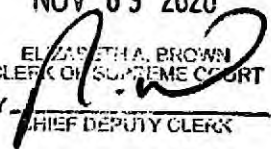
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JERRY LEE MORRISSETTE, SR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 80287-COA

FILED

NOV 09 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Jerry Lee Morrisette, Sr., appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

Morrisette argues the district court erred by denying his claims of ineffective assistance of trial counsel raised in his November 29, 2016, petition and later-filed supplements. 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

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law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

First, Morrissette argued his trial counsel was ineffective for failing to move to preclude introduction of the urinalysis report on the ground that it was more prejudicial than probative. *See* NRS 48.035(1).<sup>1</sup> Morrissette contended that a urinalysis based on a first void urine sample is per se unreliable and counsel should have urged a construction of NRS 484C.110(3) that a urinalysis must be based on a second void urine sample. Morrissette did not demonstrate that NRS 484C.110(3) requires a urinalysis to be based off a second void urine sample in order for that evidence to be considered reliable. Therefore, Morrissette did not demonstrate counsel's failure to move to exclude the urinalysis fell below an objective standard of reasonableness or that Morrissette was prejudiced by it. Accordingly, we conclude the district court did not err by denying this claim.

Second, Morrissette argued his trial counsel was ineffective for failing to retain an accident reconstruction expert in an effort to show that Morrissette was not the proximate cause of the accident. Morrissette contended an accident reconstruction expert would have demonstrated that the accident was actually caused by either the angle of the sun or by the victim. At the evidentiary hearing, counsel testified that he and Morrissette decided that an attempt to blame either the sun or the victim for the accident would not be a successful trial strategy. Counsel testified that he believed that the jury would not be sympathetic to Morrissette if they had

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<sup>1</sup> “[E]vidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues or of misleading the jury.” NRS 48.035(1).

attempted such a strategy. The district court found counsel's testimony was credible. Morrissette failed to demonstrate counsel's performance fell below an objective standard of reasonableness. *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.

Third, Morrissette appeared to argue he was entitled to relief due to the cumulative effect of counsel's errors. However, Morrissette failed to demonstrate any errors and, accordingly, he was not entitled to relief. Therefore, the district court did not err by denying this claim.

Having concluded Morrissette is not entitled to relief, we  
ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

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

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

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

cc: Hon. Scott N. Freeman, District Judge  
Richard F. Cornell  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk

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<sup>2</sup>We deny Morrissette's motion requesting oral argument.