

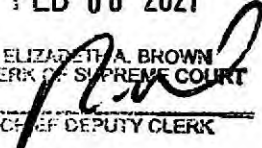
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RONALD HERBERT SHEFFEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 80071-COA

FILED

FEB 08 2021

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

ORDER OF AFFIRMANCE

Ronald Herbert Sheffey appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on September 12, 2017, and a supplemental petition filed on May 21, 2019. Eighth Judicial District Court, Clark County; David M. Jones, Judge.

Sheffey argues the district court erred by denying the ineffective-assistance-of-counsel claims raised in his petition and supplement. 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).

First, Sheffey claimed counsel failed to interview his children and the witnesses at the gas station. A petitioner claiming counsel did not conduct an adequate investigation must show how a better investigation would have made a more favorable outcome probable. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Sheffey failed to allege, or present evidence at the evidentiary hearing, to demonstrate what testimony these witnesses would have given or how their testimony would have affected the outcome of the trial. Therefore, Sheffey failed to demonstrate counsel was deficient or resulting prejudice. Accordingly, we conclude the district court did not err by denying this claim.

Second, Sheffey claimed counsel should have obtained the video surveillance tape from the gas station. At the evidentiary hearing, counsel testified she subpoenaed the video surveillance tape but was unable to obtain the video. Sheffey failed to demonstrate what further actions counsel could have taken to recover the video surveillance tape. Further, Sheffey failed to allege what he believed the video surveillance tape would show or how the tape would have helped him at trial. Therefore, Sheffey failed to demonstrate counsel was deficient or a reasonable probability of a different outcome at trial. Accordingly, we conclude the district court did not err by denying this claim.

Third, Sheffey claimed counsel should have investigated whether the money on his person was gambling winnings and not drug money. Sheffey claimed that, had counsel investigated this issue and presented evidence that the money was actually gambling winnings, the

State would not have been able to so extensively argue about the money during closing.

In its closing argument, the State argued:

A man, by the way, who when caught – get – when he's caught or when they finally search him, what's he have on him? A man with no real job has more cash in his pocket than most people make in a two-week pay period. That's the type of man you're dealing with.

This was the extent of the argument made by the State regarding the money found on Sheffey. Even had counsel presented evidence that the money was the result of gambling winnings, the State could have still made a similar argument regarding the money. Further, given the other evidence presented against Sheffey, including the quantity of drugs found in his room and the garage, Sheffey failed to demonstrate a reasonable probability of a different outcome at trial had counsel investigated and presented evidence regarding gambling winnings. Therefore, we conclude the district court did not err by denying this claim.

Fourth, Sheffey claimed counsel was ineffective for failing to challenge the search of the garage and his bedroom. Sheffey claimed his mother did not have the authority to give permission to search the garage because the garage was used mostly by Sheffey. Further, Sheffey claimed that the probable cause alleged to search his bedroom was predicated on the "illegal" search of the garage and, therefore, any evidence found in the bedroom should have been suppressed.

"Actual authority is proved (1) where defendant and a third party have mutual use of and joint access to or control over the property at issue, or (2) where defendant assumes the risk that the third party might consent to a search of the property." *Lastine v. State*, 134 Nev. 538, 542,

429 P.3d 942, 947 (Ct. App. 2019). Further, under the apparent authority doctrine, a search is valid if the officer reasonably believes that the third party has actual authority to consent. *See id.* at 544-45, 429 P.3d at 949.

The trial testimony demonstrated that Sheffey's mother was the owner of the home and, while Sheffey was the majority user of the garage, she still had access to the garage. Sheffey's mother, therefore, had the actual authority to permit the officers to enter the garage or, alternatively, the officers reasonably believed she did. Thus, Sheffey failed to demonstrate the search of the garage or the resulting search of the bedroom was illegal. Because the search was not illegal, Sheffey failed to demonstrate a reasonable probability of a different outcome at trial had counsel filed the motion, and counsel is not deficient for failing to file futile motions. *Donovan v. State*, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978). Therefore, we conclude the district court did not err by denying this claim.¹

Fifth, Sheffey claimed counsel was ineffective for failing to communicate with him. He claimed counsel only visited him once in the jail for less than an hour and only met with him a few other times for less than five minutes. And counsel failed to discuss the investigation and pretrial preparations. Counsel testified at the evidentiary hearing that she met with Sheffey in person and had meetings with him over the phone. Additionally, she investigated the witnesses recommended by Sheffey and attempted to obtain the surveillance video. Therefore, Sheffey failed to demonstrate that counsel was deficient. Further, Sheffey failed to

¹The district court conducted an evidentiary hearing on only some of Sheffey's claims. Sheffey claims on appeal that the district court should have conducted an evidentiary hearing on this claim. For the reasons stated above, we conclude Sheffey failed to demonstrate he was entitled to an evidentiary hearing.

demonstrate a reasonable probability of a different outcome at trial had counsel had further communications with him. Accordingly, we conclude the district court did not err by denying this claim.

Sixth, Sheffey claimed counsel was ineffective for failing to object to the reasonable-doubt and equal-and-exact-justice jury instructions. Sheffey failed to demonstrate the statutorily-mandated reasonable doubt instruction was improperly given. See NRS 175.211; *Chambers v. State*, 113 Nev. 974, 982-83, 944 P.2d 805, 810 (1997). He also failed to demonstrate the equal-and-exact-justice instruction was erroneously given. See *Leonard v. State*, 114 Nev. 1196, 1209, 969 P.2d 288, 296 (1998) (providing that where the jury has been instructed that defendant is presumed innocent and that the State bears the burden of proving guilt beyond a reasonable doubt, the equal-and-exact-justice instruction does not deny defendant the presumption of innocence or lessen the burden of proof). Therefore, Sheffey failed to demonstrate counsel was deficient or a reasonable probability of a different outcome at trial had counsel objected to these instructions. Accordingly, we conclude the district court did not err by denying this claim.

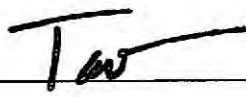
Next, to the extent Sheffey has attempted to adopt by incorporation all of the issues raised in his pro se petition, this was improper. NRAP 28(e)(2); *Thomas v. State*, 120 Nev. 37, 43, 83 P.3d 818, 822 (2004). Therefore, we decline to consider any claims not specifically raised on appeal.

Finally, Sheffey claimed he was entitled to relief due to the cumulative effect of counsel's errors. However, even assuming multiple deficiencies in counsel's performance may be cumulated to find prejudice under the *Strickland* test, see *McConnell v. State*, 125 Nev. 243, 259 n.17,

212 P.3d 307, 318 n.17 (2009), there was nothing to cumulate because Sheffey did not demonstrate multiple deficiencies. *See United States v. Sager*, 227 F.3d 1138, 1149 (9th Cir. 2000) (noting that cumulative error requires more than one error). Therefore, 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

cc: Hon. David M. Jones, District Judge
Law Office of Christopher R. Oram
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk