

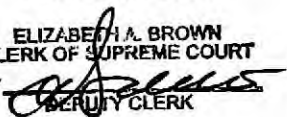
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IGNACIO VALENCIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 80307-COA

FILED

MAR 05 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  CLERK

ORDER OF AFFIRMANCE

Ignacio Valencia appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Egan K. Walker, Judge.

Valencia argues the district court erred by denying the claims of ineffective assistance of trial counsel raised in his January 10, 2014, postconviction petition for a writ of habeas corpus and later-filed 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, Valencia argued his trial counsel was ineffective for failing to call an expert witness to testify on his behalf regarding the victim's sexual assault examination. Prior to trial, counsel informed the trial court that he did not wish to call defense expert witnesses regarding the victim's sexual assault examination because he did not believe they would provide value to the defense. In light of the circumstances in this case, Valencia failed to demonstrate counsel's actions 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.").

In addition, at the evidentiary hearing Valencia presented expert testimony regarding the sexual assault examination, and the district court found this testimony not significantly different than information that was presented during the trial. Substantial evidence supports that finding. Given the evidence presented at trial regarding the sexual assault examination, and because Valencia admitted to engaging in sexual activity with the victim, Valencia failed to demonstrate a reasonable probability of a different outcome at trial had counsel presented expert witness testimony. Therefore, we conclude the district court did not err by denying this claim.

Second, Valencia argued his trial counsel was ineffective for failing to cross-examine the victim regarding inconsistencies between her trial and grand jury testimonies. At the evidentiary hearing, counsel testified that he did not believe the victim's testimonies were inconsistent when they were viewed in context. Counsel also testified that he did not want to question the victim at length because he was concerned doing so

would harm the defense case. The district court found that counsel acted appropriately in light of the circumstances in this case. The record supports the district court's findings. Given counsel's testimony at the evidentiary hearing, Valencia failed to demonstrate his counsel's performance fell below an objective standard of reasonableness. *See id.* And given Valencia's admissions regarding sexual activity with the victim, he did not demonstrate a reasonable probability of a different outcome at trial had counsel cross-examined the victim in a different manner. Therefore, we conclude the district court did not err by denying this claim.

Third, Valencia argued his trial counsel was ineffective for failing to present witnesses to testify in mitigation at the sentencing hearing. Valencia presented witnesses at the evidentiary hearing and asserted counsel should have called those witnesses to testify in mitigation at sentencing. The district court found the witnesses's testimonies did not provide helpful information regarding this case and would not have altered the outcome of the sentencing hearing. The record supports the district court's decision. Given the record in this matter, Valencia failed to demonstrate a reasonable probability of a different outcome had counsel presented mitigation witnesses at the sentencing hearing. 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. Egan K. Walker, District Judge
Ignacio Valencia
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk