

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SHAUNNA LEANN DODD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 81187-COA

FILED

JUN 07 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *E. Brown*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Shaunna Leann Dodd appeals from a district court order denying an amended petition for a writ of habeas corpus filed on February 24, 2016, and a supplemental petition for a writ of habeas corpus filed on December 18, 2017. Second Judicial District Court, Washoe County; Egan K. Walker, Judge.

Dodd claims the district court erred by denying her claims of ineffective assistance of trial counsel. To demonstrate ineffective assistance of 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, Dodd claimed counsel was ineffective for failing to call a pathologist at trial to challenge the State's expert's testimony in which he changed his opinion regarding the sequence of the victim's gunshot wounds. Dodd did not present any evidence at the evidentiary hearing as to what such an expert's testimony would have been. Therefore, Dodd failed to demonstrate a reasonable probability of a different outcome but for counsel's failure to call a pathologist at trial. We therefore conclude the district court did not err by denying this claim.

Second, Dodd claimed counsel was ineffective for failing to adequately investigate Byron Kreck as an alternative suspect. Dodd claimed that counsel should have further investigated inconsistencies in Kreck's alibi and should have called Kimberly Dandos to testify regarding Kreck's proximity to the murder scene near the time of the murder. Kreck was called by the State to testify at trial and was cross-examined regarding inconsistencies in his alibi. At the evidentiary hearing, Dandos testified that Kreck came into her bar more than eight hours after officers arrived at the murder scene. Dodd failed to demonstrate what additional investigation would have uncovered to further the defense theory establishing Kreck as an alternative suspect. Therefore, Dodd failed to demonstrate counsel was deficient and a reasonable probability of a different outcome but for counsel's failure to further investigate Kreck as an alternative suspect. We therefore conclude the district court did not err by denying this claim.

Finally, Dodd argues that counsel was ineffective for failing to call a DNA expert and investigate Alison Sanders as an alternative suspect.

These are new arguments not properly raised below, *see Barnhart v. State*, 122 Nev. 301, 303-04, 130 P.3d 650, 651-52 (2006) (requiring, among other things, that the district court make a finding on the record that petitioner had good cause to raise new claims at an evidentiary hearing), and we decline to consider them on appeal in the first instance, *see McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

For the forgoing reasons, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Egan K. Walker, District Judge
Law Offices of Lyn E. Beggs, PLLC
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk