

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JASON PAUL CARROLL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 81562-COA

FILED

JUL 12 2021

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

ORDER OF AFFIRMANCE

Jason Paul Carroll appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on May 1, 2020. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

Carroll argues the district court erred by denying his ineffective-assistance-of-counsel claims without first conducting an evidentiary hearing. 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. We give deference to the district court's factual findings that are supported by substantial evidence and not clearly wrong 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). To warrant an evidentiary hearing, a petitioner must raise claims supported by specific factual allegations that are not belied by the record and, if true, would

entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).


First, Carroll argued counsel was ineffective for failing to investigate and discover social media photographs of the victim engaging in conduct inconsistent with the claimed severity of his injuries. Carroll claimed the photographs would have contradicted the victim's testimony and rendered a different result regarding the bodily injury element of the charged offense (leaving the scene of an accident with bodily injury). Carroll did not demonstrate counsel's failure to discover and present social media content fell below an objective standard of reasonableness. Further, Carroll does not dispute that there was bodily injury, just the extent of it. And at trial, a police officer who responded to the accident scene testified that the victim's leg appeared to be broken in several places, describing the leg as akin to "drawing an S." In light of this record, Carroll also failed to demonstrate a reasonable probability of a different outcome had counsel presented the photographs. We, therefore, conclude the district court did not err by denying this claim without conducting an evidentiary hearing.


Second, Carroll argued counsel was ineffective for failing to call two percipient witnesses to testify at trial. Carroll argued the witnesses were present during the initial incident which caused Carroll to flee from a parking lot prior to hitting the victim. Carroll argued these witnesses would have corroborated his version of the events and supported his "necessity" defense theory. It appears the jury was instructed on the elements of legal necessity, which included that Carroll had to have "immediately communicated or reported to the proper authorities when he had attained

a position of safety from the immediate threat.”¹ The evidence produced at trial showed that, in the 10 to 15 minutes between when Carroll left the scene of the accident and was found, he did not attempt to communicate or report to the proper authorities when he was safe from the alleged threat. He drove his vehicle from the scene on a tire-less rim and parked at a park. But rather than using his cell phone to call 911, he removed from the car a bag containing drugs, buried the bag under some rocks, removed identifiable clothing, and fled on foot. Given these facts, Carroll failed to demonstrate a reasonable probability of a different outcome at trial had the percipient witnesses testified. We, therefore, conclude the district court did not err by denying this claim without conducting an evidentiary hearing. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

¹This language was taken from a transcript of the settling of the jury instructions. Carroll failed to provide this court with a copy of the jury instructions or a transcript of the instructions as they were read to the jury. As the appellant, it is Carroll’s obligation to provide this court with an adequate record for review. *See McConnell v. State*, 125 Nev. 243, 256 n.13, 212 P.3d 307, 316 n.13 (2009); *see also* NRAP 30(b)(3) (stating the appellant’s appendix filed on appeal shall include “any other portions of the record essential to determination of issues raised in appellant’s appeal.”).

cc: Hon. Eric Johnson, District Judge
The Law Office of Kristina Wildeveld & Associates
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk