

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TERRELL TORRY TAYLOR,
Appellant,
vs.
CALVIN JOHNSON, WARDEN; THE
STATE OF NEVADA DEPARTMENT
OF CORRECTIONS; AND HIGH
DESERT STATE PRISON,
Respondents.

No. 82772-COA

FILED

SEP 13 2021

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

ORDER OF AFFIRMANCE

Terrell Torry Taylor appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on January 5, 2021. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Taylor argues the district court erred by denying his claims of ineffective assistance of trial counsel. 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 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). 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. *Cf. Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Taylor claimed counsel was ineffective for failing to adequately challenge the DNA evidence. Specifically, Taylor argued counsel should have had the DNA evidence independently tested, hired a DNA expert to explain "why some point of the defendant DNA was in fact inconclusive," and challenged the testing laboratory's failure to follow state and federal protocols and procedures. During a pretrial hearing, counsel told the court that his decision to not have the DNA evidence independently tested was strategic. Taylor fails to demonstrate extraordinary circumstances warrant challenging counsel's decision. *See Lara v. State*, 120 Nev. 177, 180, 87 P.3d 528, 530 (2004) (holding counsel's strategic decisions are "virtually unchallengeable absent extraordinary circumstances" (quotation marks omitted)). Taylor's remaining allegations were bare as he failed to indicate what the testimony of the DNA expert would have been or which state and federal protocols and procedures were not followed. Accordingly, Taylor failed to demonstrate counsel was deficient or a reasonable probability of a different outcome but for counsel's failure to challenge the DNA evidence. Therefore, we conclude the district court did not err by denying this claim.

Second, Taylor claimed counsel was ineffective due to a conflict of interest arising from counsel's failure to adhere to Taylor's request to

challenge the DNA evidence and counsel's failure to communicate with him. Taylor's bare claims failed to allege specific facts indicating that counsel "actively represented conflicting interests" or that the alleged conflict "adversely affected" counsel's performance. *See Strickland*, 466 U.S. at 692. Accordingly, Taylor failed to demonstrate counsel was deficient or that Taylor was prejudiced. Therefore, we conclude the district court did not err by denying this claim.

Third, Taylor claimed counsel was ineffective for failing to impeach the victim with her prior inconsistent testimony about how she came to be in the back seat of Taylor's car. The victim testified that Taylor sexually assaulted her in the back seat of his car. His theory of defense at trial was that the victim had misidentified him as the attacker, but sperm containing Taylor's DNA was obtained from a vaginal swab of the victim. Accordingly, Taylor failed to demonstrate a reasonable probability of a different outcome at trial had counsel impeached the victim. Therefore, we conclude the district court did not err by denying this claim.

Fourth, Taylor claimed counsel was ineffective for failing to conduct an adequate investigation. Taylor claimed counsel failed to investigate the crime scene and to locate possible percipient witnesses. Taylor failed to specify what the outcome of the investigation would have been. He also failed to identify the potential witnesses or specify what they would have said. Finally, Taylor failed to explain how further investigation would have affected the outcome of his trial. Therefore, we conclude the district court did not err by denying this claim. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) (providing that a petitioner claiming

counsel did not conduct an adequate investigation must demonstrate what the results of a better investigation would have been and how it would have affected the outcome of the proceedings).

Fifth, Taylor claimed counsel was ineffective for failing to contact an alibi witness. Taylor's bare claim failed to identify the witness or specify what the witness would have said. Accordingly, Taylor failed to demonstrate counsel was deficient or that Taylor was prejudiced. Therefore, we conclude the district court did not err by denying this claim.

Taylor next argues the district court erred by denying his claims that he was denied police notes and internal affairs files in violation of *Brady v. Maryland*, 373 U.S. 83 (1963), DNA testing protocols were not followed, and the State elicited perjured testimony during his trial. Taylor's claims were available to be raised on direct appeal and, thus, must be dismissed absent a demonstration of good cause and actual prejudice. See NRS 34.810(1)(b)(2); *State v. Huebler*, 128 Nev. 192, 198 n.3, 275 P.3d 91, 95 n.3 (2012). Therefore, the district court did not err by denying these claims.¹

Finally, Taylor argues for the first time on appeal that counsel was ineffective for failing to conduct an investigation to support counsel's theory that the victim misidentified Taylor's license plate and for failing to object on hearsay grounds to testimony provided by the State's DNA

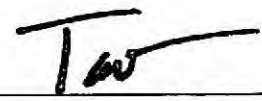
¹The district court improperly denied Taylor's claims on the merits. See *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) ("Application of the statutory procedural default rules to postconviction habeas petitions is mandatory."). Nevertheless, we affirm the district court's decision for the reasons stated above. See *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).

laboratory manager. Taylor did not raise these claims in his petition. Therefore, we decline to consider them in the first instance on appeal. See *McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Michelle Leavitt, District Judge
Terrell Torry Taylor
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk