

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JONATHAN PEREZ, A/K/A  
JOHNATHAN PEREZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 82748-COA

**FILED**

**JAN 11 2022**

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

*ORDER OF AFFIRMANCE*

Jonathan Perez appeals from an order of the district court denying a petition for a writ of habeas corpus filed on July 25, 2018, and a supplemental petition filed on April 13, 2020. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Perez claims 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).

Perez claimed counsel was ineffective for failing to conduct an adequate investigation. Perez claimed counsel failed to investigate the

effects of THC found in the victim's system and to consult an expert to determine how this evidence would have supported his theory of self-defense at trial. Perez failed to specify what the outcome of the investigation would have been and how an expert would have assisted the defense. Perez likewise failed to explain how further investigation or consultation with an expert would have affected the outcome of his trial. Accordingly, Perez failed to demonstrate that counsel's alleged failure fell below an objective standard of reasonableness or a reasonable probability of a different outcome but for the failure. *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). Therefore, we conclude the district court did not err by denying this claim.

Perez also claimed trial counsel was ineffective for failing to object to the jury instruction explaining the burden of proof for voluntary manslaughter on the grounds that it shifted the burden to the defense. The instruction correctly states that the State carries the burden of proof whenever there is some evidence of the relevant issue presented during trial.<sup>1</sup> *See Williams v. State*, 99 Nev. 530, 531, 665 P.2d 260, 261 (1983)

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<sup>1</sup>Jury Instruction No. 32 provided:

If there is some evidence of heat of passion caused by legally adequate provocation, the State has the burden of proving beyond a reasonable doubt that either:

1. The defendant was not acting in the heat of passion when he killed; or

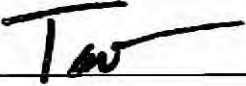
*continued on next page...*

(providing that the State must prove the absence of the heat of passion on sudden provocation beyond a reasonable doubt "when the issue is properly presented in a homicide case"). Accordingly, Perez failed to demonstrate that counsel's failure to object to the jury instruction fell below an objective standard of reasonableness or a reasonable probability of a different outcome but for counsel's alleged error. Therefore, we conclude the district court did not err by denying this claim.

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

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2. That the passion was not caused by legally adequate provocation.

If they have failed to meet this burden, but you find that the State has proven an unlawful killing then you must return a verdict of Voluntary Manslaughter.

cc: Hon. Ronald J. Israel, District Judge  
Ornoz & Ericsson, LLC  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk