

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SHAWN LYNN GLOVER, JR.,
Appellant,
vs.
WILLIAM A. GITTERE, WARDEN;
CHARLES DANIELS, DIRECTOR,
NDOC; AND THE STATE OF NEVADA,
Respondents.

No. 82700-COA

FILED

FEB 03 2022

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

ORDER OF AFFIRMANCE

Shawn Lynn Glover, Jr., appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Glover argues the district court erred by denying his September 14, 2020, petition and later-filed supplement without first conducting an evidentiary hearing. In his petition, Glover claimed his trial counsel was ineffective. 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. 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, Glover argued that his trial counsel was ineffective for failing to object when testimonial hearsay was presented at trial resulting in a violation of the Confrontation Clause. Glover asserted that a medical examiner testified concerning the victim's cause of death but improperly utilized during her testimony the autopsy reports and photographs that were created by another examiner. Glover contended that the information and conclusions contained within the autopsy reports were improperly presented to the jury in violation of his right to confrontation.

The Nevada Supreme Court has previously held that expert testimony regarding the content of a testimonial statement in a written report may function as the equivalent of a testimonial statement, *see Vega v. State*, 126 Nev. 332, 340, 236 P.3d 632, 638 (2010), and that another analyst's testimony as to the testimonial statements of a nontestifying analyst violates the Confrontation Clause, *see Polk v. State*, 126 Nev. 180, 183-84, 233 P.3d 357, 359 (2010). However, an expert witness may testify concerning an independent opinion reached as a result of reliance upon reports generated by others without violating the Confrontation Clause. *Vega*, 126 Nev. at 340, 236 P.3d at 638; *see also Flowers v. State*, 136 Nev. 1, 9, 456 P.3d 1037, 1046 (2020) ("To the extent [the expert witness] offered his independent opinions and only conveyed to the jury that he generally relied on the autopsy photographs and reports in reaching his opinions, he did not communicate hearsay to the jury.").

The medical examiner that conducted the autopsy of the victim was not available to testify at trial. However, a second medical examiner testified that she reviewed the autopsy reports and photographs that were created by the first examiner. The second medical examiner testified that she utilized the reports and photographs to reach her own independent

conclusions as to the cause of the victim's death. The second medical examiner ultimately testified that she concluded that the victim died due to a gunshot wound to the head and the manner of death was homicide. The second medical examiner did not testify as to the conclusions reached by the first medical examiner.

Because the second medical examiner testified that she reached her own independent conclusions, her testimony did not violate Glover's right to confrontation. Accordingly, Glover did not demonstrate his counsel's performance fell below an objective standard of reasonableness by failing to object to the second medical examiner's testimony. Glover also did not demonstrate a reasonable probability of a different outcome at trial had counsel done so. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.


Second, Glover argues his trial counsel, a deputy public defender, was ineffective because counsel had a conflict of interest as the public defender's office previously represented the victim in other, unrelated cases. Glover asserted that the office may have had information concerning the victim that may have been helpful to Glover's defense.

"Conflict of interest and divided loyalty situations can take many forms, and whether an actual conflict exists must be evaluated on the specific facts of each case. In general, a conflict exists when an attorney is placed in a situation conducive to divided loyalties." *Clark v. State*, 108 Nev. 324, 326, 831 P.2d 1374, 1376 (1992) (quoting *Smith v. Lockhart*, 923 F.2d 1314, 1320 (8th Cir. 1991)). A conflict of interest exists if "counsel 'actively represented conflicting interests'" and the "conflict of interest adversely affected [the defendant's] lawyer's performance." *Strickland*, 466 U.S. at 692 (quoting *Cuyler v. Sullivan*, 446 U.S. 335, 350, 348 (1980)).

Glover did not allege that his trial counsel was placed in a situation that was conducive to divided loyalties. Glover also did not allege that his trial counsel actively represented conflicting interests or that counsel's performance was adversely affected by the public defender's office's previous representation of the deceased victim. Glover's allegations were thus insufficient to show that his counsel had an actual conflict of interest. Therefore, we conclude the district court did not err in 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

cc: Hon. Michael Villani, District Judge
Gaffney Law
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk