

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HAROLD WILSON MARIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82926-COA

FILED

APR 11 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Harold Wilson Marin appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on April 24, 2018, and a supplement filed on March 11, 2020. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

Marin claims the district court erred by denying his claims that trial counsel was ineffective 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 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). 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, Marin claimed counsel was ineffective for failing to properly notice his expert witness. Specifically, Marin claimed counsel failed to provide the expert's curriculum vitae and any expert reports she may have written. While it appears counsel may have forgotten to provide the expert's curriculum vitae and reports, this was not the basis for the trial court's denial of Marin's request to present the witness as an expert at trial. Therefore, Marin failed to demonstrate a reasonable probability of a different outcome had counsel provided this information. Accordingly, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Second, Marin claimed counsel was deficient for attempting to call an expert witness to testify who was not qualified as an expert. He also claimed counsel was deficient for not finding and retaining a qualified expert. At trial, after allowing counsel to voir dire his proposed expert, the trial court determined that she lacked the necessary expertise to be qualified as an expert. Marin argued he was prejudiced because a properly qualified expert could have supported his theory of self defense: The alcohol, cocaine, and methamphetamine found in the victim's bloodstream affected the victim's judgment and caused her to attack him after he refused to pay her an additional \$50.

Here, the trial evidence was that the victim had numerous defensive injuries and a head wound, while Marin had no apparent injuries other than a broken necklace. Moreover, to strangle the victim to death, Marin had to have held her down for several minutes after she stopped fighting back. Further, Marin lied numerous times to the police about what

happened that night, which affected his credibility at trial. Finally, the jury was properly instructed on self-defense at trial, and Marin failed to demonstrate testimony from an expert regarding the victim's level of intoxication would have bolstered his claim of self-defense to the extent that it would have resulted in a reasonable probability of a different outcome at trial. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Third, Marin claimed counsel was ineffective for failing to request an inverse voluntary manslaughter instruction instructing the jury that the State must prove beyond a reasonable doubt that Marin did not act in the heat of passion. Marin may have been entitled to an inverse jury instruction regarding the heat of passion. *See Crawford v. State*, 121 Nev. 744, 753-54, 121 P.3d 582, 588-89 (2005). However, Marin failed to demonstrate a reasonable probability of a different outcome at trial had it been given, because the jury was properly instructed on reasonable doubt and the elements of the charged crimes and sufficient evidence was adduced to find Marin committed first-degree murder, *see id.*; *see also Marin v. State*, No. 67860, 2017 WL 2334518, *4 (Nev. May 26, 2017) (Order of Affirmance) (finding that sufficient evidence was provided to prove the killing was premeditated and deliberate given that it could have taken up to five minutes to kill the victim via strangulation). Therefore, we conclude that the district court did not err by denying this claim without first conducting an evidentiary hearing.

Finally, Marin argues that the cumulative errors of counsel entitle him to relief. Even assuming multiple deficiencies in counsel's performance may be cumulated to find prejudice under the *Strickland* test, *see McConnell v. State*, 125 Nev. 243, 259 n.17, 212 P.3d 307, 318 n.17

(2009), based on the testimony and evidence presented at trial, we conclude that the cumulation of alleged deficiencies would not warrant relief. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Having concluded Marin is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Tierra Danielle Jones, District Judge
Ornoz & Ericsson, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk