

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JANET SOLANDER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83874-COA

FILED

AUG 08 2022

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

ORDER OF AFFIRMANCE

Janet Solander appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on August 26, 2021. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Solander claims the district court erred by denying her 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).

First, Solander claimed her trial counsel were ineffective for meeting with her for less than two hours on the Friday before trial, which started the following Monday.¹ Solander alleged this resulted in counsel being unprepared during the trial. In her petition below, Solander failed to explain how the timing or duration of the meeting rendered counsel unprepared or affected the outcome of her trial. Accordingly, Solander failed to demonstrate counsel's performance fell below an objective standard of reasonableness or a reasonable probability of a different outcome absent counsel's alleged errors. Therefore, we conclude the district court did not err by denying this claim.

Second, Solander claimed her trial counsel were ineffective for failing to call additional witnesses to testify on her behalf at trial. In her petition below, Solander failed to identify the witnesses or explain what their testimony would have been. Accordingly, Solander failed to demonstrate counsel's performance fell below an objective standard of reasonableness or a reasonable probability of a different outcome had counsel called additional witnesses. Therefore, we conclude the district court did not err by denying this claim.

Solander also claims the district court erred by denying her claim that insufficient evidence supported her conviction for sexual assault of a minor under the age of 14 by means of inserting a stick into the victim's genital opening. On direct appeal, Solander argued the State failed to prove beyond a reasonable doubt that she was guilty of sexual assault of a minor under fourteen. The Nevada Supreme Court held that a rational trier of fact could find the elements of the offense beyond a reasonable doubt "for

¹Solander was represented by three attorneys during her trial, but she did not assign specific error to each.

each of Solander's convictions of sexual assault of a minor under the age of 14. *Solander v. State*, No. 76228, 2020 WL 3603882, *2 (Nev. July 1, 2020). This holding is the law of the case, which prevents further litigation of this issue, *see Hall v. State*, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975), and Solander did not allege any facts that would amount to an exception to the application of the law of the case to this matter, *see Tien Fu Hsu v. County of Clark*, 123 Nev. 625, 630-32, 173 P.3d 724, 728-29 (2007). Therefore, we conclude that the district court did not err by denying this claim.²

Finally, Solander claims that the trial court erroneously ruled in favor of the State regarding the relevance of evidence allegedly withheld by the State. This claim is waived because it could have been raised on direct appeal. *See id.* Therefore, we conclude the district court did not err by denying this claim, and we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

²To the extent Solander's claim was not raised on direct appeal, it could have been and is thus waived. *See Franklin v. State*, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), *overruled on other grounds by Thomas v. State*, 115 Nev. 148, 150, 979 P.2d 222, 223-24 (1999).

³Solander raises several new claims on appeal. We decline to consider them in the first instance. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

cc: Hon. Joseph Hardy, Jr., District Judge
Janet Solander
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk