

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHUCK CHAIYAKUL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83822-COA

FILED

SEP 12 2022

ELIZABETH A. BROWN
CLERK OF THE COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Chuck Chaiyakul appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on February 11, 2021, and a supplemental petition filed on August 22, 2021. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

Chaiyakul argues the district court erred by denying his claims that 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 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). 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, Chaiyakul claimed counsel was ineffective at sentencing for failing to correct the State's account that the victim struggled after being shot. In Chaiyakul's statement to the police, he told the police that the victim struggled after being shot and that she had blood coming out of her mouth. Counsel was not deficient for failing to argue against statements made by Chaiyakul. Further, the district court found that it was the heinousness of the crime and that Chaiyakul drove around with the dead body, did not get the victim help, and tried to cover up the murder that caused the sentencing court to impose the maximum sentence. Substantial evidence supports the findings of the district court. Thus, Chaiyakul failed to demonstrate a reasonable probability of a different outcome at sentencing had counsel objected to the statement of facts by the State, and we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.¹

Second, Chaiyakul claimed counsel was ineffective at sentencing for failing to correct information regarding the victim's housing situation. Chaiyakul claimed counsel should have informed the sentencing court that the victim was actually homeless as this would have supported Chaiyakul's claim that the victim attacked him because she did not want to

¹Chaiyakul also argues there were factual errors in the district court's findings of fact and conclusions of law denying his petition. The facts in the order are based on statements Chaiyakul made to the police in his voluntary statement. Chaiyakul interprets his answers differently but fails to demonstrate that the facts as stated by the district court in the order were erroneous. Therefore, we conclude Chaiyakul did not demonstrate he was entitled to relief on this claim.

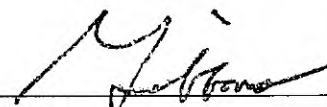
go back to living on the street after staying with Chaiyakul in his house for a while. Chaiyakul's claim that he shot the victim after she attacked him was not disputed. Therefore, it was not deficient for counsel to not point out that the victim may have had a motive to attack Chaiyakul, nor did Chaiyakul demonstrate a reasonable probability of a different outcome at sentencing had counsel pointed this out. Accordingly, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

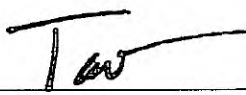
Third, Chaiyakul claimed counsel was ineffective at sentencing for failing to discuss the victim's criminal history. Chaiyakul claimed that the victim's prior charge of criminal battery could have been used to bolster his claim that she attacked him first and he acted in self-defense, thereby working in mitigation of his sentence. As stated above, the fact that the victim may have attacked Chaiyakul first was not disputed by the parties or the sentencing court. Therefore, the victim's criminal record would not have added much to what was already known about the crime, and Chaiyakul failed to demonstrate a reasonable probability of a different outcome at sentencing had counsel presented this argument. Accordingly, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.²

²Chaiyakul also claimed counsel was ineffective for failing to present an imperfect self-defense argument at sentencing. Even were sentencing the appropriate time to raise a defense to a charge, imperfect self-defense is not a viable defense in Nevada. *See Hill v. State*, 98 Nev. 295, 296-97, 647 P.2d 370, 371 (1982) (rejecting imperfect self-defense as a theory of defense). Therefore, counsel was not deficient for failing to make this argument, and we conclude the district court did not err by denying this claim.

Fourth, Chaiyakul claimed counsel was ineffective at sentencing for failing to point out other mitigating factors that supported a lesser sentence. Specifically, he claimed counsel should have told the court that he drove people around in his car all the time; he had lots of girls and, therefore, did not commit this crime because he was sex starved; he cooked for his friends; he never fought with his girls; and he is not a violent or angry person. All of these alleged mitigating factors were presented to the sentencing court through letters written by friends and family members of Chaiyakul's, and Chaiyakul failed to demonstrate that further discussion with the sentencing court would have resulted in a lesser sentence. Therefore, we conclude Chaiyakul failed to demonstrate counsel was deficient or prejudice resulting from counsel's alleged error. Accordingly, the district court did not err by denying this claim without first conducting an evidentiary hearing.

Having concluded Chaiyakul 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
Lowe Law LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk