


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DEVIN LAMPKIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86308-COA

FILED

NOV 13 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Devin Lampkin appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on October 13, 2022. Eighth Judicial District Court, Clark County; Erika D. Ballou, Judge.

Lampkin argues the district court erred by denying his claims that trial counsel provided ineffective assistance 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 the petitioner to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

Lampkin claimed that counsel was ineffective for failing to object to and rebut the misidentification of Lampkin as one of the perpetrators of the robbery. First, Lampkin was not identified by any of the witnesses or victims in this case. Thus, there was no misidentification to which counsel could have objected. Second, counsel used the victims' various descriptions of the perpetrators to argue that Lampkin was not involved. Third, Lampkin failed to allege what evidence counsel should have used to rebut any "misidentification." Therefore, Lampkin failed to demonstrate counsel was deficient or a reasonable probability of a different outcome at trial had counsel objected or presented rebuttal evidence. Accordingly, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Next, Lampkin claimed that counsel was ineffective for failing to investigate the woman whose identification was found on Lampkin when he was arrested. At trial, the State argued that Lampkin changed clothes after the robbery, and it supported this argument by introducing testimony and evidence that Lampkin was wearing women's sweatpants and was found with a woman's identification in his pocket. Lampkin argued that had counsel investigated the woman, the woman would have stated she had

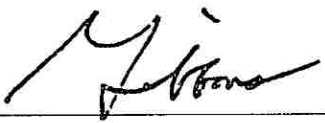
her identification the entire time and, thus, it could not have been found on Lampkin.

At trial, evidence was presented that five people were involved in the robbery and that a tracker was placed among the stolen goods. Within 20 minutes of the robbery, the police arrived at the apartment indicated by the tracker. Shortly thereafter, three people were seen fleeing the apartment. Two people remained in the apartment and held out for six hours before surrendering. One of the men in the apartment was Lampkin. In the apartment, the police found the stolen goods and evidence that someone was attempting to destroy identifying clothing. Further, Lampkin was wearing shoes that were the same or similar to shoes worn by one of the robbers. Given this evidence, the evidentiary value of the woman's identification was low. Thus, Lampkin failed to demonstrate a reasonable probability of a different outcome at trial had counsel investigated this woman and her identification. Therefore, we conclude that the district court did not err by denying this claim without first conducting an evidentiary hearing.

Finally, Lampkin claimed that counsel was ineffective for failing to object to or introduce evidence rebutting the testimony of multiple witnesses that stated Lampkin scaled a wall. Lampkin argued he has a debilitating ankle injury that would have made it difficult for him to climb a wall. No witnesses testified to seeing Lampkin scale the wall. Instead, evidence was introduced showing only that the tracker went over a wall. There were five people alleged to have been involved in the robbery. This left four accomplices who could have scaled the wall with the tracker, and

we note that at least one suspect drove to the apartment because by the time the police arrived at the apartment, the vehicle the suspects traveled in was parked in front of it. Thus, Lampkin failed to demonstrate counsel was deficient or a reasonable probability of a different outcome at trial had counsel presented the information. Therefore, we conclude that the district court did not err by denying this claim without first conducting an evidentiary hearing. Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

¹We have reviewed all documents Lampkin has filed in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Lampkin attempts to present claims or facts in those submissions which were not previously presented in the proceedings below, we decline to consider them in the first instance. *See McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).

cc: Hon. Erika D. Ballou, District Judge
Devin Lampkin
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk