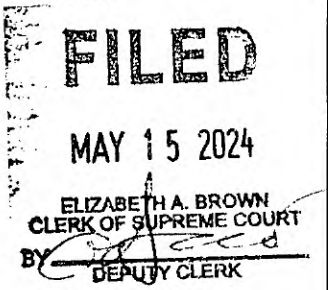
IN THE SUPREME COURT OF THE STATE OF NEVADA

GREGORY L. RICHARDSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86510



ORDER OF AFFIRMANCE

This is a pro se appeal from a district court order denying a postconviction petition for a writ of habeas corpus.[1] Eighth Judicial District Court, Clark County; Monica Trujillo, Judge.

Appellant Gregory Richardson was convicted of multiple felony offenses stemming from the armed robbery of a jewelry store, and we affirmed the judgement of conviction on direct appeal. *Richardson v. State*, No. 79913, 2020 WL 7396064 (Nev. Dec. 16, 2020) (Order of Affirmance). Richardson filed a timely postconviction petition for a writ of habeas corpus, raising collateral challenges to the conviction and sentence. After a limited evidentiary hearing, the district court denied the petition.

Richardson argues that the district court erred in denying his claim that trial counsel should have litigated a motion to suppress evidence. To prove ineffective assistance of counsel, a petitioner must demonstrate counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that, but for counsel's errors, there is a reasonable probability of a different outcome in

[1]Having considered the pro se brief filed by appellant, we conclude that a response is not necessary. NRAP 46A(c). This appeal therefore has been submitted for decision based on the pro se brief and the record. *See* NRAP 34(g).

the proceedings. *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*); *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1113-14 (1996) (applying *Strickland* to claims of ineffective assistance of appellate counsel). Both components of the inquiry must be shown, *Strickland*, 466 U.S. at 697, and the petitioner must demonstrate the underlying facts by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). 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).

Richardson argues that trial counsel should have filed a motion to suppress evidence obtained from an allegedly unlawful search of a third party's cellphone. Richardson has not shown deficient performance or prejudice. At trial, a detective testified that law enforcement recovered a cellphone from Richardson's deceased accomplice. Law enforcement searched the recent contacts and subpoenaed the cellular provider for relevant subscriber information. That information ultimately led law enforcement to Richardson. As conceded by Richardson, he lacked standing to challenge the warrantless search of a third party's cellphone. *See Scott v. State*, 110 Nev. 622, 627, 877 P.2d 503, 507 (1994) (concluding that a defendant lacked standing to challenge the search of personal property he did not own).

Despite having no standing to challenge the search of the third-party cellphone, Richardson contends that a motion to suppress would have been meritorious as Richardson's personal information was the fruit of an allegedly unlawful search. But without standing to challenge the initial

search, Richardson cannot avail himself of the remedy afforded under the doctrine of the fruit of the poisonous tree. *See Fruit-of-the-Poisonous-Tree Doctrine*, *Black's Law Dictionary* (11th ed. 2019) (defining the doctrine as "[t]he rule that evidence derived from an illegal search . . . is inadmissible because the evidence (the 'fruit') was tainted by the illegality (the 'poisonous tree'")). Moreover, Richardson had "no legitimate expectation of privacy in information he voluntarily turns over to third parties," *Smith v. Maryland*, 442 U.S. 735, 743-44 (1979), and he is therefore not entitled to challenge the search that uncovered that information, *Rawlings v. Kentucky*, 448 U.S. 98, 103-06 (1980) (concluding that appellant could not challenge the validity of the search of another person's purse). Richardson failed to demonstrate a motion to suppress would have had a reasonable probability of success, and counsel is not deficient for failing to pursue futile motions. *See Donovan v. State*, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (concluding that counsel was not ineffective for omitting a futile suppression motion). Therefore, we conclude that the district court did not err in denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Stiglich, J.

Stiglich

Pickering, J.

Pickering

Parraguirre, J.

Parraguirre

cc: Hon. Monica Trujillo, District Judge
Gregory L. Richardson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk