


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

OTIS HOLLAND,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85950-COA

FILED
MAY 28 2024
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Otis Holland appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on October 22, 2018, and a supplement filed on June 28, 2019. Eighth Judicial District Court, Clark County; Carli Lynn Kierny, Judge.

Holland argues that the district court erred by denying his claims that counsel were ineffective.¹ 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

¹Holland had four different counsel during the pendency of his case. Holland's claims relate primarily to his sentencing counsel and to only one of his trial counsel. The district court conducted an evidentiary hearing in this case, but the trial counsel whose performance is primarily at issue passed away prior the hearing. We note that only Holland and an investigator hired to do pretrial investigation testified at the hearing.

(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, 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).

First, Holland claimed trial counsel was ineffective for failing to communicate with him. Specifically, he claimed that counsel did not provide him with all of his discovery, did not meet with him regularly, and did not counsel him about the danger of going to trial. The district court found that Holland failed to explain what was not provided to him or how the alleged deprivation of his discovery affected his trial. Further, the district court found that Holland failed to testify with particularity regarding the length, duration, and time between visits with counsel. Finally, the district court found that Holland professed his innocence from the inception of the case, he was dead set on going to trial, and Holland failed to demonstrate that any plea offer was extended. The record supports the findings of the district court.

At the evidentiary hearing, Holland did not explain what discovery was not provided or how the failure to provide this discovery affected his trial. Further, while Holland testified that counsel met with him five or six times during the pendency of the case, he did not testify as to the length of the visits or the time between visits. And the investigator

in this case testified he met with Holland 10 to 15 times during the case and relayed conversations to counsel. Finally, Holland did not testify at the evidentiary hearing as to how counsel's failure to explain the consequences of going to trial affected him, nor did he present evidence that an offer was extended to him. Instead, Holland testified that he was innocent, and he did not testify he was interested in pleading guilty. Thus, Holland failed to demonstrate that counsel was deficient or a reasonable probability of a different outcome at trial had counsel communicated more. Accordingly, we conclude that the district court did not err by denying this claim.

Second, Holland claimed trial counsel was ineffective for failing to investigate witnesses. He claimed counsel should have investigated the victims because they were accusing him out of jealousy. He also claimed that witnesses would have testified favorably for him at trial. The district court found that Holland failed to provide evidence at the evidentiary hearing regarding the victims' alleged jealousy. The district court also found that the victims were asked about their potential jealousy at trial, and they denied it. Further, the district court found that (1) the investigator testified he interviewed the witnesses given to him by Holland and (2) they either would not testify favorably or refused to cooperate. Finally, the district court found that Holland failed to present any of these witnesses at the evidentiary hearing. The record supports the findings of the district court. Therefore, Holland failed to demonstrate counsel was deficient or a reasonable probability of a different outcome at trial had counsel done further investigation into the victims or other witnesses. Thus, we conclude the district court did not err by denying this claim.

Third, Holland claimed trial counsel was ineffective for failing to investigate his phone records. Holland claimed that the phone records would show that he did not call the people who claimed Holland told them to destroy evidence in the storage unit. The district court found that Holland did not present the phone records or any witnesses to validate this claim. The district court also found that while postconviction counsel argued that too much time had passed to get the phone records for the evidentiary hearing, counsel did not provide any evidence to support that the records had actually been sought in the postconviction proceedings. The record supports the findings of the district court. Holland did not present the records at the evidentiary hearing and did not provide evidence he actually sought the records. Holland failed to demonstrate by a preponderance of the evidence what the phone records would have shown, and therefore, he failed to demonstrate counsel's performance was deficient or a reasonable probability of a different outcome at trial had counsel retrieved the phone records. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) (stating that a petitioner alleging that an attorney should have conducted a better investigation must demonstrate what the results of a better investigation would have been and how it would have affected the outcome of the proceedings). Thus, we conclude that the district court did not err by denying this claim.

Fourth, Holland claimed trial counsel was ineffective because counsel forced him to waive his speedy trial rights. This claim does not appear to have been raised below, and we decline to consider it for the first

time on appeal.² See *McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).

Fifth, Holland claimed trial counsel was ineffective for failing to properly and timely object to improper testimony. The trial court ordered the State not to elicit testimony from a witness regarding Holland supporting another witness's abortion. The State, believing that Holland opened the door to that testimony on cross-examination, asked a question that seemed designed to bring up the abortion, and the witness's answer referred to the abortion. Counsel objected prior to the witness's answer only on relevancy grounds and not on grounds that the State was not to ask about the abortion. Counsel's objection was overruled, and the witness answered the question. The district court called an immediate bench conference, after which the jury was given an admonishment to disregard the testimony.

While counsel should have made the proper objection, the district court properly admonished the jury. And the jury is presumed to follow the district court's instructions. See *Summers v. State*, 122 Nev. 1326, 1333, 148 P.3d 778, 783 (2006). Therefore, Holland fails to demonstrate a reasonable probability of a different outcome at trial had

²The district court's order does not address any such claim, and the claim is not raised in Holland's supplemental petition. To the extent Holland might have raised the claim in his initial petition, he failed to provide this court with a copy of it. See *Greene v. State*, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980) ("The burden to make a proper appellate record rests on appellant."); see also NRAP 30(b)(3).

counsel properly objected. Thus, we conclude that the district court did not err by denying this claim.

Sixth, Holland claimed trial counsel was ineffective for failing to utilize an expert to challenge the State's witness regarding grooming. The district court found that Holland failed to present evidence as to what such an expert would have testified about or what specific prejudice he suffered. The record supports the findings of the district court. Holland did not present an expert at the evidentiary hearing, nor did Holland present any other evidence of what an expert would have testified about or how it would have undermined the State's expert's testimony. Therefore, Holland failed to demonstrate counsel's performance was deficient or a reasonable probability of a different outcome at trial had counsel utilized an expert. Thus, we conclude that the district court did not err by denying this claim.

Seventh, Holland claimed trial counsel was ineffective for failing to object to a juror's question regarding where Holland sourced his income from. Holland argued that counsel should have objected because this question was not relevant and it may have left the jury with the impression that he made his money from his congregation rather than working for it or inheriting it. While the information was not necessarily relevant and counsel should have objected, Holland failed to demonstrate a reasonable probability of a different outcome at trial. Holland answered the questions and stated he got his income and money from intermittent jobs while a pastor, from previous jobs before he became a pastor, and from an inheritance. Thus, he failed to demonstrate that the jury was left with the impression that he made his money off his congregation. Therefore,

Holland failed to demonstrate a reasonable probability of a different outcome at trial had counsel objected. Accordingly, we conclude that the district court did not err by denying this claim.

Eighth, Holland claimed trial counsel was ineffective for failing to ask Holland questions on redirect examination. The district court found that Holland testified for four hours and extensively covered the defense strategy. The record supports the finding of the district court. At the evidentiary hearing, Holland failed to demonstrate what questions counsel should have asked him on redirect examination or what additional information he wanted presented to the jury regarding his defense strategy. Therefore, Holland failed to demonstrate counsel's performance was deficient or a reasonable probability of a different outcome at trial had counsel asked Holland questions on redirect examination. Thus, we conclude that the district court did not err by denying this claim.

Ninth, Holland claimed sentencing counsel was ineffective for failing to present sufficient mitigating evidence and that counsel could not have been properly prepared given that counsel was newly appointed. The district court found that Holland failed to specify what mitigation evidence counsel should have presented. The record supports the findings of the district court. Holland failed to allege in his supplemental petition, or to present evidence, as to what mitigation evidence counsel should have presented or how counsel's presentation was affected by a lack of time to prepare. At sentencing, counsel stated he was somewhat handicapped because he was not privy to conversations between the parties. But he also stated he reviewed the discovery and understood the case. Therefore,

Holland failed to demonstrate counsel's performance was deficient or a reasonable probability of a different outcome at sentencing had counsel presented additional mitigating evidence. Thus, we conclude that the district court did not err by denying this claim.

Tenth, Holland claimed that the cumulative errors of counsel entitled him to relief. Even if multiple instances of deficient performance may be cumulated for purposes of demonstrating prejudice, *see McConnell v. State*, 125 Nev. 243, 259 & n.17, 212 P.3d 307, 318 & n.17 (2009), Holland did not demonstrate a reasonable probability of a different outcome at trial but for counsel's errors. Thus, we conclude the district court did not err by denying this claim.

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


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Carli Lynn Kierny, District Judge
Law Office of Christopher R. Oram
Attorney General/Carson City
Clark County District Attorney
Robert L. Langford & Associates
Eighth District Court Clerk