

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RAEKWON SETREY ROBERTSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87811-COA

FILED

AUG 01 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Raekwon Setrey Robertson appeals from a district court order, following a prior remand, denying a postconviction petition for a writ of habeas corpus filed on October 29, 2020, and later-filed supplements. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Robertson argues the district court erred by denying his 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, 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).

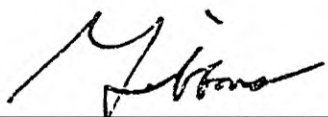
First, Robertson claimed counsel was ineffective for failing to investigate his mental health conditions or present evidence of them during trial to demonstrate he did not have the specific intent to commit the crimes. At an evidentiary hearing regarding this claim, Robertson presented evidence, including school district records, mental health reports, and his mother's testimony, purporting to show that Robertson suffered from mental health conditions that negatively affected his emotions, behavior, and learning. Robertson did not testify during the evidentiary hearing and presented no expert testimony explaining how these conditions rendered him incapable of forming specific intent at the time of the offense. In light of these circumstances, Robertson failed to prove by a preponderance of the evidence the existence of mental health conditions that prevented him from having the specific intent to commit the crimes. Accordingly, Robertson failed to demonstrate that counsel's performance fell below an objective standard of reasonableness or a reasonable probability of a different outcome but for counsel's alleged errors. Therefore, we conclude the district court did not err by denying this claim.

Second, Robertson claimed counsel was ineffective at sentencing for failing to argue for specific sentences and present to the court his mental health issues or other mitigating evidence. Robertson alleged that counsel failed to communicate with him in advance of sentencing and had no discernable plan or strategy for presenting mitigating evidence or arguments. Robertson argued that evidence of his mental health conditions would have demonstrated his actions were impulsive and thus mitigated his culpability. He also appeared to argue that presentation of the mitigation evidence would have resulted in a "somewhat" lesser sentence generally.

As is discussed above, Robertson failed to demonstrate the existence of any mental health conditions that impacted his specific intent

to commit the offenses. Thus, Robertson failed to demonstrate that presentation of this evidence would have shown diminished culpability and resulted in a lesser sentence. Further, Robertson offered only bare and conclusory arguments regarding how counsel's failure to present this mitigation evidence or communicate before the sentencing hearing would have resulted in a lesser sentence generally. And the district court concluded that Robertson failed to demonstrate a reasonable probability of a lesser sentence based on the "very strong" case the State presented against Robertson. Specifically, the district court found that the crimes were "a very violent event perpetrated by four young men carrying firearms looking to 'hit a house,'" the State presented overwhelming evidence that Robertson was one of the shooters, and the trial testimony was that Robertson fired first. These findings are supported by the record. In light of these circumstances, Robertson failed to demonstrate a reasonable probability of a different outcome but for counsel's alleged errors. Therefore, we conclude the district court did not err by denying this claim, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Michelle Leavitt, District Judge
Steven S. Owens
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk