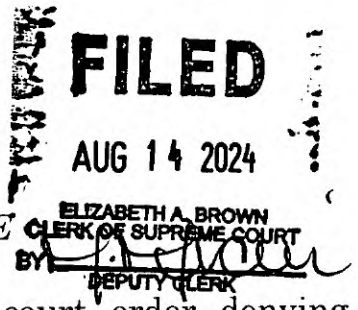
IN THE SUPREME COURT OF THE STATE OF NEVADA

RAMANJEET SINGH SIDHU,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86337



ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant Ramanjeet Sidhu was convicted of first-degree murder for stabbing a security guard to death. At trial, Sidhu testified that he had been diagnosed with schizoaffective disorder and was experiencing delusional beliefs at the time of the offense. In the postconviction habeas petition, Sidhu alleged that trial and appellate counsel should have pursued defenses arising from the delusions. The district court denied the petition after conducting an evidentiary hearing.

To demonstrate ineffective assistance of 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); *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996) (applying *Strickland* to claims of ineffective assistance of appellate counsel); *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, Sidhu contends that counsel should have pursued theories based on self-defense or defense of others. In particular, Sidhu argues that had counsel investigated Sidhu's delusional beliefs concerning a plot involving a chemical weapon, counsel could have argued that the killing was justified as self-defense or defense of others.

For a killing to be legally justified as self-defense or defense of others, there must be evidence that the person who was killed posed an imminent threat of great personal injury or death to the defendant or others. NRS 200.160(1); *see* NRS 200.200(2); *see also* NRS 174.035(6)(b)(2) (providing that a defendant is not guilty by reason of insanity if, due to a delusional state, the defendant did not appreciate that their "conduct was wrong, meaning not authorized by law"). At the postconviction evidentiary hearing, Sidhu testified that he believed at the time of the offense that the victim possessed a chemical weapon that would kill most of the people in the shopping center near the attack, sparing only a few patrons to survive and carry out acts of terror. Sidhu, however, did not testify to this belief at trial. Rather, at trial, Sidhu described a delusion that he was a CIA agent and had received orders, via an implanted communication device, to kill the victim and retrieve a similar device from the victim's body. Sidhu also did not tell trial counsel that the imminent release of a chemical agent was the impetus for the attack. Although Sidhu had mentioned a chemical agent to the defense expert, according to trial counsel, Sidhu did not believe anyone

was in immediate danger. Because Sidhu did not relay to counsel that he believed he was acting in response to an imminent threat to himself or others and did not demonstrate how counsel could have elicited such evidence before trial, Sidhu failed to overcome the strong presumption that counsel's performance was objectively reasonable. *See Dawson v. State*, 108 Nev. 112, 115, 825 P.2d 593, 595 (1992) ("In order to eliminate the distorting effects of hindsight, courts indulge in a strong presumption that counsel's representation falls within the broad range of reasonable assistance."); *see also Finger v. State*, 117 Nev. 548, 576, 27 P.3d at 66, 84-85 (2001) (explaining that a delusion involving a future plot, as opposed to a perceived immediate danger, is insufficient to support an insanity defense). Accordingly, the district court did not err in rejecting this claim.

Second, Sidhu contends that trial counsel should have argued that Sidhu's actions were authorized by law as "justifiable homicide by a public officer" under NRS 200.140 (2013) because he believed himself to be a CIA agent. At the time of the offense, NRS 200.140 provided that, among other circumstances, a public officer may commit a justifiable homicide when necessary to "protect[ ] against an imminent threat to the life of a person." 2013 Nev. Stat., ch. 78, § 1(d), at 270. Thus, like self-defense and defense of others, this legal justification for homicide depends on an imminent threat. Again, Sidhu had not conveyed sufficient information about his delusion to defense counsel to suggest that he believed the victim posed an imminent threat to himself or others. Sidhu did not demonstrate that counsel should have argued that he was a public officer responding to an imminent threat. Accordingly, the district court did not err in denying this claim.

Third, Sidhu argues that trial counsel should have argued that the factfinder could consider the law as Sidhu perceived it in his delusion. In support, Sidhu relies on an illustration of the *M'Naghten* rule[1] from *Finger*—that a person who believed themselves to be engaged in a war could not form the intent to kill with malice aforethought. According to Sidhu, because the existence of a war involves both factual and legal determinations, *Finger* allows the trial court to consider the legal landscape as it existed in the defendant's delusion. We disagree.

Under the *M'Naghten* rule, which is the test for legal insanity in Nevada, the finder of fact must assess the facts as the defendant believed them to be in their delusional state and determine if those facts constitute a legal defense under the law as it exists, not as the defendant perceives it to exist. *Finger*, 117 Nev. at 577, 27 P.3d at 85 ("Delusional beliefs can only be the grounds for legal insanity when the *facts of the delusion*, if true, would justify the commission of the criminal act." (emphasis added)). The war illustration described in *Finger* merely demonstrates that if an individual believed themselves to be in the midst of combat, killings which occurred in an effort to survive that battle would not constitute murder. *See id.* at 557, 574-75, 27 P.3d at 72, 83-84. To accept Sidhu's interpretation of *Finger* would expand the insanity defense beyond the "very narrow standard" that we have recognized it to be. *Id.* at 577, 27 P.3d at 85. Therefore, Sidhu did not demonstrate that trial counsel should have pursued this argument or that it would have resulted in a reasonable probability of a different outcome at trial.

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[1]*M'Naghten's Case*, 8 Eng. Rep. 718, 10 Cl. & Fin. 200, 209 (1843).

Fourth, Sidhu argues that the cumulative effects of trial counsel's errors warrant relief. Even assuming that any such errors may be cumulated, *see McConnell v. State*, 125 Nev. 243, 259 n.17, 212 P.3d 307, 318 n.17 (2009), Sidhu failed to demonstrate any errors to cumulate. Accordingly, we conclude that the district court did not err by denying this claim.

Fifth, Sidhu argues that appellate counsel should have contended on direct appeal that Sidhu believed himself to be a public official, that *Finger* permitted the factfinder to consider the legal landscape of Sidhu's delusion, and that the cumulative effect of those errors warranted relief. Additionally, Sidhu suggests that appellate counsel should have pursued the argument that some language in *Finger* was abrogated by the 2003 amendments to NRS 174.035.

We conclude that these arguments lack merit. As discussed above, the contention that Sidhu believed himself a public officer was insufficient to support a defense of justifiable homicide under NRS 200.140, and *Finger* did not permit the factfinder to consider the legal framework of Sidhu's delusion. Therefore, Sidhu fails to show that these arguments would have had a reasonable possibility of success on appeal even if considered cumulatively. Sidhu does not present any cogent argument supporting his assertion that appellate counsel should have asserted that *Finger* had been partially abrogated, *see Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (providing that this court need not consider issues for which appellant does not "present relevant authority" or "cogent argument"), instead suggesting that appellate counsel should have merely "cop[ied] and paste[d]" portions of the transcript into the brief on appeal, NRAP 28(e)(2) ("Parties shall not incorporate by reference briefs or

memoranda of law submitted to the district court or refer the Supreme Court or Court of Appeals to such briefs or memoranda for the arguments on the merits of the appeal."). Accordingly, the district court did not err in denying this claim.

Lastly, Sidhu argues that the district court erred in prohibiting a psychiatrist, Dr. Daniel Sussman, from testifying during the evidentiary hearing regarding whether Sidhu understood the nature of his act or believed his actions were authorized by law. We agree.

This court has held that "a qualified expert witness may testify regarding whether the defendant meets the elements of the not-guilty-by-reason-of-insanity plea under NRS 174.035(6)," but the expert witness "may not offer a direct opinion on the ultimate conclusion that a defendant is not guilty by reason of insanity." *Pundyk v. State*, 136 Nev. 373, 376-77, 467 P.3d 605, 608-09 (2020); *see also* NRS 50.275 (providing expert may testify "[i]f scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue"). Thus, Dr. Sussman should have been allowed to discuss Sidhu's delusional beliefs at the time of the offense so long as the testimony did not exceed the limitations set forth in *Pundyk*. Accordingly, the district court abused its discretion in otherwise limiting Dr. Sussman's testimony. *See Chavez v. State*, 125 Nev. 328, 344, 213 P.3d 476, 487 (2009) (reviewing a district court's decision to admit or exclude evidence for an abuse of discretion); *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005) ("An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." (quoting *Jackson v. State*, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001))). Nevertheless, we conclude this error is harmless because Sidhu did not establish that either trial or

appellate counsel performed deficiently. *See Pundyk*, 136 Nev. at 378, 465 P.3d at 609 (finding that error was not harmless where there was a "reasonable probability that [the expert's] testimony would have affected the outcome of the [proceeding]").

Having considered Sidhu's contentions and concluding that they lack merit, we

ORDER the judgment of the district court AFFIRMED.

Stiglich, J.
Stiglich

Pickering, J.
Pickering

Parraguirre, J.
Parraguirre

cc: Hon. Michelle Leavitt, District Judge
Nevada State Public Defender's Office
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk