

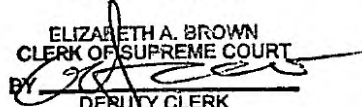
IN THE SUPREME COURT OF THE STATE OF NEVADA

WALTER HAN LAAK,
Appellant,
vs.
KYLE OLSEN, WARDEN; WARM
SPRINGS CORRECTIONAL CENTER;
AND THE STATE OF NEVADA,
Respondents.

No. 86794

FILED

AUG 14 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

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; Tara D. Clark Newberry, Judge.

Walter Han Laak argues that the district court erred in denying claims of ineffective assistance of 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, Laak argues that counsel should have objected to jury instruction 30, which he contends instructed the jury it could find him not guilty by reason of insanity only if his delusions were reasonable. Laak did not assert an ineffective-assistance claim related to instruction 30 in the postconviction petition filed in the district court. Instruction 30 was discussed at the evidentiary hearing, but only in relation to a claim related to instruction 29. Further, the statements and arguments made at the evidentiary hearing did not suggest that the State or district court acquiesced to Laak raising a new claim based on instruction 30 at the hearing. Accordingly, we decline to consider this claim for the first time on appeal. *See McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).

Second, Laak argues that counsel should have moved for a directed verdict asserting that the State did not produce sufficient evidence to support the attempted murder charge.

We conclude that this argument lacks merit. A directed verdict of not guilty is not available in Nevada as a remedy in a criminal case. *State v. Wilson*, 104 Nev. 405, 407, 760 P.2d 129, 130 (1988). Therefore, Laak failed to demonstrate deficient performance. *See Donovan v. State*, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (concluding counsel was not deficient for failing to file futile motions). To the extent that Laak contends that counsel should have challenged the sufficiency of the evidence supporting the indictment, NRS 34.360, sought an advisory verdict, NRS 175.381(1), or moved for a post-verdict judgment of acquittal, NRS 175.381(2), he failed to demonstrate the motions would have been successful. Those motions depend on the sufficiency of the evidence. The evidence showed that after the altercation with Andres Charry, during which other apartment

occupants were present, Laak left the premises, returned a short time later, and fired four shots into a balcony sliding door on Charry's apartment. That evidence supports a reasonable inference that Laak intended to kill the people residing in the apartment. See NRS 200.010 (defining murder); NRS 193.330(1) (defining attempt); *Washington v. State*, 132 Nev. 655, 663, 376 P.3d 802, 808-09 (2016) (concluding that evidence showing defendant firing repeatedly into occupied apartment was sufficient to sustain attempted murder convictions for surviving occupants); see also *Grant v. State*, 117 Nev. 427, 435, 24 P.3d 761, 766 (2001) ("Intent need not be proven by direct evidence but can be inferred from conduct and circumstantial evidence."). Therefore, Laak failed to demonstrate prejudice based on counsel's failure to pursue any pre- or post-verdict motions based on the sufficiency of the evidence.

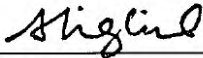
Third, Laak argues that counsel should have sought a continuance to admit video that Laak recorded during the altercation with Charry. He asserts that the video showed his mental illness.

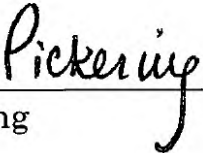
Laak failed to demonstrate deficient performance. According to the record, Laak's counsel did not learn the video existed until Charry testified about it at trial. Laak's counsel promptly directed the defense investigator to find the video on Laak's phone, disclosed the video to the State, and moved to admit it into evidence. See NRS 174.295(1) ("If . . . a party discovers additional material previously requested which is subject to discovery . . . , the party shall promptly notify the other party . . . of the existence of the additional material."). Counsel's efforts were reasonable under the circumstances. Although the district court had considerable discretion to grant a continuance or prohibit admission of the evidence, NRS 174.295(2); *Evans v. State*, 117 Nev. 609, 638, 28 P.3d 498, 517-18 (2001),

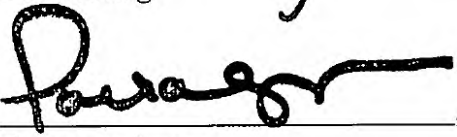
overruled on other grounds by Lisle v. State, 131 Nev. 356, 366 n.5, 351 P.3d 725, 732 n.5 (2015), Laak fails to explain what argument counsel could have made to persuade the district court to grant a continuance given the State's insistence that its investigators would be unable to verify the video's authenticity within the foreseeable future. Laak further fails to demonstrate prejudice. Laak asserts that the video would have been further evidence of his unhinged behavior, but both Charry and Laak testified about Laak's demeanor during the incident and the jury found that Laak was indeed guilty but mentally ill. Laak did not allege that the video would have shown that the delusions he experienced prevented him from understanding that his conduct was "not authorized by law," so as to support a not-guilty-by-reason-of-insanity verdict. NRS 174.035(6)(b)(2). Accordingly, the district court did not err in denying this claim.

Because Laak has not demonstrated that the district court erred in denying the postconviction habeas petition, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Stiglich


_____, J.
Pickering


_____, J.
Parraguirre

cc: Hon. Tara D. Clark Newberry, District Judge
The Law Office of Kristina Wildeveld & Associates
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk