IN THE SUPREME COURT OF THE STATE OF NEVADA

JONATHAN WAYNE BLAYLOCK,
Appellant,
vs.
THE STATE OF NEVADA; AND
WILLIAM HUTCHINGS, WARDEN,
Respondents.

No. 87260

FILED

NOV 13 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; Monica Trujillo, Judge.

Appellant Jonathan Blaylock argues that the district court erred in denying claims of ineffective assistance of counsel. To demonstrate ineffective assistance of counsel, a petitioner must show that counsel's performance fell below an objective standard of reasonableness, and that the prejudice from the deficient performance creates a reasonable probability that there would have been a different outcome absent counsel's errors. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *see also Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the *Strickland* test). For purposes of the deficiency prong, counsel is strongly presumed to have provided adequate assistance and exercised reasonable professional judgment in all significant decisions. *Strickland*, 466 U.S. at 690. "With respect to the prejudice prong, '[a] reasonable probability is a probability sufficient to undermine confidence in the outcome.'" *Johnson v. State*, 133 Nev. 571, 576, 402 P.3d 1266, 1273 (2017) (quoting *Strickland*, 466 U.S. at 694) (alteration in original). 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 defer to the district court's factual findings that are supported by substantial evidence and not clearly wrong but review its application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

Blaylock first argues that counsel should have sought leave to withdraw because of a conflict of interest. Pointing to counsel's testimony at the evidentiary hearing that counsel became "fixated" on the issue of competency, Blaylock contends that counsel unreasonably fixated on competency and that fixation eroded the attorney-client relationship. Blaylock has not shown deficient performance or prejudice.

Blaylock has not demonstrated that counsel "actively represented conflicting interests" by pursuing multiple competency assessments. *Cuyler v. Sullivan,* 446 U.S. 335, 350 (1980); *see also* RPC 1.7-1.8 (listing disqualifying conflicts in representation of a current client). The record reveals that Blaylock refused to answer counsel's questions about the facts of the case. Instead, Blaylock told counsel that there was no defense for the truth and that God would ensure success at trial. Given Blaylock's apparent refusal to assist in a defense, counsel reasonably questioned Blaylock's competency. *See Melchor-Gloria v. State*, 99 Nev. 174, 179-80, 660 P.2d 109, 113 (1983) (holding that the test for incompetency includes "whether [the defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" (quoting *Dusky v. United States*, 362 U.S. 402, 402 (1960))); *see also* NRS 178.400(2)(c). Counsel therefore acted consistently with Blaylock's due process right not to be prosecuted if incompetent. *See Lipsitz v. State*, 135 Nev. 131, 135, 442

P.3d 138, 142 (2019). Moreover, once the district court made its final competency determination, counsel implemented an objectively reasonable trial strategy given the information available.

Blaylock's claim that counsel's focus on competency eroded the attorney-client relationship to the point of an irreconcilable conflict is similarly belied by the record. *See Young v. State*, 120 Nev. 963, 968-69, 102 P.3d 572, 576 (2004) (requiring substitution of counsel only when "the complete collapse of the attorney-client relationship is evident"). Blaylock never requested new counsel during the many opportunities he had to speak directly with the district court. While Blaylock expressed frustration with trial continuances, he stated that he understood defense counsel were doing their jobs and he was not angry with them. And Blaylock's intermittent refusal to engage with defense counsel because Blaylock did not believe in preparing a defense cannot, on its own, be the basis for a conflict warranting new counsel. *See Gallego v. State*, 117 Nev. 348, 363, 23 P.3d 227, 237 (2001) (noting that a defendant's "refusal to cooperate with appointed counsel" alone does not establish a conflict of interest (quoting *Thomas v. State*, 94 Nev. 605, 608, 584 P.2d 674, 676 (1978))), *abrogated on other grounds by Nunnery v. State*, 127 Nev. 749, 263 P.3d 235 (2011).

Blaylock has also failed to demonstrate a reasonable probability that the result of the trial would have been different had counsel attempted to withdraw. Although counsel repeatedly notified the district court of Blaylock's refusal to discuss the facts of the case, the district court observed that Blaylock communicated well with both the court and counsel and was entitled to maintain unorthodox beliefs and disagree with counsel on trial strategy. Thus, it is not evident that the district court would have granted a motion to withdraw based on a conflict of interest had counsel pursued

one. *See Young*, 120 Nev. at 968, 102 P.3d at 576 (requiring adequate cause for substitution of appointed counsel). Nor does Blaylock cite any convincing reasons why alternate counsel would have been more successful at overcoming Blaylock's religious views about preparing for trial. Accordingly, we conclude that the district court did not err in denying this claim.

Blaylock next argues that counsel should have pursued a procuring agent defense. Acting as a procuring agent is a defense to sale of a controlled substance where "the defendant was merely a conduit for the purchase and in no way benefited from the transaction." *Love v. State*, 111 Nev. 545, 548, 893 P.2d 376, 378 (1995), *overruled on other grounds by Adam v. State*, 127 Nev. 601, 607-08, 261 P.3d 1063, 1067 (2011). Acting as a procuring agent is not, however, a viable defense to trafficking in a controlled substance. *See Adam*, 127 Nev. at 607, 261 P.3d at 1067.

Even if a procuring agent defense might have precluded guilty findings for two of the charges (sale and attempted sale of a controlled substance), we conclude that counsel's strategic decision not to pursue the defense was objectively reasonable. First, Blaylock would have had to admit participating in the drug transaction as the buyer's agent, all but ensuring conviction on the two far more serious trafficking charges. *See* NRS 453.321(2); NRS 453.3385(1). Second, the State presented evidence that Blaylock was an active seller rather than simply an agent for the buyer. That evidence included testimony that Blaylock negotiated the price of controlled substances with an undercover narcotics officer and provided a free sample of cocaine to entice the officer to buy more. And given that evidence, Blaylock also has not demonstrated a reasonable probability of a different outcome at trial had counsel pursued the procuring agent defense.

Because Blaylock has not shown deficient performance or prejudice, we conclude that the district court did not err in denying this claim.

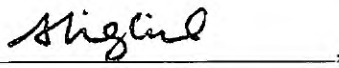
Finally, Blaylock argues that counsel improperly litigated the issue of law enforcement's failure to preserve a Craigslist advertisement and text messages exchanged between Blaylock and the undercover officer. Counsel sought an adverse-inference jury instruction, which the district court denied. We affirmed on direct appeal, concluding that Blaylock failed to show that the evidence was exculpatory or that the State acted in bad faith. *Blaylock v. State*, No. 78182, 2020 WL 1903190, at *3 (Nev. Apr. 16, 2020) (Order of Affirmance) (citing *Daniels v. State*, 114 Nev. 261, 266-67, 956 P.2d 111, 115 (1998)). Blaylock's habeas petition asserted that the advertisement and messages would have shown that he was working at the behest of the buyer, supporting the procuring agent defense. Thus, Blaylock contends that counsel failed to correctly frame the exculpatory value of the unpreserved evidence. Blaylock has not shown deficient performance or prejudice.

Blaylock did not identify what information contained in the advertisement and messages would have demonstrated that he was merely obtaining drugs on behalf of a buyer. *See Daniel v. State*, 119 Nev. 498, 520, 78 P.3d 890, 905 (2003) ("It is not sufficient that the showing disclose merely a hoped-for conclusion from examination of the destroyed evidence." (quoting *Boggs v. State*, 95 Nev. 911, 913, 604 P.2d 107, 108 (1979))). Nor did Blaylock show that the unpreserved evidence had apparent exculpatory value before it was lost when, as discussed above, the weight of the available evidence did not support a viable procuring agent defense to the sales charges. Counsel did not act unreasonably by declining to make an argument grounded in a likely futile defense. *See Ennis v. State*, 122 Nev.

694, 706, 137 P.3d 1095, 1103 (2006) ("Trial counsel need not lodge futile objections to avoid ineffective assistance of counsel claims."). Accordingly, we conclude that the district court did not err in denying this ineffective-assistance claim.

Having considered Blaylock's contentions and concluded that relief is not warranted, we

ORDER the judgment of the district court AFFIRMED.

 , J.
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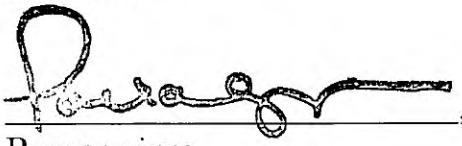 , J.
Parraguirre

cc: Hon. Monica Trujillo, District Judge
Benjamin Durham Law Firm
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk