IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RYAN ANTHONY WARREN-HUNT,
Appellant,
vs.
GABRIELA NAJERA, WARDEN; AND THE STATE OF NEVADA,
Respondents.

No. 87773-COA

ORDER OF AFFIRMANCE

Ryan Anthony Warren-Hunt appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on November 15, 2022. Eighth Judicial District Court, Clark County; Erika D. Ballou, Judge.

Warren-Hunt 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. 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). A petitioner must raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle the

petitioner to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Warren-Hunt claimed that counsel was ineffective for failing to move to dismiss count 1 of the amended indictment (conspiracy to commit robbery) because it was improperly charged and did not provide him with adequate notice of the allegations against him.[1] Warren-Hunt argued that count 1 was conclusory because it merely alleged he "conspired" with others and that the incorporated robbery counts only alleged he drove the car to and from the crime scene, which was insufficient notice that he was being accused of entering into an agreement with others to commit a specific illegal act. A charging document must inform the accused "of the charges against him so that he can prepare an adequate defense" and thus must include "a statement of the acts constituting the offense in ordinary and concise language" and give the defendant notice of the State's theory of prosecution. *Viray v. State*, 121 Nev. 159, 162, 111 P.3d 1079, 1081-82 (2005) (internal quotation marks omitted); *accord* NRS 173.075(1). "Allegations made in one count may be incorporated by reference in another count." *See* NRS 173.075(2).

The charging document alleged that Warren-Hunt and his codefendants committed conspiracy to commit robbery by "willfully, unlawfully, and feloniously conspir[ing] with each other to commit a

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[1]We decline Warren-Hunt's invitation to take judicial notice of the indictment in *Randolph v. State*, 117 Nev. 970, 977, 36 P.3d 424, 429 (2001). *See Mack v. Estate of Mack*, 125 Nev. 80, 91, 206 P.3d 98, 106 (2009) (stating that this court will generally not take judicial notice of records in an unrelated case).

robbery, by the defendants committing the acts as set forth in" counts 2-8.[2] Counts 2-8 each alleged in the alternative that Warren-Hunt was liable "pursuant to a conspiracy to commit this crime with the intent that this crime be committed." Specifically, each count alleged that Warren-Hunt and/or another codefendant "drove said [codefendants] to the crime scene" and remained in the car while three other codefendants entered a Verizon store and robbed the store and individuals inside, with Warren-Hunt and/or another codefendant "dr[iving] said [codefendants] from the crime scene, all [codefendants] and co-conspirators acting in concert throughout."

We conclude this language gave adequate notice to Warren-Hunt and sufficiently set forth the essential facts constituting the offense of conspiracy to commit robbery. *See* NRS 173.075(1) (providing the charging document "must be a plain, concise and definite written statement of the essential facts constituting the offense charged"); *see also Conspiracy*, *Black's Law Dictionary* (12th ed. 2024) ("[T]o breathe together, agree, act in concert, plot together"). We disagree with Warren-Hunt's contention that the charging document was insufficient because it alleged a conspiracy by saying he "conspired" with others. *See Laney v. State*, 86 Nev. 173, 178, 466 P.2d 666, 669 (1970) ("The sufficiency of an indictment or information is to be determined by practical rather than technical considerations."); *see also Nunnery v. Eighth Jud. Dist. Ct.*, 124 Nev. 477, 480, 186 P.3d 886, 888 (2008) (recognizing a conspiracy is "an agreement between two or more persons for an unlawful purpose" (quotation marks omitted)). The charging document, taken as a whole, put Warren-Hunt on notice of the State's

[2]Count 2 alleged the commission of burglary while in possession of a deadly weapon while counts 3-8 all alleged the commission of robbery with the use of a deadly weapon.

allegation that he agreed with others to commit a robbery. *Cf. Doyle v. State*, 112 Nev. 879, 894, 921 P.2d 901, 911 (1996) ("[A] conspiracy conviction may be supported by a coordinated series of acts, in furtherance of the underlying offense, sufficient to infer the existence of an agreement." (internal quotation marks omitted)), *overruled on other grounds by Kaczmarek v. State*, 120 Nev. 314, 333, 91 P.3d 16, 29 (2004). Because the charging document was sufficiently clear to allow Warren-Hunt to adequately prepare a defense to count 1, he has not shown counsel's performance was deficient for failing to challenge the charging document or a reasonable probability of a different result had counsel made such a challenge. *See Ennis v. State*, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006) (holding that counsel is not deficient for failing to make futile objections). Therefore, we conclude the district court did not err by denying this claim.

Second, Warren-Hunt claimed counsel was ineffective for failing to challenge the conspiracy allegations in Counts 2-9 of the amended indictment because the factual basis was insufficient and failed to provide him with adequate notice.[3] As quoted above, the amended indictment alleged that Warren-Hunt conspired with his codefendants to commit the crimes alleged; the crimes were committed pursuant to that conspiracy with the intent that the crimes be committed; that Warren-Hunt or another defendant drove the defendants to the Verizon store and remained in the car while the crimes were committed; and the crimes were committed with the coconspirators "acting in concert throughout." For the reasons discussed above, we conclude this language gave adequate notice to Warren-Hunt and sufficiently set forth the essential facts alleging Warren-Hunt

[3]Count 9 also alleged the commission of robbery with use of a deadly weapon.

committed the offenses as a conspirator. *See Doyle*, 112 Nev. at 894, 921 P.2d at 911 ("A person who knowingly does any act to further the object of a conspiracy, or otherwise participates therein, is criminally liable as a conspirator."). Accordingly, Warren-Hunt failed to demonstrate counsel's performance was deficient or a reasonable probability of a different outcome but for counsel's inaction. Therefore, we conclude the district court did not err by denying this claim.

Third, Warren-Hunt claimed counsel was ineffective for failing to have the jury instructed that a conspiracy must begin prior to the commission of the target offense. Warren-Hunt contended that counsel's failure to have the jury so instructed, when paired with a provision in Instruction 13 which provided that conspiracy "is usually established by inference from the conduct of the parties," allowed the jury to believe that Warren-Hunt's post-offense conduct was sufficient to infer that he entered into a conspiracy to commit the robbery prior to the crime.

Instruction 13 provided:

> A conspiracy is an agreement between two or more persons for an unlawful purpose. To be guilty of conspiracy, a defendant must intend to commit the specific crime agreed to. The crime is an agreement to do something unlawful; it does not matter whether it was successful or not.
>
> Mere knowledge of, or acquiescence in, the object and purpose of a conspiracy without an agreement to cooperate in achieving such object or purpose does not make one a party to a conspiracy. Conspiracy is seldom susceptible of direct proof and is usually established by inference from the conduct of the parties. In particular, a conspiracy may be supported by a coordinated series of acts, in furtherance of the underlying offense, sufficient to infer the existence of an agreement.

Instruction 13 explained that conspirators must possess the requisite intent to commit the target offense and agree to cooperate in achieving that criminal goal, regardless of whether it is accomplished. Thus, we conclude Instruction 13 instructed the jury that the elements required to enter a conspiracy necessarily precede the commission of the target offense. And Warren-Hunt did not allege that Instruction 13 misstated the law. Accordingly, Warren-Hunt failed to demonstrate counsel's performance was deficient or a reasonable probability of a different outcome but for counsel's inaction. Therefore, we conclude the district court did not err by denying this claim.

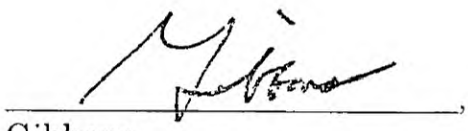
Finally, Warren-Hunt claimed that counsel was ineffective for failing to investigate the source of the U.S. currency found in his car that was later returned to the victim. Warren-Hunt alleged that counsel should have identified the custodian of records at Warren-Hunt's California bank to verify that Warren-Hunt withdrew the cash after cashing his paycheck. Warren-Hunt contended that the serial numbers on the cash could have been traced and tracked and that the serial numbers on the cash seized from his car were not documented to corroborate or disprove his argument that the cash was his.

The district court found that Warren-Hunt failed to allege that he informed counsel that the cash seized from Warren-Hunt's car was from his California bank account. This finding is supported by the record. The district court concluded that, because Warren-Hunt did not communicate this information to his counsel, Warren-Hunt failed to demonstrate that his counsel could be "faulted" for failing to investigate this type of information. The record supports the district court's conclusion. *Cf. Riley v. State*, 110 Nev. 638, 647 & n.4, 878 P.2d 272, 278 & n.4 (1994) (concluding counsel was

not ineffective for failing to investigate statements when he was not informed of those statements ahead of trial). Accordingly, Warren-Hunt failed to demonstrate that counsel's performance was deficient.

Further, this court determined on direct appeal that the State presented substantial evidence beyond the fact that the cash was found in Warren-Hunt's car to support the conclusion that a rational jury could have found that Warren-Hunt committed the charged crimes. *See Warren-Hunt v. State*, No. 81027-COA, 2021 WL 4933424 (Nev. Ct. App. Oct. 21, 2021) (Order of Affirmance). Accordingly, Warren-Hunt failed to demonstrate a reasonable probability of a different outcome at trial had counsel performed this investigation. Therefore, we conclude the district court did not err by denying this claim. For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.



_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Erika D. Ballou, District Judge
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Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk