IN THE SUPREME COURT OF THE STATE OF NEVADA

BRANDY STUTZMAN,
Appellant,
vs.
DWIGHT NEVEN, WARDEN; AND THE STATE OF NEVADA,
Respondents.

No. 86795

FILED
JAN 16 2025
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; Jacqueline M. Bluth, Judge. Appellant Brandy Stutzman argues that she received ineffective assistance from trial and appellate counsel and that the district court should have held an evidentiary hearing. We disagree and affirm.

To demonstrate ineffective assistance of counsel, a petitioner must show that counsel's performance was deficient in that it fell below an objective standard of reasonableness and that 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*); *see also Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1113 (1996) (applying *Strickland* to claims of ineffective assistance of appellate counsel). 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), and both components of the inquiry must be shown,

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Strickland, 466 U.S. at 697. For purposes of the deficiency prong, counsel is strongly presumed to have provided adequate assistance and exercised reasonable professional judgment in all significant decisions. *Id.* at 690. We give deference to the district court's factual findings 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). The petitioner is entitled to an evidentiary hearing when the claims asserted are supported by specific factual allegations that are not belied or repelled by the record and that, if true, would entitle the petitioner to relief. *See Nika v. State*, 124 Nev. 1272, 1300-01, 198 P.3d 839, 858 (2008).

Stutzman first argues that appellate counsel should have argued that insufficient evidence supported the conviction because the inculpatory testimony of Jeremiah Merriweather, who admitted killing the victim (Stutzman's husband) at Stutzman's request, was not corroborated. A conviction may not rest on accomplice testimony unless other evidence corroborates the testimony and connects the defendant with the offense. NRS 175.291(1). "Corroboration evidence need not be found in a single fact or circumstance and can, instead, be taken from the circumstances and evidence as a whole." *Cheatham v. State*, 104 Nev. 500, 504, 761 P.2d 419, 422 (1988). Such evidence need not itself conclusively establish guilt, and it will satisfy NRS 175.291 "if it merely tends to connect the accused to the offense." *Id.* at 504-05, 761 P.2d at 422.

Merriweather testified that Stutzman wanted the victim dead to obtain financial benefits; that Stutzman told him that the victim was medicated, groggy, and thus vulnerable before Merriweather went to the victim's house and killed him; that later that night he told Stutzman he had

killed the victim; and that Stutzman borrowed his cell phone the next day to send text messages to the victim to feign ignorance of the killing. Substantial evidence supports the district court's finding that Merriweather's testimony was corroborated. Stutzman admitted to the police that she told Merriweather that the victim was medicated, that Merriweather told her that night that he thought he killed the victim, and that she sent text messages to the victim, feigning ignorance of the killing the next morning. Evidence of the text messages was admitted, and responding officer testimony established that Stutzman waited until the next afternoon to check that Merriweather had in fact killed the victim, corroborating that the plan had been achieved. A neighbor corroborated that Stutzman knew the victim was medicated that evening in testifying that she saw Stutzman meet with the victim at his residence several hours before the killing occurred. Several other witnesses corroborated that Stutzman wanted the victim gone or dead and anticipated receiving a large amount of money thereafter.[1] As an appellate claim asserting that Merriweather's testimony was uncorroborated lacked merit, counsel did not perform deficiently by not raising it. *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."). The district court therefore did not err in denying this claim without conducting an evidentiary hearing.

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[1]These witnesses had varying degrees of awareness of the plan to kill the victim, but they were not so involved as to be liable for prosecution for murder. *See* NRS 175.291(2) ("An accomplice is hereby defined as one who is liable to prosecution, for the identical offense charged against the defendant on trial in the cause in which the testimony of the accomplice is given.").

Stutzman next argues that counsel should have investigated more extensively by interviewing two coconspirators of Merriweather, obtaining recordings or notes regarding Merriweather's proffer and anticipated testimony that were not provided to the defense, and examining the crime scene to rebut Merriweather's assertion that he climbed the back wall of the victim's property to access the backyard. This claim fails.

First, Stutzman has not identified what interviewing the coconspirators would have revealed that would have been material. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) (concluding that showing prejudice for omitted investigative efforts requires showing what additional investigation would uncover). Second, Stutzman conceded that trial counsel sought any written or recorded statements Merriweather made to police, and this court concluded on direct appeal that even if the State withheld documents regarding Merriweather's anticipated testimony, those documents were not material. *Stutzman v. State*, Nos. 73112 & 75054, 2019 WL 1450261, at *1 (Nev. Mar. 29, 2019) (Order of Affirmance). It is thus the law of the case that uncovering such materials would not have led to a reasonable probability of a different outcome. *Id.*; *see Hall v. State*, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975). And third, substantial evidence supports the district court's finding that Stutzman failed to show that photographs of the wall impeached Merriweather's testimony where the photographs were consistent with his description of the wall and his explanation of how he climbed it. Accordingly, Stutzman failed to show prejudice regarding further investigation into the rear wall. Given that Stutzman failed to show that additional investigation into these matters would have led to a reasonable probability of a different outcome, we

conclude that the district court did not err in denying this claim without conducting an evidentiary hearing.

Stutzman next argues that trial counsel should have investigated her mental health and history of trauma and should have presented a defense of mental incapacity during the guilt phase. Counsel raised Stutzman's mental health and trauma history during the penalty phase, and the record therefore shows that counsel investigated these matters. Nothing in the record, however, suggests that Stutzman suffered from a cognitive deficiency or mental condition precluding her culpability for first-degree murder, and Stutzman failed to show what further inquiry would have revealed to undermine her culpability. *Cf. Dumas v. State*, 111 Nev. 1270, 1271-72, 903 P.2d 816, 817 (1995) (concluding that counsel should have investigated and presented mental-condition evidence where appellant suffered "from serious mental deficiency, derangement and organic brain damage which arguably would have affected his capacity to form the intent to kill necessary for first-degree murder"). We conclude that the district court did not err in denying this claim without conducting an evidentiary hearing.

Lastly, Stutzman argues that cumulative error warrants relief. Even assuming that multiple deficiencies in counsel's performance may cumulate to establish prejudice, *see McConnell v. State*, 125 Nev. 243, 259 & n.17, 212 P.3d 307, 318 & n.17 (2009), Stutzman has not shown any instances of deficient performance to cumulate.[2]

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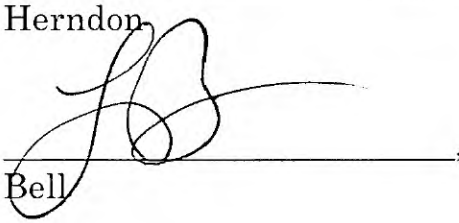
[2]Stutzman identifies a jury instruction claim in the statement of issues in the opening brief. This claim has not been supported with relevant authority or cogent argument, and we therefore need not address it. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).

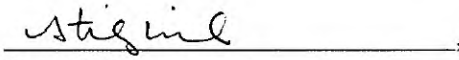
Having considered Stutzman's contentions and concluded that relief is not warranted, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Herndon



_____, J.
Bell



_____, J.
Stiglich

cc: Hon. Jacqueline M. Bluth, District Judge
Law Office of Christopher R. Oram
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk