IN THE SUPREME COURT OF THE STATE OF NEVADA

JUAN RODRIGUEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87663

FILED

MAR 13 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 Juan Rodriguez argues that the district court erred in denying five claims of ineffective assistance of counsel after a limited evidentiary hearing. To demonstrate ineffective assistance of counsel, a petitioner must show (1) counsel's performance fell below an objective standard of reasonableness (deficient performance) and (2) a reasonable probability of a different outcome but for counsel's deficient performance (prejudice). *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (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, 987-88, 998, 923 P.2d 1102, 1107, 1113 (1996) (applying *Strickland* to appellate-counsel claims). Postconviction claims warrant an evidentiary hearing when the claims are supported by specific factual allegations that are not belied by the record and that would entitle the petitioner to relief if true. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). The petitioner bears the burden of proving the facts supporting the claims 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, *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005); *Lara v. State*, 120 Nev. 177, 179, 87 P.3d 528, 530 (2004), and review the application of law to those facts de novo, *Evans v. State*, 117 Nev. 609, 622, 28 P.3d 498, 508 (2001), *overruled on other grounds by Lisle v. State*, 131 Nev. 356, 366 n.5, 351 P.3d 725, 732 n.5 (2015).

First, Rodriguez argues that trial counsel should have retained an expert to refute the sexual assault allegation. Because Rodriguez makes no argument in support of this claim, we decline to consider it. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court.").[1]

Second, Rodriguez argues that trial counsel should have moved to suppress the evidence seized from Rodriguez's former apartment. During the investigation, the management of Rodriguez's apartment complex told detectives that Rodriguez and his family had moved out of the apartment two weeks prior, without notice, and that the apartment was now vacant and in the process of being cleaned and rented to new tenants. Thus, the record reflects that Rodriguez voluntarily abandoned any property found in the apartment. *See State v. Lisenbee*, 116 Nev. 1124, 1130, 13 P.3d 947, 951 (2000) ("Voluntarily abandoned property is not subject to Fourth

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[1]To the extent Rodriguez attempts to incorporate by reference the arguments set forth in the supplemental petition for writ of habeas corpus, this is improper. *See* NRAP 28(e)(2) ("Parties must 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.").

Amendment protections."). And even if Rodriguez had not abandoned the apartment, a warrantless search based on a reasonable mistake of fact does not violate the Fourth Amendment, and the detectives had no reason to doubt management's representations. *See State v. Taylor*, 114 Nev. 1071, 1080, 968 P.2d 315, 322 (1998).

Rodriguez further asserts that trial counsel should have challenged warrantless DNA tests on the property obtained from his former apartment. Rodriguez does not demonstrate deficient performance or prejudice. The genetic link between Rodriguez and the DNA found on the victim would have inevitably been discovered when Rodriguez's girlfriend later reported Rodriguez's crimes to the police and allowed the police to collect DNA from their son to connect Rodriguez to the murder. *See Nix v. Williams*, 467 U.S. 431, 444 (1984) (stating that evidence will not be suppressed based on improper police conduct if the evidence ultimately would have been discovered by lawful means). And Rodriguez's reliance on *Gaines v. State*, 116 Nev. 359, 998 P.2d 166 (2000) is misplaced, as that case pertains to obtaining biological specimens from a person, not conducting tests on items. Thus, a motion to suppress would have been futile. Accordingly, we conclude that the district court did not err by denying this claim without conducting an evidentiary hearing. *See Donovan v. State*, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (concluding that counsel was not ineffective for omitting a futile suppression motion).

Third, Rodriguez argues that trial counsel erred in opening the door to evidence of his past domestic violence against his girlfriend. But Rodriguez has not shown deficient performance given the record supports the district court's finding that trial counsel made a reasonable strategic decision as to cross-examination. Counsel reasonably chose to attack the

credibility of Rodriguez's girlfriend (a key prosecution witness) during cross-examination and attempted to be surgical in the questioning, despite a lack of clear guidance from the court on what questions might open the door to the domestic violence evidence.[2] Thus, the district court did not err by denying this claim after the evidentiary hearing. *See Howard v. State*, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990) ("Tactical decisions are virtually unchallengeable absent extraordinary circumstances."), *abrogated on other grounds by Harte v. State*, 116 Nev. 1054, 1072 n.6, 13 P.3d 420, 432 n.6 (2000).

Fourth, Rodriguez contends that trial and appellate counsel should have challenged the admission of evidence, without a *Petrocelli* hearing, that Rodriguez sexually assaulted his girlfriend. *See Petrocelli v. State*, 101 Nev. 46, 51-52, 692 P.2d 503, 507-08 (1985) (recognizing that the district court must hold a hearing when the State seeks to admit prior bad act evidence pursuant to NRS 48.045(2)), *superseded in part by statute as stated in Thomas v. State*, 120 Nev. 37, 44-45, 83 P.3d 818, 823 (2004). While appellate counsel did not specifically challenge the sexual assault evidence on appeal, appellate counsel did argue that the district court erred by admitting evidence about Rodriguez's physical abuse of his girlfriend without a *Petrocelli* hearing. This court ruled that "[a] *Petrocelli* hearing was not required because the State did not seek to admit the evidence in its case-in-chief pursuant to NRS 48.045(2), and only sought to give context to [Rodriguez's] girlfriend's inconsistent statements." *Rodriguez v. State*, No.

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[2]The record on appeal does not include the transcript for the January 23, 2014, hearing where the court ruled on the State's motion in limine, and "we necessarily presume that the missing portion supports the district court's decision." *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007).

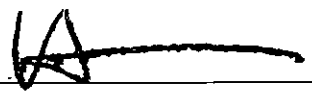
68313, 2016 WL 6837867, at *1 (Nev. Nov. 18, 2016) (Order of Affirmance). Like the evidence of physical abuse, the evidence of sexual assault was admitted not pursuant to NRS 48.045(2), but to give context to the girlfriend's inconsistent statements. Thus, Rodriguez has not shown deficient performance or prejudice because any challenge would have been futile. *See Donovan*, 94 Nev. at 675, 584 P.2d at 711 ("[C]ounsel cannot be deemed ineffective for failure to submit to a classic exercise in futility." (internal quotation marks omitted)); *Kirksey*, 112 Nev. at 998, 923 P.2d at 1114 ("To establish prejudice based on the deficient assistance of appellate counsel, the defendant must show that the omitted issue would have a reasonable probability of success on appeal."). Accordingly, the district court did not err in rejecting these claims without conducting an evidentiary hearing.

Fifth, Rodriguez argues that trial counsel should have investigated and presented a mental state defense. Rodriguez asserts that his girlfriend's police statement and testimony provided evidence of Rodriguez's insanity and that Rodriguez believed killing the victim would protect his children if they were incarcerated in the future. Even accepting that as true, it would not have been sufficient to support an insanity defense. *See Finger v. State*, 117 Nev. 548, 576, 27 P.3d 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). Rodriguez also asserts that trial counsel should have argued that Rodriguez's delusions meant that Rodriguez did not harbor the requisite mens rea for murder. Rodriguez has not shown deficient performance or prejudice because Rodriguez was charged with felony murder. *See State v. Contreras*, 118 Nev. 332, 334, 46 P.3d 661, 662 (2002) ("The felonious intent

involved in the underlying felony is deemed, by law, to supply the malicious intent necessary to characterize the killing as a murder"). Accordingly, trial counsel did not act unreasonably by omitting a futile defense, and the district court did not err in rejecting this claim without conducting an evidentiary hearing. *See United States v. Cronic*, 466 U.S. 648, 656 n.19 (1984) (noting that counsel is not required to create an unsupported defense).

Finally, Rodriguez 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), Rodriguez has not shown any instances of deficient performance to cumulate. Accordingly, we

ORDER the judgment of the district court AFFIRMED.



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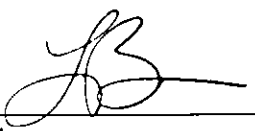

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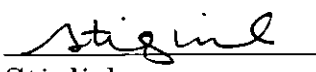

_____, J.
Stiglich

cc: Hon. Jacqueline M. Bluth, District Judge
Michael Lasher LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk