

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WILBERT KNIGHT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88421-COA

FILED

APR 09 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Wilbert Knight appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on January 5, 2021, and supplemental pleadings. Eighth Judicial District Court, Clark County; Christy L. Craig, Judge.

Knight 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, 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). 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, and "counsel's strategic or tactical decisions

will be virtually unchallengeable absent extraordinary circumstances,” *Lara v. State*, 120 Nev. 177, 180, 87 P.3d 528, 530 (2004) (internal quotation marks omitted). 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, Knight claimed trial counsel was ineffective for failing to object to the State’s admission of evidence that two firearms—a black semiautomatic Smith and Wesson .40 caliber pistol and a silver Ruger .357 caliber revolver—were found in Knight’s home. Knight argued this evidence was irrelevant and unfairly prejudicial because it damaged his reputation in front of the jury. The State alleged that Knight, Quincy Williams, and Brandon Black conspired to commit multiple crimes with firearms arising from three home invasions.¹ The district court conducted an evidentiary hearing regarding this claim where trial counsel testified. Counsel explained he did not object to the firearm evidence because he determined “there was a substantial nexus circumstantially between” Knight and Williams based on the fact that Williams’ DNA was found on the Smith and Wesson found in Knight’s residence, and Knight’s DNA was found on the Ruger and at the scene of the first home invasion. Counsel’s strategic decision is virtually unchallengeable absent extraordinary circumstances which are not present here, but even if counsel had objected, such objection would have been futile. *See Ennis v. State*, 122 Nev. 694,

¹Knight and Williams were tried together while Black’s trial was severed. Knight was convicted of the charges related to the first and third home invasions and Williams was convicted of the charges related to the second home invasion.

706, 137 P.3d 1095, 1103 (2006) (“Trial counsel need not lodge futile objections to avoid ineffective assistance of counsel claims.”). Therefore, Knight failed to demonstrate counsel was deficient.

Knight also failed to demonstrate prejudice. The district court found that, while victims from each of the three home invasions were able to give general descriptions of the firearms used, they were unable to specify the specific type of firearms used. A victim from the first home invasion described one of the assailants as having a silver revolver while the other victim was unable to give a description of the gun used. A victim from the second home invasion described the firearm as black with a long barrel and was not sure whether the firearm was a revolver or an automatic. The victim from the third home invasion described the gun as approximately 10 inches long with a sliding action, not a “spiral,” implying it was an automatic. Knight does not dispute these findings, and they are supported by the record.

The firearms discovered in Knight’s residence were not inconsistent with the victims’ descriptions of the firearms used during the crimes, and therefore Knight has not shown the admission of this evidence was in error. *Cf. Bean v. State*, 81 Nev. 25, 34, 398 P.2d 251, 257 (1965) (concluding evidence of the defendant’s firearms was irrelevant and erroneously admitted where the victim was killed by strangulation). Additionally, as Williams’ DNA was found on one of the firearms in Knight’s residence, the evidence tended to support the State’s charges of a conspiracy involving Knight and Williams. Based on the above, we conclude Knight failed to demonstrate a reasonable probability of a different outcome had counsel objected to the firearm evidence. *See* NRS 48.025(1) (providing that generally all relevant evidence is admissible); NRS 48.015 (providing that

relevant evidence is “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence”); NRS 48.035(1) (providing that relevant evidence “is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice”). Accordingly, we conclude the district court did not err by denying this claim.

Second, Knight claimed trial counsel was ineffective for failing to move to sever the counts for each of the three home invasions. Knight argued the counts were not based on the same act or transaction.² He further argued that, even assuming the three home invasions were part of a common plan or were connected together, he was entitled to severance given the prejudicial effect of “spillover evidence.” In support of the latter argument, Knight contended that there was no evidence connecting him to the third home invasion and that common sense supported the notion that the jury convicted him based on spillover evidence from the other home invasions.

NRS 173.115(1) provides that “[t]wo or more offenses may be charged in the same indictment or information in a separate count for each offense if” they are “[b]ased on the same act or transaction” or “on two or more acts or transactions connected together or constituting parts of a common scheme or plan.” “[E]ven if joinder is permissible under NRS 173.115, the trial court should sever the offenses if the joinder is unfairly prejudicial, i.e., required by justice.” *Middleton v. State*, 114 Nev. 1089, 1107, 968 P.2d 296, 309 (1998); *see also* NRS 174.165(1).

²We agree that, because the three home invasions took place on different dates and at different locations, they were not based on the same act or transaction.

The district court conducted an evidentiary hearing regarding this claim where counsel testified that, because the evidence connected Knight to other counts, counsel determined a motion to sever was not “sustainable or even feasible for me to file.” Based on counsel’s testimony, the district court found counsel’s decision to be “tactical.” Knight does not challenge this finding on appeal, and it is supported by the record. Therefore, Knight failed to demonstrate counsel was deficient.

Knight also failed to demonstrate prejudice. While Knight argued there was no evidence supporting his convictions arising from the third home invasion, the Nevada Supreme Court determined on direct appeal that sufficient evidence supported those convictions.³ *See Knight v. State*, No. 79603, 2020 WL 6586657, at *3 (Nev. Nov. 9, 2020) (Order of Affirmance). This determination is the law of the case and “cannot be avoided by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings.” *Hall v. State*, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975). Further, the jury acquitted Knight of crimes related to the second home invasion, demonstrating the jury was able to independently consider the evidence against Knight for each home invasion. Knight’s bare claim failed to explain what evidence from the first home invasion prejudiced him by “spilling over” to the third home invasion. In light of these circumstances, Knight failed to demonstrate a reasonable probability of a different outcome had counsel moved to sever the counts. Accordingly, we conclude the district court did not err by denying this claim.

³We note that, in recounting the evidence supporting Knight’s convictions stemming from the third home invasion, the supreme court focused on the evidence related or near-in-time to the third home invasion and did not rely exclusively on evidence from the other home invasions.

Third, Knight claimed trial counsel was ineffective for failing to object when the district court improperly directed witness testimony on two occasions. Knight raised these substantive claims on direct appeal. In his supplemental petition, Knight alleged that an objection could have precluded “less than truthful” trial testimony and would have resulted in the supreme court considering the errors in full.

On direct appeal, the supreme court concluded that “Knight fail[ed] to explain how either instance was, in fact, prejudicial, as the statements appeared to favor Knight” and that “the record belie[d] Knight’s arguments that the statements substantively misrepresented the evidence.” *Knight*, No. 79603, 2020 WL 6586657, at *4. These determinations are the law of the case and “cannot be avoided by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings.” *Hall*, 91 Nev. at 316, 535 P.2d at 799. Knight’s postconviction claims relied on the same facts and law as those raised on direct appeal. *See Hsu v. Cty. of Clark*, 123 Nev. 625, 630, 173 P.3d 724, 728-29 (2007) (discussing circumstances where a court may revisit a prior ruling, including where “substantially new or different evidence” is produced at a subsequent proceeding or where “there has been an intervening change in controlling law”). Based on the supreme court’s determinations on direct appeal, Knight did not demonstrate counsel was deficient or a reasonable probability of a different result had counsel objected. Accordingly, we conclude the district court did not err by denying this claim.

Fourth, Knight claimed trial counsel was ineffective for failing to object to prosecutorial misconduct during closing arguments. Knight claimed counsel should have objected when the prosecutor argued that “families commit crimes.” Knight raised this substantive claim on direct

appeal. In his supplemental petition, he contended the supreme court would have reviewed this claim under the less stringent abuse-of-discretion standard and reversed had counsel objected. The supreme court concluded the “evidence and surrounding circumstances, aside from the family relationship, implicated each defendant in at least one of the robberies and shows Knight’s guilt was not proven here solely by familial relationships,” *Knight*, No. 79603, 2020 WL 6586657, at *4 n.6, and Knight does not demonstrate that a different standard of review would have changed the supreme court’s conclusion. While Knight contended the supreme court’s logic in reaching this conclusion was “flawed,” the supreme court’s determination remains the law of the case and “cannot be avoided by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings.” *Hall*, 91 Nev. at 316, 535 P.2d at 799. Therefore, Knight did not demonstrate a reasonable probability of a different result had counsel objected. Accordingly, we conclude the district court did not err by denying this claim.

Fifth, Knight claimed trial counsel was ineffective for failing to file discovery motions or request information related to disciplinary issues of the lead police detective. Knight contended that information about the detective stealing on behalf of his girlfriend and providing her with urine samples to keep her out of jail would have impeached the credibility of the detective’s investigation. The district court found that Knight’s trial began June 10, 2019, but that the detective was not indicted until March of 2020. This finding is supported by the record. During the evidentiary hearing on Knight’s petition, counsel testified he was not aware the detective was under investigation until postconviction counsel told him about it long after Knight’s trial was over. Counsel explained he had done a complete file

review with the district attorney's office and saw no need to file a discovery motion. In light of these circumstances, Knight failed to demonstrate that counsel's failure to file discovery motions or request information related to disciplinary issues of the detective was objectively unreasonable based on what counsel knew or should have known at the time Knight went to trial. *See Strickland*, 466 U.S. at 689 ("A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time.").

Further, the district court found that Knight failed to present evidence that the detective's wrongdoing or any investigation into the detective's wrongdoing occurred during the time period relevant to Knight's trial. The district court also found that Knight presented no evidence that the detective's wrongdoing impacted Knight's case. Knight does not dispute these findings, and they are supported by the record. Therefore, Knight failed to demonstrate a reasonable probability of a different result had counsel filed discovery motions or requested information related to disciplinary issues of the detective. *Cf. Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) (stating a petitioner alleging that an attorney should have conducted a better investigation must demonstrate what the results of a better investigation would have been and how it would have affected the outcome of the proceedings). Accordingly, we conclude the district court did not err by denying this claim.

Finally, Knight argues the district court erred by denying his claim that the cumulative errors of counsel entitled him to relief. Even if multiple instances of deficient performance could be cumulated for purposes of demonstrating prejudice, *see McConnell v. State*, 125 Nev. 243, 259 &

n.17, 212 P.3d 307, 318 & n.17 (2009), Knight failed to demonstrate multiple errors to cumulate, *see Burnside v. State*, 131 Nev. 371, 407, 352 P.3d 627, 651 (2015) (stating a claim of cumulative error requires multiple errors to cumulate). Therefore, we conclude Knight is not entitled to relief based on this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Christy L. Craig, District Judge
Law Office of Betsy Allen
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk