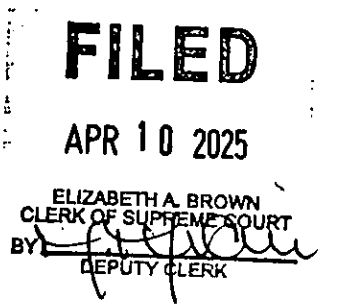
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOEY CHADWICK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89178-COA



ORDER OF AFFIRMANCE

Joey Chadwick appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on June 5, 2024. Eighth Judicial District Court, Clark County; Bita Yeager, Judge.

Chadwick's postconviction habeas petition challenged his conviction of leaving the scene of an accident involving personal injury. Chadwick argues the district court erred by denying his claims of ineffective assistance of counsel without conducting an evidentiary hearing. 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. To warrant an evidentiary hearing, a petitioner must raise claims supported by specific factual allegations that are not belied by the

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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, Chadwick argues trial counsel's cross-examination should have highlighted inconsistent testimony by the victim's mother, the victim's aunt, and Chadwick's passenger at the time of the collision. According to Chadwick, the victim's aunt previously stated that the victim's parents were inside the home during the collision but later testified they were not; the victim's mother also said she was inside but testified later that she was not. He asserts the victim's family members changed their testimony to avoid being charged for endangering the victim by allowing her to cross the street unattended. Chadwick also asserts counsel should have pointed out that his passenger was not forthcoming when she spoke to the victim's family the day after the crime.

The trial record reveals that trial counsel cross-examined both the victim's mother and aunt about their prior statements and testimony. This examination explored where they were at the time of the collision, how much of the collision they were able to view, and the accuracy of their observations about the events leading up to and following the collision. As to Chadwick's passenger, counsel's cross-examination elicited that she was not forthcoming when she spoke to the victim's family and did not reveal to them that she was in the van during the collision. Because the record reveals that counsel in fact pursued the cross-examination strategy that Chadwick contends counsel should have, this claim is belied by the record. *See id.* at 502-03, 686 P.2d at 225. Therefore, the district court did not err in denying this claim without conducting an evidentiary hearing.

Second, Chadwick contends counsel failed to discover violations of *Brady v. Maryland*, 373 U.S. 83 (1963). *Brady* obliges the State to disclose favorable evidence to the accused. *Id.* at 87. "[T]here are three components to a *Brady* violation: the evidence at issue is favorable to the accused; the evidence was withheld by the state, either intentionally or inadvertently; and prejudice ensued, i.e., the evidence was material." *Mazzan v. Warden*, 116 Nev. 48, 67, 993 P.2d 25, 37 (2000). Chadwick asserts the State withheld surveillance footage from a casino that would show the van was undamaged after the collision and footage from the neighbors' doorbell camera. He also contends the State withheld NRS 484B.281 and NRS 484B.287, which together inform a pedestrian's conduct when crossing traffic.

In his pleadings below, Chadwick pointed to the victim's mother's preliminary hearing testimony that she heard one of the neighbors had a street-facing security camera and Chadwick's own belief that the casino "must have" surveillance video of their parking lot. The victim's mother's belief that one of her neighbors had a security camera and Chadwick's insistence that a casino had to have cameras observing where he parked were insufficient to show that favorable video evidence existed and had been collected by the police. Thus, Chadwick failed to show the State withheld any surveillance footage. As to the statutes, the State could not be in exclusive possession of statutory law. *See Steese v. State*, 114 Nev. 479, 495, 960 P.2d 321, 331 (1998) ("*Brady* does not require the State to disclose evidence which is available to the defendant from other sources, including diligent investigation by the defense."). Because this *Brady* claim

lacks merit, *see Mazzan*, 116 Nev. at 66-67, 993 P.2d at 36-37, we conclude Chadwick failed to show that trial counsel performed deficiently or that he suffered prejudice as a result. Therefore, the district court did not err in denying this claim without conducting an evidentiary hearing.

Third, Chadwick argues counsel should have asserted that the bad act evidence admitted at trial was irrelevant and improperly admitted because it did not apply to a prosecution under NRS 484E.010. Contrary to Chadwick's contention, trial counsel challenged the introduction of uncharged conduct at trial and on appeal. *See Chadwick v. State*, 140 Nev., Adv. Op. 10, 546 P.3d 215, 223-24 (Ct. App. 2024) (concluding the district court did not abuse its discretion in admitting evidence of Chadwick's drinking as the evidence was relevant to his motive to leave the scene of a collision). Thus, this claim is belied by the record. *See Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225. Therefore, the district court did not err in denying this claim without conducting an evidentiary hearing.

Lastly, Chadwick contends that his conviction was invalid.[1] He argues counsel should have exonerated him by showing inconsistent testimony from the victim's mother and aunt as well as his passenger, showing they may have had motivation to alter their testimony to prove

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[1]Chadwick describes this claim as failure to find evidence underlying the validity of NRS 484E.010, the offense for which he was convicted, and NRS 48.045, the statute under which his prior uncharged conduct was admitted. Chadwick's arguments did not challenge the validity of these statutes but were instead arguments that he should not have been convicted.

they were not neglecting the victim, and showing when the pedestrian's duty of care requires yielding to traffic.

To the extent Chadwick's brief and petition below assert this as an actual innocence claim, the district court properly denied the claim. A gateway claim of actual innocence is unavailable in this case because Chadwick's petition was not procedurally barred. *See Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001) (describing a gateway claim of actual innocence), *abrogated on other grounds by Rippo v. State*, 134 Nev. 411, 423 n.12, 423 P.3d 1084, 1097 n.12 (2018). And the Nevada Supreme Court has never held that a freestanding claim of actual innocence can be raised in a postconviction petition for a writ of habeas corpus. *See Berry v. State*, 131 Nev. 957, 966 n.2, 967 n.3, 363 P.3d 1148, 1154 nn. 2, 3 (2015) (noting a claim of actual innocence is a "gateway through which a habeas petitioner must pass to have his otherwise barred constitutional claim considered on the merits" and it is not clear whether a freestanding claim of actual innocence may be raised in a postconviction petition for a writ of habeas corpus (quotation marks omitted)). However, the Legislature recently created a remedy that allows people who have been convicted to assert their factual innocence based on newly discovered evidence. *See* NRS 34.900-.990. In light of this new remedy, we decline to consider Chadwick's freestanding claim of actual innocence as he may raise this claim in a petition filed pursuant to NRS 34.900.[2]

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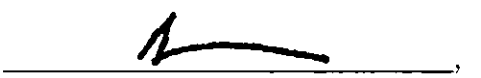
[2]We express no opinion as to whether Chadwick can satisfy the requirements of a petition to establish factual innocence.

To the extent Chadwick's argument suggests that the aforementioned instances of ineffective assistance as a whole resulted in his conviction, we conclude this argument lacks merit. Even if multiple instances of deficient performance may be cumulated to demonstrate prejudice, *see McConnell v. State*, 125 Nev. 243, 259 & n.17, 212 P.3d 307, 318 & n.17 (2009), Chadwick did not demonstrate any instances of deficient performance to cumulate, *see Morgan v. State*, 134 Nev. 200, 201 n.1, 416 P.3d 212, 217 n.1 (2018). Accordingly, we

ORDER the judgment of the district court AFFIRMED.[3]



_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

[3]We deny appellant's April 3, 2025, "Motion for Default Judgment for State failure to respond within timeframe NRCP 55." To the extent Chadwick asserts the respondent's failure to respond to his informal brief warrants default judgment, "[a]n opposing party is not required to respond to documents, including briefs, filed by a party appearing pro se unless ordered to do so by the Supreme Court or Court of Appeals." NRAP 46A(c). To the extent he contends that a default judgment was warranted because the respondent did not file a brief within 120 days of the transfer to the Court of Appeals, the rules governing this court do not provide for any such action. *See generally* Nevada Rules of Appellate Procedure.

cc: Hon. Bita Yeager, District Judge
Joey Terrall Chadwick
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk