

IN THE SUPREME COURT OF THE STATE OF NEVADA

DUSTIN BROCCOOPER,  
Appellant,  
vs.  
WILLIAM GITTERE, WARDEN; AND  
THE STATE OF NEVADA,  
Respondents.

No. 88240

FILED

JUN 17 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. Third Judicial District Court, Lyon County; John Schlegelmilch, Judge.

Appellant Dustin Cooper argues that the district court erred in denying his postconviction habeas petition after conducting an evidentiary hearing. The petition alleged various claims of ineffective assistance of trial and/or appellate counsel. To prove ineffective assistance of counsel, Cooper had to demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability that, but for counsel's errors, the outcome of the proceedings would have been different. *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 697, and Cooper had to demonstrate the underlying facts by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). 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).

Cooper raises three issues. First, Cooper argues that trial counsel prevented him from testifying at trial. The district court determined that Cooper was adequately canvassed about and knowingly waived the right to testify. *See Lara v. State*, 120 Nev. 177, 182, 87 P.3d 528, 531 (2004) (“[A]n accused has the ultimate authority to make certain fundamental decisions regarding the case, including the decision to testify.”).

Next, Cooper argues that trial and appellate counsel did not adequately challenge the admission of the civil judgments against Cooper. The district court determined that trial counsel made sound strategic decisions regarding the judgments. Likewise, the district court determined that appellate counsel strategically omitted a challenge to the admission of the judgments. *See Lara*, 120 Nev. at 180, 87 P.3d at 530 (holding that counsel's strategic decisions are “virtually unchallengeable absent extraordinary circumstances” (internal quotation marks omitted)).


Finally, Cooper argues that trial counsel performed deficiently by introducing the issue of polygraph test results. The district court determined that Cooper did not overcome the presumption that trial counsel made an objectively reasonable decision to refer to the polygraph exam during closing argument.

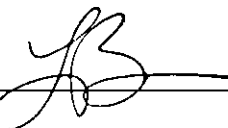
As the appellant, Cooper has the burden of providing the portions of the district court record that are necessary for our review of these ineffective-assistance claims. *See* NRAP 30(b)(3) (setting forth appellant's burden to provide an appendix containing portions of the district


court record necessary for the appellate court's review); *Greene v. State*, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980) ("The burden to make a proper appellate record rests on appellant."); *see also Gray v. Greer*, 800 F.2d 644, 646 (7th Cir. 1986) ("When a claim of ineffective assistance of counsel is based on failure to raise viable issues, the [reviewing] court must examine the trial court record to determine whether appellate counsel failed to present significant and obvious issues on appeal."). "When an appellant fails to include necessary documentation in the record, 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).

Cooper failed to include all necessary documents in the appendix. As examples, Cooper did not provide the transcript of the canvass regarding the right to testify or the transcript and documents relevant to the trial court's decision to admit the civil judgments. Given these omissions, Cooper has not shown that the district court erred in denying the ineffective-assistance claims. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Herndon

  
\_\_\_\_\_, J.  
Bell

  
\_\_\_\_\_, J.  
Stiglich

cc: Hon. John Schlegelmilch, District Judge  
Ristenpart Law  
Attorney General/Carson City  
Lyon County District Attorney  
Third District Court Clerk