

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHAFIQ AHMED AFZALI,
Appellant,
vs.
RENEE BAKER, WARDEN AND THE
STATE OF NEVADA,
Respondents.

No. 87498

FILED

AUG 14 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 habeas petition. Eighth Judicial District Court, Clark County; Tara D. Clark Newberry, Judge.

Appellant Shafiq Afzali argues that the district court erred in denying claims of ineffective assistance of counsel without conducting an evidentiary hearing. To prove ineffective assistance of counsel, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). The petitioner must also show resulting prejudice such that there is a reasonable probability that, but for counsel's errors, the outcome of the proceedings would have been different. *Id.*; *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 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). If the petitioner's claims are supported by specific factual allegations which, if true, would entitle the

25-35725

petitioner to relief, then the petitioner is entitled to an evidentiary hearing unless those claims are repelled by the record. *Hargrove v. State*, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984). On appeal, our review is mixed. 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, Afzali argues that trial counsel should have challenged the State's charging of 25 counts of possession of child pornography as redundant. See NRS 200.730 (prohibiting possession of visual presentation depicting sexual conduct of a person under 16 years of age). Afzali has not shown deficient performance or prejudice. In 2016, this court determined that the "simultaneous possession at one time and place" of multiple "images depicting child pornography constituted a single violation of NRS 200.730." *Castaneda v. State*, 132 Nev. 434, 444, 373 P.3d 108, 115 (2016). At the time of Afzali's trial in 2009, however, counsel did not have the benefit of that decision, and we cannot use hindsight in evaluating counsel's performance. See *Doyle v. State*, 116 Nev. 148, 156, 995 P.2d 465, 470 (2000) ("The failure of counsel to anticipate a change in the law does not constitute ineffective assistance."). Regarding prejudice, this court reversed 21 of Afzali's 22 convictions for violating NRS 200.730 pursuant to *Castaneda*. See *Afzali v. State*, No. 54019, 2016 WL 4005727, at *2 (Nev. July 22, 2016) (Order Affirming in Part and Reversing in Part). Thus, even assuming that trial counsel's performance was deficient, Afzali would be entitled to no further relief than what this court already granted on direct appeal. The district court did not err in denying this claim without conducting an evidentiary hearing.

Next, Afzali argues that the district court erred in denying his claim that counsel should have objected to the State's rebuttal evidence as improper other act evidence. Afzali has not demonstrated deficient performance or prejudice.

"Rebuttal evidence is that which explains, repels, contradicts, or disproves evidence introduced by a defendant during his case in chief." *Morrison v. Air Cal.*, 101 Nev. 233, 235-36, 699 P.2d 600, 602 (1985). The record shows that the State presented appropriate rebuttal evidence to explain and clarify Afzali's testimony. At trial, Afzali testified about an incident where he found an unaccompanied child but could not take the child to his apartment because he had "a registration." The State clarified this testimony with evidence that Afzali had a prior conviction in Pennsylvania for a sex-related offense involving a child, which required Afzali to register as a sex offender. Next, Afzali testified that "[a]ll together there is supposed to be 11 videos" of Afzali and one of the child victims. In rebuttal, the State presented evidence that the police discovered 13 compact discs hidden in Afzali's apartment, which included sexual depictions of one of the child victims. We conclude Afzali has not shown that counsel was deficient for not objecting to the rebuttal evidence. Additionally, before the State's rebuttal case the district court cautioned Afzali that his testimony had opened the door to otherwise inadmissible evidence, i.e., the rebuttal evidence. Therefore, Afzali has neither shown that counsel forgoing an objection was objectively unreasonable nor that an objection would have created a reasonable probability of a different outcome at trial. See *Ennis v. State*, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006) ("[C]ounsel need not lodge futile objections to avoid ineffective assistance of counsel claims.").

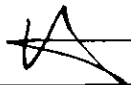
Thus, the district court did not err in denying this claim without conducting an evidentiary hearing.

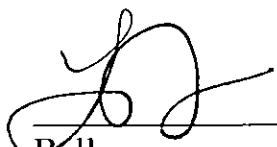
Next, Afzali argues that the cumulative effect of counsel's errors warrants relief. Even assuming that instances of deficient performance may be cumulated, *see McConnell v. State*, 125 Nev. 243, 259, 212 P.3d 307, 318 (2009), Afzali has not shown any deficiencies to cumulate.


Finally, to the extent Afzali assigns error to the district court concentrating on the prejudice prong during argument, we discern no error. *See Rippo v. State*, 134 Nev. 411, 423-24, 423 P.3d 1084, 1098 (2018) ("[A] court need not address the [*Strickland*] prongs in a particular order or even consider both prongs if the petitioner makes an insufficient showing on one.").

Having considered Afzali's contentions and concluding that they lack merit, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Herndon


_____, J.
Bell


_____, J.
Stiglich

cc: Hon. Tara D. Clark Newberry, District Judge
Jean J. Schwartz
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk