

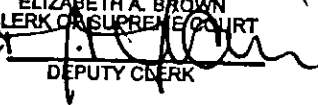
IN THE SUPREME COURT OF THE STATE OF NEVADA

JIM HWA CHEN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 85071

**FILED**

SEP 12 2025

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

*ORDER OF AFFIRMANCE*

This is an appeal from a district court order dismissing a postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Scott N. Freeman, Judge. Appellant Jim Hwa Chen, who was convicted of one count of sexual assault of a child under 14 years of age and five counts of lewdness with a child under 14 years of age, contends that the district court erred in dismissing two 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, 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*); see *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1113-14 (1996) (applying *Strickland* to appellate-counsel claims). 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). An evidentiary hearing is required when the petitioner supports the claims with specific factual allegations that are not repelled by the record and that, if true, would entitle the petitioner to relief. *Hargrove v. State*, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

First, Chen argues that trial and appellate counsel should have argued that the State failed to prove by clear and convincing evidence that the uncharged other acts at a hot springs preceded the charged conduct. Chen contends that he was prejudiced by counsel's failure to exclude the hot springs evidence because that evidence lent credibility to testimony about the charged offenses. We agree with Chen that the district court erred in dismissing this claim as procedurally barred and barred by the law of the case doctrine because Chen challenged the admission of the other act evidence on direct appeal. Because the postconviction claim challenged counsel's performance in opposing the motion to admit that evidence, it was not the same claim that was raised on direct appeal, nor was it a claim that could have been raised in a prior proceeding. See *Pellegrini v. State*, 117 Nev. 860, 883, 34 P.3d 519, 534 (2001) (reiterating that ineffective-assistance claims generally cannot be raised on direct appeal from a judgment of conviction), *abrogated on other grounds by Rippo v. State*, 134 Nev. 411, 423 n.12, 423 P.3d 1084, 1097 n.12 (2018). We nevertheless conclude that the district court reached the correct result when it rejected this claim because Chen did not plead sufficient facts to demonstrate that he was entitled to relief. See *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (recognizing that this court may affirm a district court decision that reaches the correct result for the wrong reason).

Contrary to the premise underlying Chen's ineffective-assistance claim, uncharged other-act evidence does not need to have preceded the charged conduct in order to be admissible. NRS 48.045(2) recognizes that "[e]vidence of other crimes, wrongs or acts" can be admissible for limited purposes. *See also* NRS 48.045(3) ("Nothing in this section shall be construed to prohibit the admission of evidence in a criminal prosecution for a sexual offense that a person committed another crime, wrong or act that constitutes a separate sexual offense."). It includes no temporal limit. Accordingly, Chen failed to allege sufficient facts to demonstrate deficient performance. *See Ennis v. State*, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006) (stating that counsel is not ineffective for failing to make futile objections). Moreover, as Chen failed to demonstrate that trial counsel could have excluded the evidence or that appellate counsel could show error in its admission, he failed to allege sufficient facts to show a reasonable probability of a different outcome at trial or on appeal had counsel challenged the evidence in this way.

Second, Chen argues that trial counsel should have cross-examined several witnesses, including the victim's mother, sister, and friends, as to their opinions of the victim's reputation for truthfulness. We conclude that this argument lacks merit.

As an initial matter, this ineffective-assistance claim is not properly before this court. In the petition and supplemental petition, Chen claimed that counsel should have investigated the victim's history of disciplinary problems related to dishonesty and examined trial witnesses about the victim's propensity to make up stories. Chen did not mention opinion testimony until the opposition to the State's motion to dismiss when Chen argued that counsel should have investigated the victim's specific acts

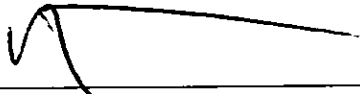
to be prepared to cross-examine witnesses who expressed an opinion as to the victim's truthfulness. As Chen did not claim below that counsel should have investigated and questioned witnesses as to their opinion of the victim's truthfulness, we need not consider the argument on appeal. *McNelson v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999) (declining to consider issues on appeal that were not raised in petitioner below).


Even if Chen's claim below could be construed to include counsel's failure to investigate and question these witnesses about their opinions of the victim's credibility, as opposed to investigating specific instances of dishonesty, we conclude that the district court did not err in rejecting this claim without conducting an evidentiary hearing. The cross-examination of witnesses reflects both strategic and tactical decisions about the presentation of the defense case that are the purview of counsel. See *Rhyne v. State*, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002) (recognizing that counsel is entrusted with decisions about legal tactics); *Wilson v. Gray*, 345 F.2d 282, 286 (9th Cir. 1965) (holding that "the accused may waive his right to cross examination and confrontation and that the waiver of this right may be accomplished by the accused's counsel as a matter of trial tactics or strategy"). Chen did not allege sufficient facts to demonstrate extraordinary circumstances necessary to overcome the "strong presumption that counsel's conduct falls within the range of reasonable professional assistance." *Strickland*, 466 U.S. at 689; see *Lara v. State*, 120 Nev. 177, 180, 87 P.3d 528, 530 (2004). Although Chen alleged that the victim may have lied or fabricated stories in the past, he did not allege how these instances shaped the opinions of the witnesses who testified for the State. See *Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) (requiring petitioner alleging that counsel's investigation was inadequate

to allege what the results of an adequate investigation would have shown). And the record supports a sound, strategic reason for not engaging in the cross-examination now urged by Chen. The evidence at trial included not only the victim's testimony, but also testimony about and recordings of Chen's acknowledgments that he abused the victim. Additionally, one of the victim's friends encouraged her to report the abuse to the police and the victim's mother testified that she confronted Chen, who partially admitted to the abuse, and subsequently initiated divorce proceedings. Given this evidence, counsel reasonably may have seen little value in attacking the credibility of a witness whose statements were corroborated by Chen or in seeking to impugn the victim's credibility by cross-examining witnesses who believed the victim's reports of abuse about the victim's general reputation for truthfulness. Lastly, given Chen's admissions, he failed to demonstrate a reasonable probability of a different outcome at trial had counsel pursued this line of cross-examination.

Having considered Chen's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.<sup>1</sup>

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

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

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

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<sup>1</sup>To the extent Chen asserts that he is entitled to relief based on the cumulative effect of counsel's errors, as he failed to show any error, his argument lacks merit.

cc: Hon. Scott N. Freeman, District Judge  
Edward T. Reed  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk