

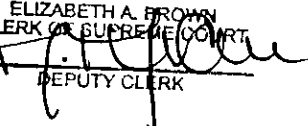
IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIS KING DAVIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89376

FILED

NOV 20 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. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

Appellant Willis King Davis argues the district court erred in denying two claims of ineffective assistance of counsel without conducting an evidentiary hearing. To demonstrate ineffective assistance of counsel, a petitioner must show (1) counsel's performance fell below an objective standard of reasonableness (deficient performance) and (2) a reasonable probability of a different outcome but for counsel's deficient performance (prejudice). *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*). Postconviction claims warrant an evidentiary hearing when the claims are supported by specific factual allegations that are not belied by the record and that would entitle the petitioner to relief if true. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). The petitioner bears the burden of proving the facts supporting the claims by a preponderance of the evidence. *Means v. State*, 120 Nev. 1001, 1012,

25-50832

103 P.3d 25, 33 (2004). We defer to the district court's factual findings, *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005); *Lara v. State*, 120 Nev. 177, 179, 87 P.3d 528, 530 (2004), and review the application of law to those facts de novo, *Evans v. State*, 117 Nev. 609, 622, 28 P.3d 498, 508 (2001), *overruled on other grounds by Lisle v. State*, 131 Nev. 356, 366 n.5, 351 P.3d 725, 732 n.5 (2015).

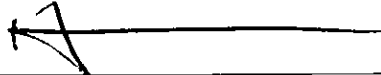
First, Davis argues trial counsel's defense strategy—that Davis's long-term use of phencyclidine (PCP), a dissociative hallucinogenic drug, led to false memories and a false confession—constituted ineffective assistance of counsel. We disagree. In assessing deficient performance, counsel is strongly presumed to have provided adequate assistance and exercised reasonable professional judgment in all significant decisions. *Strickland*, 466 U.S. at 690. Strategic decisions, such as what defenses to develop and witnesses to call, rest with counsel, *Rhyne v. State*, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002), and “will be virtually unchallengeable absent extraordinary circumstances,” *Lara*, 120 Nev. at 180, 87 P.3d at 530 (citation modified). Davis has not shown such circumstances. Counsel called multiple witnesses, including two experts, to testify as to Davis's PCP use, the long-term effects of PCP use on the brain, and the creation of false memories. And Davis does not demonstrate that, under the circumstances, trial counsel pursued an objectively unreasonable defense strategy. See *Gustave v. United States*, 627 F.2d 901, 904 (9th Cir. 1980) (“Mere criticism of a tactic or strategy is not in itself sufficient to support a charge of inadequate representation.”). Therefore, Davis failed to demonstrate trial counsel's performance was deficient. See *Strickland*, 466 U.S. at 697 (noting that there is no need “to address both components of the [ineffective assistance of counsel] inquiry if the defendant makes an insufficient

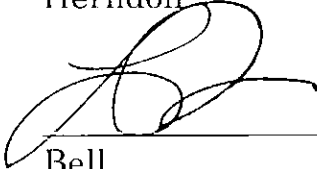
showing on one"). Thus, the district court did not err in denying this claim without conducting an evidentiary hearing.

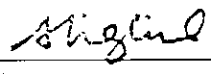
Second, Davis argues trial counsel was ineffective for failing to fully advise Davis of the strengths and weaknesses of the case. This ground for relief was not raised in either Davis's original or supplemental postconviction habeas petition, was not argued in the district court, and was not considered in the district court's order denying the petition. Accordingly, this claim was not properly raised below, and thus it need not be considered by this court. *See Davis v. State*, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991), *overruled on other grounds by Means v. State*, 120 Nev. 1001, 103 P.3d 25 (2004).

Having determined that Davis failed to demonstrate that relief is warranted, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Herndon


_____, J.
Bell


_____, J.
Stiglich

cc: Hon. Jacqueline M. Bluth, District Judge
Lowe Law LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk