

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MAALIKA DABNEY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 89911-COA

**FILED**

**DEC 16 2025**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Maalika Dabney appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on May 2, 2023, and a supplemental petition filed on February 22, 2024. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Dabney argues the district court erred by denying her 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. 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). To warrant an evidentiary hearing, a petitioner must raise claims supported by specific factual

allegations that are not belied by the 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, Dabney claimed counsel was ineffective for failing to file a pretrial motion or to request a jury instruction regarding the State's failure to collect surveillance video of the shooting. Dabney contended there were several nearby businesses with surveillance cameras that "likely" had video of the shooting and that the State acted in bad faith by failing to collect this video. Dabney's bare claim did not allege that these cameras were working at the time of the offense, specify the scope or viewpoint of these cameras, or describe what any surveillance video would have depicted beyond "the shooting."<sup>1</sup> Moreover, a police officer testified at trial that, although he did not obtain surveillance video from nearby businesses in this case, he had previously attempted to secure surveillance video from the gas station where the shooting occurred, and that when he previously viewed the gas station's surveillance video, "[i]t was very grainy" and "didn't have [a] good depiction of anything."

Therefore, Dabney failed to allege specific facts indicating counsel's performance was deficient or a reasonable probability of a different outcome but for counsel's errors. *See Daniels v. State*, 114 Nev. 261, 267, 956 P.2d 111, 115 (1998) (stating dismissal of the charges or an instruction presuming evidence would have been unfavorable to the State is warranted where the State fails to collect material evidence as a result of bad faith or gross negligence, respectively); *see also Chappell v. State*, 137

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<sup>1</sup>Indeed, Dabney appeared to concede that it was unknown whether the cameras were working at the time of the offense and what the scope or viewpoint of the cameras were.

Nev. 780, 788, 501 P.3d 935, 950 (2021) (stating a petitioner alleging ineffective assistance of counsel “must *specifically explain* how his attorney’s performance was objectively unreasonable” and “specifically articulate how counsel’s deficient performance prejudiced him or her” (quotation marks omitted)). Accordingly, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Second, Dabney claimed counsel was ineffective for failing to “fully inspect” the vehicle she was in on the day of the shooting. Dabney contended that the vehicle had a child safety feature that made it “impossible” to roll down the backseat windows “even half way” and that it was “impossible to see inside the vehicle” because the windows were tinted. Dabney claimed this evidence would have further undermined Officer Marcus Cook’s testimony that he saw Dabney sitting in the backseat of the vehicle, stick her arm out of the window, and fire the gun.

At trial, defense counsel attempted to impeach Cook on where he was standing leading up to, and at the time of, the shooting; whether he saw Dabney wearing a wig; and whether he saw Dabney lean out of, or move her head out of, the vehicle at the time of the shooting. During closing argument, defense counsel challenged Cook’s perception of the crime based on these purported discrepancies and argued, among other things, that the windows had a black tint and that the State had not proven the windows were capable of rolling down all the way. In light of the foregoing, Dabney failed to allege specific facts indicating counsel’s performance was deficient or a reasonable probability of a different outcome but for counsel’s errors. Accordingly, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Third, Dabney claimed counsel was ineffective for failing to communicate with her prior to trial. Dabney contended that she wanted to discuss case strategy, potential defenses, investigation to be conducted, witnesses that could potentially assist her defense, and a “possible offer” mentioned by an investigator. Dabney’s bare claim did not specify how additional communication with counsel would have affected the outcome of the trial. In particular, Dabney did not specify what defenses or strategies she was unable to discuss with counsel, what investigation counsel failed to conduct, or the identity of the witnesses that could have assisted her defense. Therefore, Dabney failed to allege specific facts indicating counsel’s performance was deficient or a reasonable probability of a different outcome but for counsel’s errors. *See Morris v. Slappy*, 461 U.S. 1, 13-14 (1983) (holding that parties are not entitled to a meaningful relationship with counsel).

Moreover, Dabney did not provide specific facts concerning a possible plea offer or allege that there was a reasonable probability counsel could have obtained a plea offer from the State that she would have accepted absent counsel’s alleged deficiency, the State would not have withdrawn its plea offer in light of intervening circumstances, or the district court would have accepted such an offer. *Cf. Lafler v. Cooper*, 566 U.S. 156, 163-64 (2012); *see also Missouri v. Frye*, 566 U.S. 134, 147 (2012) (requiring a showing of “a reasonable probability that the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time”). Accordingly, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Fourth, Dabney claimed counsel was ineffective for failing to call a DNA expert at trial. Dabney contended that an expert for the State testified that the lab items related to the gun used in the shooting were not suitable for comparison, which allowed the State to argue it was possible her DNA was in fact on the gun. Dabney's bare claim did not specify what such an expert would have found or why their testing of the gun would have yielded a different result. Moreover, the State argued in closing and rebuttal that the lack of DNA evidence was not surprising because Dabney may not have left DNA on the gun despite touching and using it, Dabney could have washed off any DNA in the bathroom where the gun was disposed of, or any DNA could have rubbed off when the gun was placed in the garbage can. Therefore, Dabney failed to allege specific facts indicating counsel's performance was deficient or a reasonable probability of a different outcome but for counsel's errors. Accordingly, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Fifth, Dabney claimed counsel was ineffective for advising her not to testify in her own defense. Dabney contended this was a mistake because she would have explained why she was at the gas station, that she did not have any issues with the victim and "was actually trying to calm the situation down," and that her position in the vehicle as it drove away would have made it impossible for her to be the shooter.

On the fourth day of trial, the trial court canvassed Dabney regarding her right to testify. The State indicated that, if she took the stand, it intended to prove Dabney had been convicted of at least one felony: attempted battery with substantial bodily harm in 2019. Given this prior criminal conviction, Dabney's bare claim failed to specify why objectively


reasonable counsel would have advised her to testify at trial. *See Yates v. State*, 95 Nev. 446, 450, 596 P.2d 239, 242 (1979) (recognizing a defendant's "anticipation of the state's use of his prior felony convictions may [be] a strong factor affecting his decision not to testify"). Moreover, Dabney did not allege counsel coerced or misled her into waiving her right to testify. Therefore, Dabney failed to allege specific facts indicating counsel's performance was deficient or a reasonable probability of a different outcome but for counsel's errors. Accordingly, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Finally, Dabney claimed the cumulative effect of counsel's deficiencies warranted vacating her conviction. Even assuming any such errors may be cumulated, *see McConnell v. State*, 125 Nev. 243, 259 n.17, 212 P.3d 307, 318 n.17 (2009), Dabney failed to demonstrate multiple errors to cumulate, *see Burnside v. State*, 131 Nev. 371, 407, 352 P.3d 627, 651 (2015) (noting cumulative error claims require "multiple errors to cumulate"). Accordingly, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

In light of the foregoing, we

ORDER the judgment of the district court AFFIRMED.

  
Bulla, C.J.

  
Gibbons, J.

  
Westbrook, J.

cc: Hon. Michelle Leavitt, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Waldo Law, LLC  
Eighth District Court Clerk