

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL MCNAIR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89912-COA

FILED

JAN 13 2026

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY Al Jones
DEPUTY CLERK

ORDER OF AFFIRMANCE

Michael McNair appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on January 4, 2023, and supplemental petition filed on July 29, 2024. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

McNair argues the district court erred by denying his claims that trial counsel were ineffective without first 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, 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). 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, McNair claimed trial counsel were ineffective for failing to investigate several unnamed witnesses. McNair failed to allege who these witnesses were or what their testimony would have been. Therefore, McNair failed to support this claim with specific facts not belied by the record that, if true, would entitle him to relief, and his claim did not demonstrate trial counsels' performances were deficient or that there was a reasonable probability of a different outcome at trial but for this alleged error. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) (stating a petitioner claiming counsel did not conduct an adequate investigation must specify what a more thorough investigation would have uncovered). Thus, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Second, McNair claimed trial counsel were ineffective for failing to locate a witness, Kenneth Saldana, prior to trial. McNair claimed he did not know of any efforts trial counsel undertook to locate Saldana before requesting that Saldana's preliminary hearing testimony be read into the trial record.¹ However, in the motion in limine to introduce Saldana's preliminary hearing testimony, counsel stated that Saldana was homeless and that numerous attempts to locate him had been fruitless. Further, in the affidavit attached to the motion, the defense investigator stated his

¹Saldana testified at the preliminary hearing that it was not McNair who shot the victim, contradicting the testimony of several other witnesses.

search “included numerous attempts and sweeps of the homeless area in which the event occurred” and included “computer searches for next of kin, last known addresses, and monitoring the local detention records and court filings.” Further, McNair failed to identify what further efforts counsel should have undertaken in order to procure Saldana’s presence at trial. *See id.* Given this information, McNair failed to demonstrate trial counsels’ performances were deficient.

Further, McNair failed to demonstrate a reasonable probability of a different outcome at trial had counsel located and presented Saldana as a witness at trial because Saldana’s testimony was read into the trial record.² Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Third, McNair claimed trial counsel were ineffective for failing to communicate. He claimed trial counsel failed to communicate with any regularity and did not meet with him sufficiently in order to prepare an effective defense for trial. McNair argued trial counsel needed to discuss possible defenses with him and make sure he understood all consequences if he went to trial and lost. Further, McNair acknowledged he had contact

²To the extent McNair argues that, due to counsels’ failure to locate Saldana, the State presented improper testimony regarding Saldana’s demeanor on the stand during the preliminary hearing, this claim is belied by the record. At trial, the State had an investigator testify about his attempts to locate Saldana. The investigator testified Saldana was uncooperative and inebriated the times the investigator contacted him. This testimony was not a comment on Saldana’s demeanor on the stand, and we note that the supreme court found the testimony was proper. *See McNair v. State*, No. 78871, 2022 WL 575744 (Nev. Feb. 24, 2022) (Order of Affirmance).

with the defense investigator in preparation for trial, but he alleged that contact was limited.

McNair failed to allege what defenses trial counsel should have discussed with him or what further investigation may have uncovered had the investigator had more contact with McNair. He also failed to allege what consequences of going to trial he did not understand. Thus, McNair failed to support this claim with specific facts not belied by the record that, if true, would demonstrate that trial counsels' performances were deficient or that there was a reasonable probability of a different outcome at trial had counsel or the investigator communicated with him further. *See Molina*, 120 Nev. at 192, 87 P.3d at 538. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Fourth, McNair claimed trial counsel were ineffective for failing to call an expert witness at trial. McNair alleged trial counsel had noticed an expert for trial who could testify about "crime scene analysis, crime scene investigation, processing of crime scenes, collection and preservation, latent print comparison, blood splatter evidence, ballistics, DNA evaluations and give opinions thereto" but failed to specifically allege what the expert's testimony would be or how it would have affected the outcome of trial. *See Chappell v. State*, 137 Nev. 780, 788, 501 P.3d 935, 950 (2021) (stating "a petitioner must do more than baldly assert that his attorney could have, or should have, acted differently" but must instead "specifically explain how his attorney's performance was objectively unreasonable" (quotation marks omitted)). Therefore, McNair failed to support this claim with specific facts not belied by the record that, if true, would demonstrate counsels' performances were deficient or a reasonable probability of a different

outcome at trial. Thus, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Fifth, McNair claimed trial counsel were ineffective for failing to call Trisha McNair at trial. McNair failed to explain what this witness would have testified to or how that testimony would have affected his trial. Therefore, he failed to support this claim with specific facts not belied by the record that, if true, would demonstrate counsels' performances were deficient or a reasonable probability of a different outcome at trial. *Id.* Thus, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Sixth, McNair claimed trial counsel were ineffective for advising him not to testify on his own behalf at trial. McNair claimed that he wanted to testify but that counsel advised him not to testify because of his stutter. McNair was properly canvassed on his right to testify on his own behalf and acknowledged the decision to testify was his to make. Further, the candid advice of counsel is not evidence of deficient performance.³ *Cf. Dezzani v. Kern & Assocs., Ltd.*, 134 Nev. 61, 69, 412 P.3d 56, 62 (2018) (noting that one of the roles of an attorney is to provide candid advice to their client). Finally, McNair failed to demonstrate a reasonable probability of a different outcome at trial had he testified. McNair offered that he would have testified about "how his altercation with the victim began, the circumstances surrounding the altercation, and why [Mitchell


³We note McNair had three prior felony convictions. Given these prior convictions, McNair's claim failed to specify why objectively reasonable counsel would have advised him 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").

Johnson⁴] was there and what [McNair] discussed with [Johnson].” McNair also asserted he would have explained why Johnson identified McNair as the shooter. Because this was the extent of McNair’s claim, he failed to provide specifics as to what his testimony would have encompassed. Thus, he failed to support his claim with specific facts not belied by the record that, if true, would entitle him to relief. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Finally, McNair claimed the cumulative errors of trial counsel entitled him to relief. Even if multiple instances of deficient performance could be cumulated for purposes of demonstrating prejudice, *see McConnell v. State*, 125 Nev. 243, 259 & n.17, 212 P.3d 307, 318 & n.17 (2009), McNair failed to demonstrate any errors to cumulate. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

⁴Mitchell Johnson was McNair’s half-brother, was with him when the shooting occurred, and was identified by Saldana as the shooter.

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