



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHNATHAN BRADLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 90983-COA

ORDER OF AFFIRMANCE

Johnathan Bradley appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on March 20, 2020, and supplement. Eighth Judicial District Court, Clark County; Hon. Joseph Hardy, Jr., Judge.

Bradley was convicted, pursuant to a jury verdict, of nine counts in relation to a burglary and robbery he committed with his brother Delphonso Bradley. The supreme court affirmed the judgment of conviction on direct appeal, *see Bradley v. State*, No. 75464, 2019 WL 1422716 (Nev. Mar. 28, 2019) (Order of Affirmance), and Bradley filed the instant postconviction habeas petition pro se. The district court denied the petition, and this court reversed the district court's decision in part and remanded the matter for an evidentiary hearing on two of Bradley's claims of ineffective assistance of counsel. *See Bradley v. State*, No. 82006-COA, 2021 WL 4167112, at *1-2 (Nev. Ct. App. Sep. 13, 2021) (Order Affirming in Part, Reversing in Part and Remanding).

On remand, postconviction counsel was appointed and filed a supplement to the petition. Three witnesses testified at the evidentiary hearing: a private investigator who was appointed for the postconviction proceedings (Kenneth Hardy), trial counsel (Jess Matsuda), and Bradley.

Thereafter, the district court denied the petition again, and Bradley filed the instant appeal.

On appeal, Bradley argues the district court erred by denying his remaining claims of ineffective assistance of counsel. 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).

First, Bradley claimed counsel was ineffective for failing to investigate his alibi. Bradley contended that, at the time the crimes were being committed, he was dropping off the mother of his children (Tarik Negash) at work and then going to a 7-Eleven before returning home. He contended that counsel failed to interview Negash or obtain surveillance video from the 7-Eleven, both of which could have corroborated his alibi.

Even if counsel was deficient for failing to interview Negash or investigate the aforementioned surveillance video,¹ Bradley did not demonstrate a reasonable probability of a different outcome at trial but for counsel's errors. Negash did not testify at the evidentiary hearing,² and Bradley did not present any other evidence as to what Negash would have testified had she been called as a witness at trial. Thus, Bradley failed to demonstrate by a preponderance of the evidence that Negash's testimony would have corroborated his alibi.

Moreover, the State presented substantial evidence of Bradley's guilt at trial, including (1) Delphonso's girlfriend's testimony that she informed a detective and testified at the grand jury hearing that Delphonso left their apartment the morning of the crimes to go meet someone, that Delphonso and Bradley subsequently returned and admitted to participating in a robbery, that Bradley had a gun on him that he claimed to have stolen from the victim,³ and that she was asked to go retrieve Bradley's vehicle; (2) evidence that a bloodstain found in the victim's bedroom resulted in a mixture DNA profile that was 78,500 times more likely to have Bradley as a contributor than not; and (3) historical cell phone data indicating Bradley's phone called Delphonso's phone shortly before the crimes were committed, was near the scene of the

¹Assuming without deciding that counsel's performance was deficient, we need not address Bradley's arguments challenging the district court's findings related to deficiency.

²Hardy testified that he attempted to contact Negash regarding testifying at the evidentiary hearing but could not locate her.

³The victim also testified at trial that one of his firearms was missing after the incident and was never recovered.

crimes during their commission, and was near Delphonso's apartment after the crimes were committed.

Apart from his own testimony, Bradley did not present any evidence at the evidentiary hearing to support his purported alibi. In light of the evidence presented at trial, Bradley failed to demonstrate by a preponderance of the evidence that, had counsel recovered the aforementioned surveillance video, such video would have shown he was at a 7-Eleven at the time the crimes were committed. *See Strickland*, 466 U.S. at 696 (“[A] verdict or conclusion only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support.”). Accordingly, we conclude the district court did not err by denying this claim.

Second, Bradley claimed counsel was ineffective for failing to adequately communicate with him. In particular, Bradley contended that he and his family attempted to contact counsel many times, that counsel ignored them, and that counsel only visited him three times for a total of 50 minutes. The district court found that counsel visited Bradley in jail at least twice, that counsel's investigator visited Bradley in jail at least once, and that counsel spoke with Bradley multiple times in court. The district court's findings are supported by the record.

To the extent Bradley generally claimed that counsel should have communicated with him more or should have responded to his or his family's calls, he failed to demonstrate counsel's performance was deficient. *See Morris v. Slappy*, 461 U.S. 1, 13-14 (1983) (holding that parties are not entitled to a meaningful relationship with counsel); *see also Chappell v. State*, 137 Nev. 780, 788, 501 P.3d 935, 950 (2021) (stating that, to overcome the presumption that counsel performed effectively, “a petitioner must do more than baldly assert that his attorney could have, or should have, acted differently” and must

“specifically explain how his attorney’s performance was objectively unreasonable” (quotation marks omitted)). To the extent Bradley claimed that he needed additional time to communicate with counsel regarding his alibi, Bradley failed to demonstrate a reasonable probability of a different outcome at trial had counsel communicated with him more for the reasons previously discussed. Therefore, we conclude the district court did not err by denying this claim.

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.



Bulla, C.J.



Gibbons, J.



Westbrook, J.

cc: Hon. Joseph Hardy Jr., District Judge
Clark County District Attorney
Attorney General/Carson City
Law Office of Rachael E. Stewart
Eighth District Court Clerk