

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN LAMONT ALFORD,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 62763

FILED

DEC 17 2013

TRAMIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court dismissing a post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

On appeal from the denial of his June 2, 2011, petition and his June 6, 2012, supplemental petition, appellant argues that the district court erred by denying his claims of ineffective assistance of counsel as alleged in grounds 14, 15, and 16.<sup>1</sup> 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

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<sup>1</sup>Appellant concedes that grounds 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 17 were properly dismissed by the district court pursuant to NRS 34.810(1)(b)(2). Ground 13 was also dismissed by the district court pursuant to NRS 34.810(1)(b)(2), and appellant provides no argument on appeal. Therefore, we need not address the matter. *See generally Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987). Further, appellant concedes that the allegations of ground 1 are unsupported and contradicted by the record.

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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*). 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).

First, appellant argues that trial counsel was ineffective for failing to perform adequate pretrial investigation. Specifically, appellant argues that trial counsel failed to interview Detective Jenkins, who recorded a conversation between appellant and his girlfriend and informed the jury about that conversation, and thus allowed the State to portray appellant in an unfavorable light. Appellant fails to provide this court with an adequate appendix containing trial transcripts for this court's review on appeal. *See Thomas v. State*, 120 Nev. 37, 43 & n.4, 83 P.3d 818, 822 & n.4 (2004) (appellant is ultimately responsible for providing this court with portions of the record necessary to resolve his claims on appeal); *Greene v. State*, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980) ("The burden to make a proper appellate record rests on appellant"). Accordingly, appellant fails to demonstrate how a pretrial interview with Detective Jenkins would have altered the trial testimony or the outcome of the trial. Therefore, appellant fails to demonstrate that the district court erred in denying this claim.

Second, appellant argues that trial counsel was ineffective for failing to file a motion to suppress, or make an objection to the admission

of, the recorded conversation between appellant and his girlfriend. Appellant argues that Detective Jenkins secretly recorded the conversation without first informing him of his constitutional rights under *Miranda v. Arizona*, 384 U.S. 436 (1966). Appellant fails to demonstrate deficiency or prejudice as he fails to show that a motion to suppress would have been successful.<sup>2</sup> See *Kirksey v. State*, 112 Nev. 980, 990, 923 P.2d 1102, 1109 (1996); see also *Thomas*, 120 Nev. at 43 & n.4, 83 P.3d at 822 & n.4; *Greene*, 96 Nev. at 558, 612 P.2d at 688. Thus, appellant fails to demonstrate that the district court erred in denying this claim.

Third, appellant argues that trial counsel was ineffective for failing to submit a proposed jury instruction on manslaughter and for failing to object to the State's jury instructions. As appellant fails to provide this court with an adequate appendix containing trial transcripts or jury instructions for this court's review on appeal, see *Thomas*, 120 Nev. at 43 & n.4, 83 P.3d at 822 & n.4; *Greene*, 96 Nev. at 558, 612 P.2d at 688, appellant fails to demonstrate that the district court erred in denying this claim.

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<sup>2</sup>In appellant's appeal from the judgment of conviction, *Alford v. State*, Docket No. 53415 (Order of Affirmance, July 22, 2010), we concluded that his argument regarding the admission of the recorded conversation was without merit because he failed to object to or file a motion to suppress the evidence, that he failed to demonstrate that his girlfriend should be considered an agent of the police, and that he failed to demonstrate that the admission of the evidence prejudicially impacted the verdict when viewed in context of the trial as a whole.

Having considered appellant's claims and concluded that no relief is warranted, we

ORDER the judgment of the district court AFFIRMED.

Pickering, C. J.  
Pickering

Hardesty, J.  
Hardesty

Cherry, J.  
Cherry

cc: Hon. Patrick Flanagan, District Judge  
Story Law Group  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk