

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TRAVIS WILFORD BOWLES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71311

FILED

DEC 14 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Travis Wilford Bowles appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Bowles claims the district court erred by denying his claims of ineffective assistance of counsel. To prove ineffective assistance of counsel, a petitioner must demonstrate counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability, 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). 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 support his petition with specific facts, not belied by the record, that, if true, would entitle him to relief. *See Hargrove v. State*, 100 Nev. 498, 686 P.2d 222 (1984).

First, Bowles claimed counsel was ineffective for failing to challenge language in the information. Bowles failed to demonstrate he was prejudiced. Even assuming the language in the information regarding “allow” was incorrect, Bowles failed to demonstrate a reasonable probability of a different outcome had counsel objected to the language. Had counsel objected to the language, the State likely would have been permitted to amend the language in the information. *See NRS 173.095(1); Viray v. State*, 121 Nev. 159, 162-163; 111 P.3d 1079, 1081-82 (2005). Further, even without the “allowed” language, the information sufficiently alleged the crime of lewdness. Therefore, the district court did not err by denying this claim without holding an evidentiary hearing.¹

Second, Bowles claimed counsel was ineffective for failing to challenge the information because the information charged more than one crime in each count. Further, Bowles argues the information was insufficient because it did not allege in what room of the home the conduct took place. Bowles failed to demonstrate counsel was deficient or resulting

¹Bowles also raised the underlying claim as a claim under NRS 34.360, as an original habeas corpus petition. However, NRS 34.360 is limited to persons who are inquiring into the cause of their imprisonment or restraint. Bowles is not inquiring into the cause of his imprisonment or restraint but rather is challenging the validity of his judgment of conviction. Therefore, the district court erred by reaching the merits of this claim. However, because the district court reached the correct result, we affirm the denial of this claim. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338 (1970).

prejudice. The information did not charge more than one crime per count, but instead, offered alternative theories for each count charged. The State is allowed to allege different theories for each crime charged, *see* NRS 173.075(2), and the jury is not required to be unanimous in its determination of what theory constituted the crime, *see Richardson v. United States*, 526 U.S. 813, 817 (1999); *see also Anderson v. State*, 121 Nev. 511, 515, 118 P.3d 184, 186 (2005).

Further, even assuming the State should have included information regarding which rooms in the home the conduct occurred, Bowles was on notice from the preliminary hearing as to what rooms the conduct occurred. "An inaccurate information does not prejudice a defendant's substantial rights if the defendant had notice of the State's theory of prosecution." *Viray*, 121 Nev. at 1082, 111 P.3d at 162-63. In addition, had counsel objected, the State likely would have been allowed to amend the information to include location information. *See* NRS 173.095(1). Therefore, Bowles failed to demonstrate a reasonable probability of a different outcome had counsel objected. Accordingly, the district court did not err by denying this claim without holding an evidentiary hearing.

Third, Bowles claimed counsel was ineffective for failing to file a motion to suppress his interview with police officers. Bowles claimed he was in custody and interrogated without being given his *Miranda*² warnings. The district court concluded counsel was not deficient because Bowles failed to demonstrate the motion would have been successful. Specifically, the district court found, based on evidence presented at trial,

²*Miranda v. Arizona*, 384 U.S. 436 (1966).

Bowles failed to demonstrate he was in custody. The district court found the police asked Bowles to drive to the station for an interview and Bowles stated he would after putting some things away. He took his time and then followed officers to the police station in his own vehicle. Once in the room, Bowles was informed he was not under arrest and he told the officers "I figured that one." Bowles was not handcuffed or restrained in any way. The door of the interview room was unlocked, the door was not blocked, and he at one point announced he needed to use the bathroom and left the room. Further, he was not arrested that day. Based on the totality of these circumstances, the district court concluded Bowles was not in custody at the time of his interview, and therefore, any motion to suppress the interview would have been futile.

The district court's decision is supported by substantial evidence, *see State v. Taylor*, 114 Nev. 1071, 1082, 968 P.2d 315, 323 (1998); *Donovan v. State*, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978), and we conclude the district court did not err by denying this claim without holding an evidentiary hearing.


Next, Bowles claims the district court erred by denying his claim his preliminary hearing counsel had a conflict of interest because the public defender's office previously, or at the time of the preliminary hearing, represented the victims' father. "In order to establish a violation of the Sixth Amendment, a defendant who raised no objection at trial must demonstrate that an actual conflict of interest adversely affected his lawyer's performance." *Cuyler v. Sullivan*, 446 U.S. 335, 348 (1980). "[A] defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice in order to obtain relief." *Id.* at 349-50.

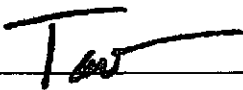
Bowles failed to demonstrate he was prejudiced. At the preliminary hearing, the State only had to prove slight or marginal evidence to support the charges in the criminal complaint. *See Sheriff, Washoe Cty. v. Hodes*, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980). Bowles did not demonstrate that absent the alleged conflict the State would not have been able to meet his standard. Further, he failed to demonstrate the adequacy of his preliminary hearing counsel's representation was influenced by the alleged conflict. We reject Bowles' assertion the alleged conflict amounted to the deprivation of counsel. Finally, we note, after the preliminary hearing, new counsel was appointed to represent Bowles at trial who did not have a conflict of interest. Accordingly, we conclude the district court did not err by denying this claim without holding an evidentiary hearing.


Next, Bowles claims the district court erred by denying his claim the lewdness statute, NRS 201.230, was unconstitutionally vague as applied to Bowles. This claim was procedurally barred because it could have been raised on appeal from Bowles' judgment of conviction and sentence and he failed to demonstrate good cause and prejudice to overcome the procedural bar. *See NRS 34.810(1)(b)*. We note application of the procedural bars is mandatory. *See State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). Therefore, the district court did not err by denying this claim without holding an evidentiary hearing.

Finally, Bowles claims the district court erred by denying his claim cumulative error entitled him to relief. Bowles failed to demonstrate any alleged errors, singly or cumulatively, would have had a reasonable probability of altering the outcome at trial. Therefore, the district court did not err by denying this claim without holding an evidentiary hearing.

Having concluded Bowles was not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Connie J. Steinheimer, District Judge
Edward T. Reed
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk