

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JERRY LEE DIXON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72100

FILED

JAN 09 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Jerry Lee Dixon appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

Dixon argues the district court erred in denying the claims of ineffective assistance of counsel he raised in his August 5, 2015, petition and supplement. 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).

First, Dixon argued his trial counsel was ineffective for failing to present witnesses in order to demonstrate Dixon and the victim had not been romantically involved. Dixon asserted counsel should have presented witnesses to show the victim attacked him because Dixon refused to engage in a romantic relationship. Dixon failed to demonstrate his trial counsel was ineffective or resulting prejudice. At trial, the victim testified he and Dixon had been in a romantic relationship for five years and another witness testified it was her understanding the victim and Dixon were romantically involved. However, Dixon testified he and the victim were merely friends and roommates. Dixon did not identify any other witnesses counsel could have presented to provide further information regarding the nature of the relationship and a bare claim is insufficient to demonstrate a petitioner is entitled to relief. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Accordingly, Dixon failed to demonstrate his counsel acted in an objectively unreasonable manner or a reasonable probability of a different outcome had counsel attempted to present further information regarding the relationship. Therefore, we conclude the district court did not err in denying this claim.

Second, Dixon argued his trial counsel was ineffective for failing to use a peremptory challenge on juror no. 17. Dixon asserted counsel should have challenged juror no. 17 because during voir dire the juror revealed domestic violence impacted his coworker and the coworker's abusive partner had visited their place of employment, he had a professional relationship with the families of deceased police officers due to his employment as the director of a funeral home, and he expressed doubt

about Dixon's innocence. Dixon failed to demonstrate his counsel's performance was deficient or resulting prejudice.

The juror in this matter responded to questions regarding experiences with domestic violence and interactions with police officers. At no time did the juror assert or imply that these issues would cause him to be biased against Dixon. Dixon also failed to demonstrate the juror's background was "replete with circumstances which would call into question his ability to be fair," *Sanders v. Sears-Page*, 131 Nev. ___, ___, 354 P.3d 201, 207 (Ct. App. 2015), and therefore, did not demonstrate the juror had an implicit bias against him.

In addition, the record demonstrates the juror did not express doubt regarding Dixon's presumption of innocence. Dixon's counsel questioned this juror regarding the presumption of innocence and the juror responded that he had not heard any facts of the case yet, so he did not know if Dixon was guilty or innocent. Counsel posed a follow-up question, "[s]o would that mean as he's sitting right here he technically is innocent?" and juror no. 17 responded "[y]es." Moreover, at the beginning of trial, the trial court instructed the jury Dixon was presumed to be innocent and jurors are presumed to follow the district court's instructions. *See Lisle v. State*, 113 Nev. 540, 558, 937 P.2d 473, 484 (1997).

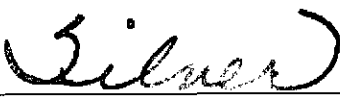
Given the nature of the questions and juror no. 17's responses, Dixon failed to demonstrate objectively reasonable counsel would have challenged the juror or a reasonable probability of a different outcome had counsel challenged the juror. Therefore, we conclude the district court did not err in denying this claim.


Third, Dixon argued his trial counsel was ineffective for failing to challenge the competency of Dr. Lisa Gavin to testify regarding living tissue. Dixon asserted Dr. Gavin is a forensic pathologist and only qualified to testify regarding examinations of the deceased, and not the alive victim in this matter. Dixon failed to demonstrate his counsel's performance was deficient or resulting prejudice. Dr. Gavin testified regarding her background, training, and education as a medical doctor and forensic pathologist. She then testified she has used those skills to examine strangulation victims, both living and deceased. She further explained how she ascertains if a person has been strangled, for both living and deceased persons. She then applied those techniques to her review of photographs depicting the victim in this matter and testified abrasions on his neck and petechial hemorrhages in his eyes indicated he had been strangled. A review of Dr. Gavin's testimony demonstrates it was admitted in compliance with NRS 50.275, and Dixon failed to demonstrate objectively reasonable counsel would have asserted this was impermissible expert testimony. See *Higgs v. State*, 126 Nev. 1, 18-19, 222 P.3d 648, 658-59 (2010). As Dr. Gavin's testimony was properly admitted at trial, Dixon failed to demonstrate a reasonable probability of a different outcome had counsel raised objections to this expert testimony. Therefore, we conclude the district court did not err in denying this claim.

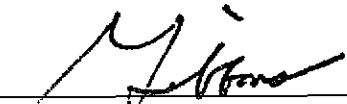
Next, Dixon argues the district court erred in denying the petition without conducting an evidentiary hearing. To warrant an evidentiary hearing, a petitioner must raise claims that are supported by specific allegations not belied by the record, and if true, would entitle him

to relief. *Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225. The district court concluded Dixon's claims failed to meet that standard and the record before this court reveals the district court's conclusions in this regard were proper. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Chief Judge, Eighth Judicial District Court
Law Office of Nadine Morton
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk