

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DEMETRIUS METMET BLACK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73352

FILED

MAR 14 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Demetrius Metmet Black appeals from an order of the district court denying the postconviction petition for a writ of habeas corpus he filed on December 16, 2015, and the supplement he filed on June 30, 2016. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

Black claims the district court erred by denying his claims he received ineffective assistance of counsel at trial. 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).

Black claimed counsel was ineffective for failing to file a motion for a pretrial physical lineup; to hire an expert to consult with regarding trial strategy for attacking the eyewitness identifications and to testify at trial about the unreliability of eyewitness identifications; and to effectively cross-examine two witnesses who identified him. Black failed to demonstrate he was prejudiced.

The district court found Black's connection to the robberies was predominantly based on accomplice testimony and physical evidence. Black, his codefendant, and the accomplice were found in possession of many of the items taken in the robberies. Further, Black's cellphone pinged cellphone towers in the area of the robberies, which placed him in the area of the robberies at the time they occurred. Further, the accomplice testified extensively about what Black and the codefendant told her happened during the robberies which was corroborated by the victims' testimony. Therefore, the district court concluded Black failed to demonstrate a reasonable probability of a different outcome at trial had counsel motioned for a pretrial lineup, hired an expert, or further cross-examined the victims. Substantial evidence supports the findings of the district court, and we conclude the district court did not err by denying these claims without first holding an evidentiary hearing. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).


Black also claimed counsel was ineffective for failing to request a jury instruction regarding the credibility of accomplice testimony. Specifically, he claimed counsel should have requested an instruction that accomplice testimony is suspect because of the potential bias a bought-and-paid-for witness always has.

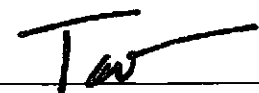
Black failed to demonstrate he was prejudiced because he failed to demonstrate a reasonable probability of a different outcome at trial had counsel requested the abovementioned instruction. The district court found

Black failed to show how the proposed instructions in his supplemental petition would have made a difference in light of the very express, detailed testimony given at trial that law enforcement was able to corroborate and in light of all of the other evidence presented at trial. Substantial evidence supports the decision of the district court, and we conclude the district court did not err by denying this claim without holding an evidentiary hearing. *See id.*

Finally, Black claimed the cumulative errors of counsel warranted relief. We disagree because Black failed to demonstrate prejudice resulting from the cumulative effect of any deficiencies in counsel's representation. *See McConnell v. State*, 125 Nev. 243, 259 n.17, 212 P.3d 307, 318 n.17 (2009). Therefore, the district court did not err by denying this claim without holding an evidentiary hearing. *See id.* Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Carolyn Ellsworth, District Judge
Terrence M. Jackson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk