

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVEYON D. CAMPBELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75098-COA

FILED

FEB 13 2019

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

ORDER OF AFFIRMANCE

Daveyon D. Campbell appeals from a district court order denying a timely postconviction petition and supplemental petitions for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

Campbell asserts the district court erred by denying his petition because he was deprived of effective assistance of counsel. To prevail on a claim of ineffective assistance of counsel, a petitioner must show (1) counsel's performance was deficient because it fell below an objective standard of reasonableness and (2) the deficiency prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Both components of the ineffective-assistance inquiry must be shown. *Id.* at 697. We review the district court's resolution of ineffective-assistance claims de novo, giving deference to the court's factual findings if they are supported by substantial evidence and are not clearly wrong. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

First, Campbell claims trial counsel was ineffective for failing to investigate his mental health. Campbell argues such an investigation would have allowed counsel to do a better job of advising him regarding the

State's plea offer, present evidence to the jury that rebutted the State's theory of culpability, and present mitigating evidence to the district court that may have resulted in a lesser sentence.

The district court conducted an evidentiary hearing on this claim and made the following findings. Campbell did not show any signs of mental health issues when he spoke, none of the trial witnesses said he suffered from mental health issues, and nothing in the trial record demonstrates counsel should have been aware of any mental health concerns. Campbell's testimony that he did not understand the plea offer and thought the outcome would be the same whether he accepted the plea offer or went to trial was not credible. Evidence of Campbell's mental health would not have rebutted the State's theory of culpability because it showed he had the ability to form intent. And evidence of Campbell's mental health would not have mitigated his sentence because the sentence was based on the facts and circumstances of the crime, Campbell's criminal history, the impact of the crime on the victim and the victim's family, and the mitigating factors presented through Campbell's counsel during the trial and at sentencing.

We conclude the district court's findings are supported by substantial evidence and are not clearly wrong, Campbell failed to demonstrate counsel was ineffective, and the district court did not err by rejecting this claim. *See Means v. State*, 120 Nev. 1001, 1012-13, 103 P.3d 25, 33 (2004) (petitioner bears the burden of proving ineffective assistance).

Second, Campbell claims trial counsel was ineffective for failing to investigate Mary Holloway's drug use. Campbell argues Holloway's testimony was crucial to the State's case and counsel could have used evidence of her drug use to impeach her testimony. However, the district

court found the drug-use allegations came from people associated with Campbell, none of these people actually claimed Holloway was under the influence of drugs when she spoke with the victim at the hospital, and consequently the value of this impeachment evidence was questionable at best. We conclude the district court's findings are supported by substantial evidence and are not clearly wrong, Campbell failed to demonstrate counsel was ineffective, and the district court did not err by rejecting this claim. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) (a petitioner claiming counsel did not conduct an adequate investigation must show how a better investigation would have made a more favorable outcome probable).

Third, Campbell claims trial counsel was ineffective for failing to object to Henry Weatherspoon's testimony regarding "why [Campbell] did not want to report his assault to the police." Campbell argues Weatherspoon was allowed to provide speculative and unsupported expert opinion testimony despite the fact he was not noticed as an expert. However, the district court found that Weatherspoon's testimony was based on his experience as a security guard, it was in line with lay opinion testimony as defined by NRS 50.265, and it was not prejudicial because it addressed "a tangential point that did not really address guilt or innocence." We conclude the district court's findings are supported by substantial evidence and are not clearly wrong, Campbell failed to demonstrate counsel was ineffective, and the district court did not err by rejecting this claim. *See generally Ennis v. State*, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006) (counsel cannot be deemed ineffective for failing to make futile objections).

Fourth, Campbell claims trial counsel was ineffective for making several inappropriate comments about Crime Scene Analyst Brenda Vaandering's appearance. Campbell argues these comments were

offensive to the average person and likely had the effect of prejudicing the jury against him. However, the district court found this claim was insufficient to establish ineffective assistance of counsel because it offered only bare speculation as to what impact the comments may have had on the jury. We conclude the district court's findings are supported by substantial evidence and are not clearly wrong, Campbell failed to demonstrate counsel was ineffective, and the district court did not err by rejecting this claim. See *Hargrove v. State*, 100 Nev. 498, 503, 686 P.3d 222, 225 (1984) (a petitioner is not entitled to postconviction relief if his claims are bare or belied by the record).


Next, Campbell asserts the district court erred by rejecting his claim that the cumulative effect of trial counsel's errors violated his right to due process and a fair trial. However, even assuming multiple deficiencies in counsel's performance may be cumulated to find prejudice under the *Strickland* test, see *McConnell v. State*, 125 Nev. 243, 259 n.17, 212 P.3d 307, 318 n.17 (2009), there was nothing to cumulate because Campbell failed to demonstrate any such deficiencies. Accordingly, the district court did not err by rejecting this claim.


Finally, Campbell asserts the district court erred by limiting the scope of its evidentiary hearing to just Campbell's mental health claim. A petitioner is entitled to an evidentiary hearing only if he asserts specific factual allegations that are not belied or repelled by the record and, if true, would entitle him to relief. *Nika v. State*, 124 Nev. 1272, 1300-01, 198 P.3d 839, 858 (2008). We review a district court's determination that a petitioner is not entitled to an evidentiary hearing for abuse of discretion. *Berry v. State*, 131 Nev. 957, 969, 363 P.3d 1148, 1156 (2015). Here, the record demonstrates Campbell's remaining claims were either bare allegations or

would not have entitled him to relief. Accordingly, the district court did not abuse its discretion by rejecting these claims without an evidentiary hearing.

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


_____, A.C.J.
Douglas


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Carolyn Ellsworth, District Judge
McLetchie Law
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk