

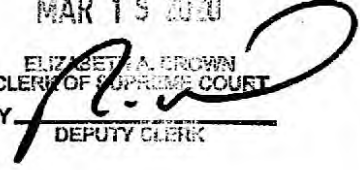
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IDA SISSAY MEKONNEN, A/K/A
HAYMANOT MEKONNEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 77663-COA

FILED

MAR 19 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Ida Sissay Mekonnen appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

Mekonnen argues the district court erred by denying the claims of ineffective assistance of counsel raised in her September 18, 2017, postconviction petition. 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).

First, Mekonnen claimed her trial counsel was ineffective for failing to introduce photographs depicting the damage to her vehicle. Mekonnen contended the photographs would help to demonstrate that the victim hit her windshield with his fist. At the evidentiary hearing, trial counsel testified that he reviewed the photographs and discussed the damage with workers at an auto-body shop. Based upon his review and the discussion with the workers, he concluded the photographs would not be helpful to Mekonnen's defense and decided not to introduce them at trial. The district court found counsel's decision was reasonable under the circumstances in this case. Substantial evidence supports the district court's finding. *See Ford v. State*, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989) ("Tactical decisions are virtually unchallengeable absent extraordinary circumstances."). The district court also found Mekonnen's testimony at the evidentiary hearing concerning the incident and what she claimed the photographs depicted was inconsistent with her trial testimony. Substantial evidence supports the district court's findings and Mekonnen failed to demonstrate a reasonable probability of a different outcome had counsel sought to introduce the photographs at trial. Therefore, we conclude the district court did not err by denying this claim.

Second, Mekonnen claimed her trial counsel was ineffective when handling jury instructions. Mekonnen claimed her counsel was

unable to obtain a self-defense instruction because of the failure to introduce the photographs depicting the damage to her vehicle. As discussed previously, the district court found counsel's decision to decline to introduce the challenged photographs was reasonable under the circumstances in this case. *See id.* Moreover, counsel requested a self-defense instruction, but the district court rejected that request. Given the record, Mekonnen failed to demonstrate her counsel's performance fell below an objective standard of reasonableness or a reasonable probability of a different outcome had counsel taken different actions concerning a self-defense instruction. Therefore, we conclude the district court did not err by denying this claim.

Third, Mekonnen claimed her trial counsel was ineffective for failing to introduce evidence to demonstrate that the victim did not suffer from serious bodily harm. Mekonnen contended counsel failed to utilize portions of the victim's medical records and social media posts in an effort to argue that the victim was not as seriously injured as he stated. The district court found photographs depicting the victim's injuries were presented to the jury and demonstrated the victim sustained substantial injuries to his head and scalp. The district court found that any reasonable person would conclude that the injuries depicted in the photographs would cause "extreme pain until the injuries healed." Substantial evidence supports the district court's findings.

Given the district court's findings, Mekonnen failed to demonstrate it was objectively unreasonable for counsel to decline to perform additional actions in an effort to show the victim did not suffer from

serious bodily harm. See NRS 0.060(2) (defining substantial bodily harm as “[p]rolonged physical pain”); *Collins v. State*, 125 Nev. 60, 64, 203 P.3d 90, 93 (2009) (explaining prolonged physical pain is “physical suffering or injury that lasts longer than the pain immediately resulting from the wrongful act”). Mekonnen also failed to demonstrate a reasonable probability of a different outcome had counsel attempted to show that the victim did not suffer serious bodily harm. Therefore, we conclude the district court did not err by denying this claim.

Fourth, Mekonnen claimed her trial counsel was ineffective for failing to argue that the probative value of portions of the victim’s medical records were substantially outweighed by the danger of unfair prejudice or confusing the jury. Mekonnen contended the unnecessary portions of the victim’s medical records may have caused the jury to incorrectly believe the victim suffered substantial bodily harm as they may have caused the jurors to believe the victim suffered from additional medical problems. Mekonnen also asserted that unnecessary portions of the medical records may have wasted the jury’s time.

“A court considering a claim of ineffective assistance must apply a strong presumption that counsel’s representation was within the wide range of reasonable professional assistance.” *Harrington v. Richter*, 562 U.S. 86, 104 (2011) (internal quotation marks omitted). At the evidentiary hearing, counsel testified he reviewed the medical records prior to trial. Mekonnen, however, did not inquire into counsel’s actions or decisions regarding admission of the medical records. Because Mekonnen did not inquire into counsel’s actions and decisions regarding the admission of the

medical records, Mekonnen failed to meet her burden to demonstrate that counsel's performance fell below an objectively reasonable standard. *See Means*, 120 Nev. at 1012, 103 P.3d at 33.

In addition, the district court found the photographs depicting the victim's injuries demonstrated he suffered substantial bodily harm. Given the district court's findings concerning the victim's injuries, Mekonnen failed to demonstrate a reasonable probability of a different outcome had counsel objected to admission of portions of the victim's medical records in an effort to rebut an allegation that he suffered substantial bodily harm. Mekonnen also failed to demonstrate a reasonable probability of a different outcome had counsel contended that portions of the records may have wasted the jury's time. Therefore, we conclude the district court did not err by denying this claim.

Fifth, Mekonnen claimed her trial counsel was ineffective for failing to assert that a juror with a limited ability to understand English should not serve on the jury. During voir dire, a juror informed the trial court that she had some difficulty understanding English. The trial court questioned the juror and found she was able to understand the proceedings. At the evidentiary hearing, counsel testified that he did not challenge the juror because Mekonnen believed the juror would be sympathetic as they both had a culturally diverse background. The district court found all parties at the trial were satisfied that the juror was sufficiently proficient in the English language to serve as a juror and counsel's decision not to challenge the juror was reasonable, *see Ford*, 105 Nev. at 853, 784 P.2d at 953 ("Tactical decisions are virtually unchallengeable absent extraordinary

circumstances.”). Substantial evidence supports the district court’s findings. Accordingly, Mekonnen failed to demonstrate her counsel’s performance fell below an objectively reasonable standard.

In addition, the district court found that the record demonstrated the juror was sufficiently proficient in the English language to serve as a juror. Substantial evidence supports the district court’s finding. Accordingly, Mekonnen failed to demonstrate a reasonable probability of a different outcome had counsel argued the juror should not have served as a juror due to language issues. Therefore, we conclude the district court did not err by denying this claim.

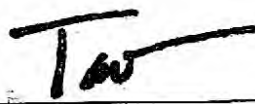
Sixth, Mekonnen claimed her counsel was ineffective for failing to adequately cross-examine the victim’s mother concerning the victim’s injuries. Mekonnen contended counsel should have utilized the victim’s medical records when questioning the victim’s mother in an effort to undermine her credibility regarding her statements concerning the victim’s injuries. As stated previously, the district court found the photographs depicting the victim’s injuries would cause any reasonable person to conclude that the victim suffered serious bodily harm. Substantial evidence supports the district court’s findings. Given the district court’s findings, Mekonnen did not demonstrate counsel’s performance fell below an objectively reasonable standard when he did not question the victim’s mother concerning whether the victim actually sustained serious injuries. Mekonnen also failed to demonstrate a reasonable probability of a different outcome had counsel cross-examined the victim’s mother concerning the

seriousness of the victim's injuries. Therefore, we conclude the district court did not err by denying this claim.

Seventh, Mekonnen claimed that the cumulative effect of trial counsel's errors violated her right to 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 Mekonnen failed to demonstrate any such deficiencies. Accordingly, we conclude the district court did not err by rejecting this claim.

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


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

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