

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LESLIE VILLA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

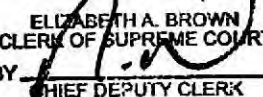
No. 80458-COA

LESLIE VILLA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 80459-COA

**FILED**

FEB 08 2021

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

*ORDER OF AFFIRMANCE*

Leslie Villa appeals from an order of the district court dismissing in part and denying in part identical petitions for a writ of habeas corpus filed on February 1, 2017, and identical supplemental petitions filed on August 25, 2017, in district court case numbers CR-7177 (Docket No. 80458-COA) and PC-7177 (Docket No. 80459-COA). Fifth Judicial District Court, Nye County; Kimberly A. Wanker, Judge.

Villa contends the district court erred by denying his claims of ineffective assistance of trial counsel without conducting an evidentiary hearing. To demonstrate ineffective assistance of trial counsel, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that there was a reasonable probability of a different outcome absent counsel's errors. *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 687. 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 raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).


First, Villa claimed counsel failed to properly prepare the defense expert to testify at trial. Villa's defense at trial was that he lacked the necessary mens rea for the crimes because he was under the influence of a prescription drug, and counsel engaged an expert to testify about the drug's possible side effects. The expert testified about Villa's prescription but did not know whether Villa had taken the drug or how much he had taken prior to the incident at issue. Villa argued the expert's lack of information rendered the expert useless and counsel was objectively unreasonable for not better preparing the expert. Villa's bare claim did not indicate what a better informed expert would have testified to or how it would have affected the outcome of the trial. And during his later confession to police, Villa rejected the notion that his actions were the result of being under the influence of "the pills." He thus failed to demonstrate he was prejudiced. We therefore conclude the district court did not err by denying this claim without an evidentiary hearing.

Second, Villa claimed counsel should have objected to prosecutorial misconduct committed during the State's rebuttal argument in closing and moved for a mistrial. Villa did not specify which comments amounted to prosecutorial misconduct or why he felt they constituted

misconduct. He also failed to support his mistrial argument with argument or authority. His bare claim thus failed to demonstrate counsel was deficient. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987). And because the Nevada Supreme Court concluded that there was overwhelming evidence of Villa's guilt, Villa failed to demonstrate a reasonable probability of a different outcome had counsel objected. We therefore conclude the district court did not err by denying this claim without an evidentiary hearing, and we

ORDER the judgments of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Kimberly A. Wanker, District Judge  
David H. Neely, III  
Attorney General/Carson City  
Nye County District Attorney  
Nye County Clerk