

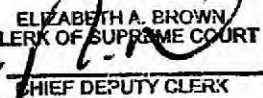
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANGELO FERGUSON, A/K/A ANGELO
FERGUSEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 80658-COA

FILED

FEB 08 2021

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

ORDER OF AFFIRMANCE

Angelo Ferguson appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on April 14, 2016, and supplement filed on May 13, 2019. Eighth Judicial District Court, Clark County; Linda Marie Bell, Chief Judge.

Ferguson claims the district court erred by denying his claim that counsel was ineffective. 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, 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).

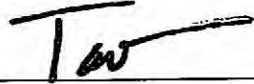
Ferguson claimed counsel was ineffective for failing to present a mens rea defense at trial. The district court conducted an evidentiary hearing. At the hearing, counsel testified that she attempted to discuss a mental health defense with Ferguson, including insanity and attacking the intent element of the crimes. Counsel further testified that, while Ferguson was found competent to stand trial, he would not speak with her about these possible defenses. Finally, counsel testified that she did not feel comfortable using Ferguson's mental health issues to attack the intent element without his consent. Ferguson testified that he would have supported a mens rea defense, but he was unwilling to admit he was involved in the crimes. While Ferguson provided extensive mental health history information with his postconviction petition, he did not provide any specific information regarding his state of mind at the time the crimes were committed.

Ferguson failed to demonstrate counsel's performance fell below an objective standard of reasonableness given Ferguson's apparent refusal to discuss a mens rea defense with counsel. Ferguson also failed to demonstrate he was prejudiced by counsel's failure to present a mens rea defense. While Ferguson presented reports from several mental health experts regarding his competency to stand trial, he did not provide any specific evidence or testimony regarding his state of mind at the time of the crimes or whether he lacked the requisite intent to commit the crimes. Further, the evidence produced at trial showed that Ferguson likely had the intent to commit the crimes. He was seen knocking on numerous doors in the neighborhood. When the victim opened her door, Ferguson asked for Jason, who did not live there. Ferguson then asked for a glass of water. After the victim closed the door and went to retrieve the glass of water, Ferguson kicked the door open. He raped the victim and then forced her to

show him where any valuables would be located. He took jewelry, poker chips, and cash. He then moved the victim into the den and told her not to come out. Ferguson was arrested leaving the home. Given this evidence, Ferguson failed to demonstrate a reasonable probability of a different outcome at trial had counsel presented a mens rea defense. Therefore, we conclude the district court did not err by denying this claim, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Linda Marie Bell, Chief Judge
Gaffney Law
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk