

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WILLIAM BILLY JACK CARON,
Appellant,
vs.
WARDEN, L.L.C.; AND THE STATE OF
NEVADA,
Respondents.

No. 80866-COA

FILED

FEB 25 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

William Billy Jack Caron appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Third Judicial District Court, Lyon County; Leon Aberasturi, Judge.

Caron argues the district court erred by denying the claims of ineffective assistance of trial counsel raised in his January 18, 2013, postconviction petition for a writ of habeas corpus and later-filed supplements.¹ 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

¹The record before this court does not contain copies of Caron's postconviction petition or his supplemental petition as required by NRAP 30(b)(2), (b)(3). We remind Caron it is his burden as the appellant to provide this court with an adequate record for review. See *McConnell v. State*, 125 Nev. 243, 256 n.13, 212 P.3d 307, 316 n.13 (2009).

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). This court will not "evaluate the credibility of witnesses because that is the responsibility of the trier of fact." *Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008).

First, Caron argued his trial counsel was ineffective for failing to investigate his mental health or request a competency evaluation. At the evidentiary hearing, trial counsel testified that Caron did not give her reason to suspect he might be incompetent or that she should request he undergo a competency evaluation. Rather, counsel testified that Caron was actively engaged in preparing his trial defense and that he did not appear to have any troubles understanding the proceedings against him.

The district court found that counsel's testimony was credible and that the evidence presented at the evidentiary hearing demonstrated that Caron had the ability to consult with his attorney with a reasonable degree of rational understanding and he understood the proceedings against him. *See Melchor-Gloria v. State*, 99 Nev. 174, 179-80, 660 P.2d 109, 113 (1983) (stating the test for competency). The district court also found that the testimony and evidence Caron presented in an attempt to demonstrate that he was incompetent during his trial and sentencing was not credible. Substantial evidence supports the district court's findings. Accordingly, Caron failed to demonstrate his counsel's performance fell below an objective standard of reasonableness or a reasonable probability of a different outcome had counsel investigated Caron's mental health and requested a competency evaluation. Therefore, the district court did not err by denying this claim.

Second, Caron argued his counsel was ineffective for advising him not to testify at trial. Caron asserted he was unable to properly consider counsel's advice because he was not competent but would have credibly testified in his defense had he been properly treated for his competency issues. At the evidentiary hearing, counsel stated that in her experience a criminal defendant often harms the defense case when testifying at trial. Counsel also testified that Caron is a large man and he had a very strong opinion about the case. For those reasons, she was worried that the jury would view him as intimidating. She stated that, based on her experience and her observations of Caron, she advised him to not testify. Counsel testified that she discussed the issue with Caron and he agreed to not testify. Moreover, counsel testified that she had no reason to suspect that Caron was incompetent and he actively participated in the preparation of his defense.

The district court found counsel's testimony was credible and substantial evidence supports the district court's findings. In light of the circumstances in this case, Caron failed to demonstrate counsel's actions fell below an objective standard of reasonableness. *See Ford v. State*, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989) ("Tactical decisions are virtually unchallengeable absent extraordinary circumstances."). Caron also failed to demonstrate a reasonable probability of a different outcome had counsel acted differently when discussing Caron's right to testify with him. Therefore, we conclude the district court did not err by denying this claim.


Third, Caron argued his counsel was ineffective for failing to have Caron undergo a psychosexual evaluation prior to the sentencing hearing. At the evidentiary hearing, counsel stated that she did not wish to have Caron undergo a psychosexual evaluation prior to the sentencing hearing because she did not believe it would be beneficial to him. The district court concluded counsel's testimony was credible. The district court

also found Caron revealed in the evaluation he undertook during the postconviction proceedings that he may have engaged in lewd behavior with another teenager and, therefore, such an evaluation would not have been helpful to him. Substantial evidence supports the district court's findings. In light of the circumstances in this case, Caron failed to demonstrate counsel's decision not to pursue a psychosexual evaluation for Caron prior to sentencing fell below an objective standard of reasonableness. *See id.* Caron also did not demonstrate a reasonable probability of a different outcome had counsel sought a psychosexual evaluation for Caron. Therefore, we conclude the district court did not err by denying this claim.

Finally, Caron argued the trial court improperly failed to order Caron to undergo a competency evaluation. This claim could have been raised on direct appeal, and Caron did not demonstrate good cause for the failure to do so and actual prejudice. Therefore, he is not entitled to relief. *See* NRS 34.810(1)(b). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Leon Aberasturi, District Judge
Mary Lou Wilson
Attorney General/Carson City
Lyon County District Attorney
Third District Court Clerk