

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NICHOLAS CRYSTAL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 81091-COA

FILED

APR 12 2021

ELIZABETH A. SPYSON
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Nicholas Crystal appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on April 27, 2018, and a supplemental petition filed on July 31, 2018. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Crystal contends the district court erred by denying his claims of ineffective assistance of trial counsel. 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).

First, Crystal argued trial counsel was ineffective for failing to investigate Crystal's mental health and substance abuse as it relates to the mens rea necessary for attempted murder. At the evidentiary hearing on Crystal's petition, trial counsel testified that Crystal did not mention any substance abuse or mental health issues, nor was he provided with Crystal's medical records prior to trial. Additionally, trial counsel testified Crystal did not give him reason to suspect Crystal's mental health. Trial counsel also testified that he spoke to Crystal's parents during trial preparation, and they did not voice any concerns about Crystal's mental health.

The district court found trial counsel's testimony was credible, and Crystal has not demonstrated the district court reached the wrong conclusion. *See Howard v. State*, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990), *abrogated on other grounds by Harte v. State*, 116 Nev. 1054, 1072, 13 P.3d 420, 432 (2000). In light of the evidence and testimony presented at the evidentiary hearing, Crystal failed to demonstrate that counsel had reason to believe Crystal lacked the requisite mens rea to commit the crime. Therefore, Crystal failed to demonstrate his counsel's failure to investigate fell below an objective standard of reasonableness. Accordingly, we conclude the district court did not err by denying this claim.¹


¹To the extent Crystal raises arguments regarding the insanity defense or mental competency on appeal, we decline to consider these arguments as they were not raised in the district court in the first instance. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

Crystal also argues on appeal that he did not need to demonstrate prejudice because counsel failed to subject the State's case to meaningful adversarial testing. Crystal did not raise this argument below, and we

Second, Crystal argued trial counsel was ineffective for failing to object to unrecorded bench conferences. The district court found the bench conferences were recorded, and Crystal concedes this fact in his reply brief. Accordingly, Crystal failed to demonstrate trial counsel's performance fell below an objective standard of reasonableness or that he was prejudiced. Therefore, we conclude the district court did not err in denying this claim.² Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

decline to consider it on appeal in the first instance. *See id.* We note that even if this claim were properly raised on appeal, this court would not be able to review the claim because Crystal failed to provide the trial transcripts. *See United States v. Cronin*, 466 U.S. 648, 659 (1984) (presuming prejudice when “counsel *entirely* fails to subject the prosecution’s case to meaningful adversarial testing” (emphasis added)); *see also Thomas v. State*, 120 Nev. 37, 43 & n.4, 83 P.3d 818, 822 & n.4 (2004) (holding it is appellant’s burden to provide this court with portions of the record necessary to resolve his claims on appeal).

²Crystal also argues the State or the district court should have transcribed the JAVS recordings or played them in open court. We decline to consider these arguments as they were not raised in the district court in the first instance. *See McNelton*, 115 Nev. at 416, 990 P.2d at 1276.

cc: Hon. Michael Villani, District Judge
Kenneth W. Long
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk