

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAMIEN KYTRELL FORD,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 81342-COA

FILED

MAY 07 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

Damien Kytrell Ford appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Ford argues the district court erred by denying claims of ineffective assistance of trial counsel raised in his March 3, 2020, postconviction petition for a writ of habeas corpus. 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).

First, Ford argued his trial counsel was ineffective for failing to investigate and present information concerning the shooting location. Ford asserted counsel should have presented information to show that Ford was too far away from the victim to have shot him. The record demonstrated that counsel questioned witnesses regarding Ford's location during the events at issue and presented an exhibit depicting a map of the relevant area. Ford failed to demonstrate that counsel's actions in this regard fell below an objective standard of reasonableness. In addition, there was significant information presented at trial regarding Ford's whereabouts during and after the shooting, including an eyewitness who testified Ford shot the victim, and therefore, Ford did not demonstrate a reasonable probability of a different outcome at trial had counsel investigated and presented additional information regarding the shooting location. Therefore, we conclude the district court did not err by denying this claim.

Second, Ford argued his trial counsel was ineffective for failing to object when the trial court refused to allow him to introduce evidence in order to impeach the credibility of a witness. A party may impeach a witness's credibility on cross-examination by inquiring into collateral matters that pertain to the witness's truthfulness or untruthfulness, provided no extrinsic evidence is used. *Ford v. State*, 122 Nev. 796, 806, 138 P.3d 500, 507 (2006); *see also* NRS 50.085(3) ("Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness's credibility, other than conviction of crime, may not be proved by extrinsic evidence. They may, however, if relevant to truthfulness, be inquired into on cross-examination of the witness.").

During trial, a witness testified that she did not communicate with Ford over social media and that she did not like guns. In response,

Ford sought to impeach the witness's credibility by introducing social media messages between himself and the witness, which included a photograph depicting her with a firearm. The trial court informed Ford he could question the witness regarding the social media messages but the messages themselves were inadmissible because they were extrinsic evidence concerning a collateral matter. The record demonstrated that counsel urged the trial court to admit the messages, and Ford did not demonstrate objectively reasonable counsel would have raised additional objections following the trial court's refusal to admit them into evidence. Moreover, because the trial court properly informed Ford that he could cross-examine the witness regarding the messages in an effort to impeach her credibility but could not use extrinsic evidence during that questioning, Ford did not demonstrate a reasonable probability of a different outcome at trial had counsel raised additional arguments regarding the trial court's decision to decline to admit the messages into evidence. Therefore, we conclude the district court did not err by denying this claim.


Next, Ford argued the district court erred by denying his claim of ineffective assistance of appellate counsel. To demonstrate ineffective assistance of appellate counsel, a petitioner must show that counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that the omitted issue would have a reasonable probability of success on appeal. *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). Both components of the inquiry must be shown. *Strickland*, 466 U.S. at 687. Appellate counsel is not required to raise every non-frivolous issue on appeal. *Jones v. Barnes*, 463 U.S. 745, 751 (1983). Rather, appellate counsel will be most effective when every

conceivable issue is not raised on appeal. *Ford v. State*, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989).

Ford claimed his appellate counsel was ineffective for failing to argue that the trial court abused its discretion by refusing to admit into evidence the social media messages between himself and a witness. “[T]he decision to admit or exclude evidence rests within the discretion of the trial court.” *Ford*, 122 Nev. at 806, 138 P.3d at 507. As discussed previously, Ford sought to admit into evidence social media messages in an effort to impeach the credibility of a witness. The trial court declined to admit the messages into evidence because they were extrinsic evidence pertaining to a collateral matter, but the court informed Ford he could cross-examine the witness regarding the messages. Because the trial court properly declined to admit the social media messages into evidence, *see* NRS 50.085(3), Ford did not demonstrate that his appellate counsel’s failure to raise the underlying claim on direct appeal fell below an objective standard of reasonableness. Ford also failed to demonstrate a reasonable likelihood of success on direct appeal had counsel argued the trial court abused its discretion by declining to admit the messages into evidence. Therefore, we conclude the district court did not err by denying this claim.

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

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

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

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

cc: Chief Judge, Eighth Judicial District Court  
Eighth Judicial District Court, Dept. 3  
Damien Kytrell Ford  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk