

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ERIC DEON ROBINSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82003-COA

FILED

SEP 13 2021

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

ORDER OF AFFIRMANCE

Eric Deon Robinson appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on October 28, 2019, and a supplemental petition filed on June 22, 2020. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

Robinson argues the district court erred by denying his claims that counsel was ineffective at trial. 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, Robinson claimed counsel was ineffective for failing to argue the statements attributed to his codefendant about a stolen gun, money, and drugs were inadmissible and not part of the *res gestae*. “Under the [*res gestae*] statute [NRS 48.035(3)], a witness may only testify to another uncharged act or crime if it is so closely related to the act in controversy that the witness cannot describe the act without referring to the other uncharged act or crime.” *Bellon v. State*, 121 Nev. 436, 444, 117 P.3d 176, 181 (2005). “Th[e] basis for admissibility [under NRS 48.035(3)] is extremely narrow.” *Weber v. State*, 121 Nev. 554, 574, 119 P.3d 107, 121 (2005), *overruled on other grounds by Farmer v. State*, 133 Nev. 693, 698-99, 405 P.3d 114, 119-20 (2017).


Prior to trial, Robinson’s codefendant made a motion to exclude references to the gun, money, and drugs. After argument, the trial court denied the motion finding that the codefendant’s statements regarding the gun, money, and drugs were part of the *res gestae* of the crimes. The record supports this finding. Throughout the kidnappings, Robinson’s codefendant continually questioned the victims about his missing gun, money, and drugs. The witnesses could not have testified about what happened to them without referring to these statements. Robinson has failed to demonstrate any further argument regarding this issue would have been successful. Thus, he failed to demonstrate counsel was deficient or resulting prejudice. Therefore, we conclude the district court did not err by denying this claim.

Second, Robinson claimed counsel was ineffective for failing to object to misstatements of the facts and law his codefendant’s counsel made during closing arguments. Specifically, Robinson claimed counsel should have objected to statements that the evidence showed Robinson was the shooter, he attempted to sexually assault the female victim, and his

codefendant stopped him. Because Robinson conceded his guilt during his closing argument, Robinson failed to demonstrate there was a reasonable probability of a different outcome at trial had counsel objected to the statements. Therefore, we conclude the district court did not err by denying this claim. Accordingly, 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. 5
Matthew D. Carling
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk