


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHRISTOPHER ROBERT KELLER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84643-COA

FILED

SEP 09 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Christopher Robert Keller appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on August 26, 2019, and a later-filed supplement. Eighth Judicial District Court, Clark County; Nancy A. Becker, Senior Judge.

Ineffective assistance of trial counsel

In his petition, Keller first claimed that his trial 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).

First, Keller claimed that his trial counsel was ineffective for failing to argue that the vehicle stop preceding his arrest was merely pretextual. An officer's decision to effectuate a traffic stop need only be supported by reasonable suspicion of illegal activity. *See State v. Rincon*, 122 Nev. 1170, 1173, 147 P.3d 233, 235 (2006). Officer D. Lopez testified that he conducted a stop of Keller's vehicle because Keller drove too long of a distance in the center turn lane and Keller's vehicle had a taillight that was not operating properly. Because Officer Lopez had a reasonable suspicion that Keller operated his vehicle in an illegal manner, Keller did not demonstrate that his counsel's performance fell below an objective standard of reasonableness due to any failure to argue that the vehicle stop was pretextual. Keller also failed to demonstrate a reasonable probability of a different outcome had counsel done so. Therefore, we conclude the district court did not err by denying this claim.

Second, Keller claimed that his trial counsel was ineffective for failing to move to suppress the evidence obtained from a search of his vehicle and his residence. Keller asserted that there was no probable cause for either search and he was detained longer than permitted by NRS 171.123. In addition, Keller asserted that there were no exigent circumstances to permit a search of his vehicle. Keller's trial counsel filed a motion to suppress evidence and raised these issues in that motion. Accordingly, Keller failed to demonstrate that his counsel's performance fell below an objective standard of reasonableness or a reasonable probability

of a different outcome but for counsel's errors. Therefore, we conclude the district court did not err by denying this claim.¹

Third, Keller claimed that his trial counsel was ineffective for failing to assert that the searches of his vehicle and residence exceeded the scope of a search incident to arrest. The searches were not performed incident to Keller's arrest. Accordingly, Keller failed to demonstrate that his counsel's performance fell below an objective standard of reasonableness due to any failure to raise this issue or a reasonable probability of a different outcome had counsel done so. Therefore, we conclude the district court did not err by denying this claim.

Fourth, Keller claimed that his trial counsel was ineffective for failing to argue that the State improperly destroyed or lost evidence stemming from Officer J. Henry's body camera. Keller appeared to claim that counsel should have moved to dismiss the case due to the lost evidence. "The State's loss or destruction of evidence constitutes a due process violation only if the defendant shows either that the State acted in bad faith or that the defendant suffered undue prejudice and the exculpatory value of the evidence was apparent before it was lost or destroyed." *Leonard v. State*, 117 Nev. 53, 68, 17 P.3d 397, 407 (2001). "In cases of bad faith, we conclude that dismissal of the charges may be an available remedy based

¹Keller also claimed that the trial court erred by declining to suppress the evidence obtained from the search of his residence. The Nevada Supreme Court has already considered and rejected this claim. *See Keller v. State*, No. 73871, 2018 WL 5095919, at *2-3 (Nev. Oct. 15, 2018) (Order of Affirmance). Because this claim has already been considered and rejected, the doctrine of the law of the case prevents further litigation of it. *See Hall v. State*, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975).

upon an evaluation of the case as a whole.” *Daniels v. State*, 114 Nev. 261, 267, 956 P.2d 111, 115 (1998).

Officer Henry testified at trial that he was wearing a body camera when he searched Keller’s vehicle and plugged the camera into the docking system when he was finished with his shift. Officer Henry also testified that body camera recordings are routinely deleted after 45 days if no one makes a request to preserve the recordings. Officer Henry stated that he could not recall if he attempted to preserve the recording and he had to assume no one else had tried to preserve the recording within the 45-day time frame as it had since been deleted from the database. In addition, Officer Henry testified concerning his participation in the relevant search and seizure of evidence. Officer Henry’s testimony was consistent with the additional testimony and evidence presented at trial. In light of Officer Henry’s testimony, Keller did not demonstrate that the State acted in bad faith concerning the loss of the body camera recording. Moreover, Keller did not demonstrate that the exculpatory value of the recording was apparent before it was lost or destroyed. Accordingly, Keller failed to demonstrate that his counsel’s performance fell below an objective standard of reasonableness due to any failure to seek a dismissal based upon the lost body camera recording or a reasonable probability of a different outcome had counsel done so. Therefore, we conclude the district court did not err by denying this claim.

Fifth, Keller claimed that his trial counsel was ineffective for telling Keller that if he testified at a suppression hearing, his prior felonies could be used against him. Keller did not demonstrate that counsel’s advice was inaccurate, *see* NRS 50.095(1), and therefore, Keller failed to demonstrate that his counsel’s performance fell below an objective standard

of reasonableness. Keller also failed to demonstrate a reasonable probability of a different outcome had counsel offered different advice. Therefore, we conclude the district court did not err by denying this claim.

Sixth, Keller claimed that his trial counsel was ineffective for telling him that he would be unable to challenge the denial of his motion to suppress evidence on direct appeal if he entered a guilty plea. Keller did not demonstrate that counsel's advice was inaccurate, *see* NRS 174.035(3); *Webb v. State*, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (stating the entry of a guilty plea generally waives any right to appeal from events occurring prior to the entry of the guilty plea), and therefore, Keller failed to show that counsel's performance fell below an objective standard of reasonableness. Keller also failed to demonstrate a reasonable probability of a different outcome had counsel offered different advice. *See Lafler v. Cooper*, 566 U.S. 156, 163 (2012) ("In the context of pleas a defendant must show the outcome of the plea process would have been different with competent advice."). Therefore, we conclude the district court did not err by denying this claim.

Seventh, Keller claimed that his trial counsel was ineffective for retaining an investigator that did not like Keller's parents or have a good working relationship with Keller. Counsel testified that he explained to Keller that the investigator was very good at his job and that there would be no issues working with the investigator. And for those reasons, counsel had the investigator continue to work on this matter. In light of counsel's testimony, Keller failed to demonstrate that counsel's decision concerning the investigator fell below an objective standard of reasonableness. Moreover, Keller did not demonstrate what information a different investigator would have uncovered, and therefore, he failed to demonstrate

a reasonable probability of a different outcome had counsel retained a different investigator. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Therefore, we conclude the district court did not err by denying this claim.

Eighth, Keller claimed that his trial counsel was ineffective because counsel rarely visited him prior to trial. Counsel testified that he or his investigator visited Keller many times. In light of counsel's testimony, Keller did not demonstrate that his counsel's performance fell below an objective standard of reasonableness. Moreover, Keller did not demonstrate how the outcome of trial would have been different had counsel visited more often, and therefore, he did not demonstrate a reasonable probability of a different outcome at trial had counsel visited him more. *See id.* Therefore, we conclude the district court did not err by denying this claim.

Ninth, Keller claimed that his trial counsel was ineffective for failing to subpoena witnesses, call potential witnesses, or present witnesses at trial. During the trial, Keller and counsel informed the trial court that Keller had only provided names and contact information of potential witnesses to counsel the day prior to trial. Counsel stated that the majority of the witnesses Keller provided did not appear to have relevant information but he or his investigator would attempt to contact them. Counsel subsequently called a police officer to testify on behalf of the defense. In light of these circumstances, Keller did not demonstrate that counsel's performance fell below an objective standard of reasonableness. Moreover, the Nevada Supreme Court concluded that overwhelming evidence of Keller's guilt was presented at trial, *see Keller*, No. 73871, 2018 WL 5095919, at *4, and therefore, Keller did not demonstrate a reasonable

probability of a different outcome at trial had counsel attempted to present additional witnesses at trial. Therefore, we conclude the district court did not err by denying this claim.

Tenth, Keller claimed that his trial counsel was ineffective for failing to inform the trial court of Keller's mental health history and that Keller was often under the influence of mental health medication during the pretrial proceedings. Counsel testified that he was aware that Keller had mental health issues but at no time did he have any concerns about Keller's competency or felt that any of Keller's mental health issues had any bearing upon the defense strategy. In light of counsel's testimony, Keller did not demonstrate his counsel's performance fell below an objective standard of reasonableness. Keller also failed to demonstrate a reasonable probability of a different outcome had counsel informed the trial court of Keller's mental health or medication issues. Therefore, we conclude the district court did not err by denying this claim.

Eleventh, Keller claimed that his trial counsel was ineffective for failing to challenge the trial court's decision to decline to continue the trial for the substitution of counsel. Keller requested a continuance for the substitution of counsel on the first day of trial, but the trial court denied that request. Keller did not demonstrate his counsel's performance fell below an objective standard of reasonableness due to any failure to perform additional actions concerning the request for a continuance or a reasonable probability of a different outcome had counsel done so. Therefore, we conclude the district court did not err by denying this claim.

Twelfth, Keller claimed that his trial counsel was ineffective for failing to question the K-9 handler. Keller's counsel testified at the evidentiary hearing that he did not wish to question the K-9 handler

because other officers testified about the actions of the dog and he did not believe that questioning the K-9 officer would yield helpful information. In light of counsel's testimony, Keller failed to demonstrate that counsel's decision concerning questioning of the K-9 handler fell below an objective standard of reasonableness. Moreover, in light of the overwhelming evidence of Keller's guilt produced at trial, Keller failed to demonstrate a reasonable probability of a different outcome had counsel questioned the K-9 handler. Therefore, we conclude the district court did not err by denying this claim.

Thirteenth, Keller claimed that his trial counsel was ineffective for failing to cross-examine Officer Lopez concerning his inconsistent statements and by failing to argue that Officer Lopez offered false testimony. Counsel cross-examined Officer Lopez at length during trial and challenged Officer Lopez's version of events. In closing argument, counsel argued that the evidence presented at trial was insufficient to prove Keller's guilt. In light of the record concerning counsel's cross-examination of Officer Lopez and counsel's closing arguments, Keller did not demonstrate his counsel's performance fell below an objective standard of reasonableness. Moreover, in light of the overwhelming evidence of Keller's guilt produced at trial, Keller failed to demonstrate a reasonable probability of a different outcome at trial had counsel posed additional questions to Officer Lopez or raised additional arguments concerning the veracity of his testimony. Therefore, we conclude the district court did not err by denying this claim.

Fourteenth, Keller claimed that his trial counsel was ineffective for failing to argue that he did not give Officer Lopez permission to retrieve his wallet and that he asked for an attorney. During trial, Officer Lopez

testified that Keller gave the officer permission to retrieve his wallet from his pants pocket. In addition, a second officer testified that he gave the *Miranda*² warnings to Keller, but the officer did not state that Keller requested an attorney. Keller's counsel questioned both officers at length, and Keller did not identify any additional actions counsel should have performed concerning these issues. In light of these circumstances, Keller did not demonstrate that his counsel's performance fell below an objective standard of reasonableness. Keller also failed to demonstrate a reasonable probability of a different outcome had counsel performed additional actions concerning these issues in light of the overwhelming evidence of Keller's guilt produced at trial. Therefore, we conclude the district court did not err by denying this claim.

Fifteenth, Keller claimed that his trial counsel was ineffective for failing to argue that Officer Lopez did not have a reasonable suspicion of criminal activity for the pat-down search. Officer Lopez did not discover significant evidence as a result of the pat-down search, and there was overwhelming evidence of Keller's guilt even excluding any evidence gained as a result of the pat-down search. In light of the overwhelming evidence of Keller's guilt presented at trial, Keller failed to demonstrate a reasonable probability of a different outcome at trial had counsel argued that Officer Lopez did not have sufficient reasonable suspicion of criminal activity to justify the pat-down search. Therefore, we conclude the district court did not err by denying this claim.

Sixteenth, Keller claimed that his trial counsel was ineffective for failing to emphasize that a woman told police officers her purse was in

²*Miranda v. Arizona*, 384 U.S. 436 (1966).

the vehicle, which would have shown that the drugs and weapons belonged to her. Keller contended that there was evidence showing that the woman was involved in the drug sales, including owe sheets written in her handwriting, and counsel should have attempted to show that she was responsible for the drugs. During trial, counsel questioned witnesses concerning the woman. Counsel also argued in closing that the woman had access to the residence where the drugs were discovered and that she was the person responsible for the criminal activity. In light of these circumstances, Keller did not demonstrate that counsel's performance fell below an objective standard of reasonableness. Moreover, in light of the overwhelming evidence of Keller's guilt produced at trial, Keller failed to demonstrate a reasonable probability of a different outcome at trial had counsel made further attempts to show that the woman was the person responsible for the criminal activity. Therefore, we conclude the district court did not err by denying this claim.

Seventeenth, Keller claimed that his trial counsel was ineffective for failing to assert that the State improperly used DNA evidence. A DNA expert witness testified at trial that the DNA test results were inconclusive but that the DNA sample from one firearm contained DNA from a male. The expert witness also acknowledged that inconclusive test results did not exclude Keller as the contributor to the DNA sample. During its closing arguments, the State noted that the expert witness could not exclude Keller as the contributor to the DNA found on the firearm. Counsel objected to this statement, and the trial court instructed the jury that it was to determine the facts based on the testimony. In light of counsel's objection, Keller did not demonstrate that his counsel's performance fell below an objective standard of reasonableness. Keller also

failed to demonstrate a reasonable probability of a different outcome had counsel performed additional actions concerning the State's argument regarding the DNA evidence. Therefore, we conclude the district court did not err by denying this claim.

Eighteenth, Keller claimed that his trial counsel was ineffective for failing to argue that it was illegal for the sentencing court to impose his sentence under the habitual criminal enhancement consecutively to his other sentences. NRS 176.035(1) plainly gives the district court discretion to run subsequent sentences consecutively. *Pitmon v. State*, 131 Nev. 123, 128-29, 352 P.3d 655, 659 (Ct. App. 2015). Accordingly, Keller did not demonstrate that his counsel's performance fell below an objective standard of reasonableness by failing to raise Keller's underlying argument or a reasonable probability of a different outcome had counsel done so. Therefore, we conclude the district court did not err by denying this claim.

Nineteenth, Keller claimed that his trial counsel was ineffective for failing to argue that two of his prior convictions arose out of the same situation and therefore should have only counted as one prior conviction for the habitual criminal enhancement. "[W]here two or more convictions grow out of the same act, transaction or occurrence, and are prosecuted in the same indictment or information, those several convictions may be utilized only as a single prior conviction for purposes of applying the habitual criminal statute." *See Rezin v. State*, 95 Nev. 461, 462, 596 P.2d 226, 227 (1979).

The record contains five separate judgments of conviction that were filed in different years and under different criminal case numbers. Keller thus did not demonstrate his prior convictions were prosecuted in the same indictment or information. Thus, Keller did not demonstrate his prior

convictions should have been considered as a single prior conviction for purposes of enhancing his sentence pursuant to the habitual criminal statute. Accordingly, Keller did not demonstrate that his counsel's performance fell below an objective standard of reasonableness by failing to raise Keller's underlying arguments or a reasonable probability of a different outcome had counsel done so. Therefore, we conclude the district court did not err by denying this claim.

Twentieth, Keller claimed that his trial counsel was ineffective for not arguing that the State improperly failed to file an amended information to allege that it was seeking a sentence under the habitual criminal enhancement. The State did not file an amended information but rather filed a notice of its intent to seek punishment as a habitual criminal. Keller did not demonstrate the State's notice was improper. *See* NRS 207.016(2). Accordingly, Keller did not demonstrate his counsel's performance fell below an objective standard of reasonableness by any failure to object to the State's notice. Keller also failed to demonstrate a reasonable probability of a different outcome had counsel done so. Therefore, we conclude the district court did not err by denying this claim.

Twenty-first, Keller claimed that his trial counsel was ineffective for failing to assert that he was entitled to a jury trial on the habitual criminal enhancement. The Nevada Supreme Court has held a defendant is not entitled to a jury determination on a habitual criminal allegation. *See O'Neill v. State*, 123 Nev. 9, 16, 153 P.3d 38, 43 (2007). Accordingly, Keller did not demonstrate his counsel's performance fell below an objective standard of reasonableness by any failure to seek a jury trial on the habitual criminal enhancement. Keller also failed to demonstrate a reasonable probability of a different outcome had counsel

done so. Therefore, we conclude the district court did not err by denying this claim.

Twenty-second, Keller claimed that his trial counsel was ineffective for failing to present character witnesses at the sentencing hearing. Keller asserted that character witnesses would have shown he had strong family and community support. The sentencing court informed the parties at the sentencing hearing that it received numerous letters from Keller's friends and family. Counsel also referenced those letters during his sentencing arguments. Because the sentencing court received letters from Keller's friends and family, he did not demonstrate his counsel's performance fell below an objective standard of reasonableness due to any failure to present information concerning Keller's family and community support via in-court witnesses. Keller also failed to demonstrate a reasonable probability of a different outcome had counsel done so. Therefore, we conclude the district court did not err by denying this claim.

Ineffective assistance of appellate counsel

Next, Keller claimed that his appellate counsel was ineffective. 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, and the petitioner must demonstrate the underlying facts by a preponderance of the evidence, *Means*, 120 Nev. at 1012, 103 P.3d at 33. Appellate counsel is not required to raise every non-frivolous issue on appeal. *Jones v. Barnes*, 463 U.S. 745, 754 (1983). Rather, appellate counsel will be most effective

when every conceivable issue is not raised on appeal. *Ford*, 105 Nev. at 853, 784 P.2d at 953.

First, Keller claimed that his appellate counsel was ineffective for failing to argue that the search of his vehicle was illegal. Officer Lopez initiated the search of Keller's vehicle because of the smell of marijuana and because he viewed a green leafy substance on the floorboard of the vehicle. This evidence established probable cause to believe the vehicle contained contraband or evidence of a crime. Accordingly, Officer Lopez's initial search was permitted by the automobile exception to the warrant requirement. *See State v. Lloyd*, 129 Nev. 739, 749, 312 P.3d 467, 473 (2013) (permitting the warrantless search of a vehicle if there is "probable cause to believe the vehicle contains contraband or evidence of a crime"). A drug dog sniffed Keller's vehicle and alerted, and in light of the odor and apparent presence of marijuana in the vehicle, Keller did not demonstrate that the dog sniff of his vehicle was improper. *See State v. Beckman*, 129 Nev. 481, 484, 305 P.3d 912, 915 (2013) (stating that extended detention to permit a dog sniff may be "justified by a reasonable articulable suspicion of criminal activity"). The officers subsequently obtained a search warrant for Keller's vehicle, and Keller did not demonstrate that the warrant was not based upon probable cause. *See Keese v. State*, 110 Nev. 997, 1001-02, 879 P.2d 63, 66 (1994).

Accordingly, Keller failed to demonstrate that the search of his vehicle was illegal. Keller thus did not demonstrate that his counsel's performance fell below an objective standard of reasonableness by failing to raise Keller's underlying argument or a reasonable probability of success on appeal had counsel done so. Therefore, we conclude the district court did not err by denying this claim.

Second, Keller claimed that his appellate counsel was ineffective for failing to argue that he was detained in violation of NRS 171.123(4), because he was held for almost 3 hours before the officers obtained a search warrant for his vehicle. “[U]nder NRS 171.123, once an individual has been detained, the officer has sixty minutes to either release or arrest the individual.” *State v. McKellips*, 118 Nev. 465, 472, 49 P.3d 655, 660 (2002). “If the individual is not released after sixty minutes, . . . the detention ripens into an arrest for which probable cause is necessary.” *Id.*

Officer Lopez testified to the following at trial. He detained Keller after smelling marijuana on Keller’s person and coming from Keller’s vehicle. Officer Lopez then heard gunshots from nearby, and he therefore placed Keller in his patrol vehicle and took cover. Officer Lopez subsequently walked toward Keller’s vehicle and noticed the front door was open. Officer Lopez viewed a green leafy substance that he believed to be marijuana on the floorboard of the vehicle.

Based on this testimony, Officer Lopez had probable cause sufficient to arrest Keller prior to issuance of the search warrant. Accordingly, Keller did not demonstrate that his counsel’s performance fell below an objective standard of reasonableness by failing to raise Keller’s underlying argument or a reasonable probability of success on appeal had counsel done so. Therefore, we conclude the district court did not err by denying this claim.

Third, Keller appeared to claim that his appellate counsel was ineffective for failing to argue that the vehicle stop was merely pretextual and Officer Lopez did not have reasonable suspicion to conduct a pat-down search. As stated previously, Keller did not demonstrate that the vehicle

stop was improper. In addition, Keller did not demonstrate he was prejudiced due to any failure of counsel to challenge Officer Lopez's decision to conduct a pat-down search in light of the overwhelming evidence of his guilt. Accordingly, Keller did not demonstrate his counsel's performance fell below an objective standard of reasonableness or a reasonable probability of success on appeal but for counsel's error. Therefore, we conclude the district court did not err by denying this claim.

Fourth, Keller claimed that his appellate counsel was ineffective for failing to argue that the trial court erred by denying his motion to continue the trial in order to allow him to retain substitute counsel. Counsel raised the underlying claim on direct appeal, and the Nevada Supreme Court concluded that the trial court did not abuse its discretion by denying the motion to continue trial. *Keller*, No. 73871, 2018 WL 5095919, at *1-2. Accordingly, Keller did not demonstrate his counsel's performance fell below an objective standard of reasonableness or a reasonable probability of success on appeal but for counsel's error. Therefore, we conclude the district court did not err by denying this claim.

Fifth, Keller claimed that his appellate counsel was ineffective for failing to argue that the district court erred by failing to dismiss the case despite a lost or destroyed body camera recording. As stated previously, Keller did not demonstrate that the State acted in bad faith concerning the loss of the body camera recording, and he did not demonstrate that the exculpatory value of the recording was apparent before it was lost or destroyed. Accordingly, Keller did not demonstrate that his counsel's performance fell below an objective standard of reasonableness by failing to raise Keller's underlying argument or a reasonable probability of success on

appeal had counsel done so. Therefore, we conclude the district court did not err by denying this claim.

Sixth, Keller claimed that his appellate counsel was ineffective for failing to argue that Officer Lopez's testimony was inadmissible because the officer's version of events was not accurate. Keller also contended that counsel should have argued that the trial court erred by admitting the DNA evidence. The record demonstrates that Officer Lopez's testimony and the DNA evidence were relevant, and relevant evidence is generally admissible at trial. *See* NRS 48.015; NRS 48.025(1). In addition, Keller did not demonstrate that the probative values of Officer Lopez's testimony or the DNA evidence were substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. *See* NRS 48.035(1). Therefore, Keller did not demonstrate Officer Lopez's testimony and the DNA evidence were inadmissible. Accordingly, Keller did not demonstrate that his counsel's performance fell below an objective standard of reasonableness by failing to raise Keller's underlying arguments or a reasonable probability of success on appeal had counsel done so. Therefore, we conclude the district court did not err by denying this claim.

Seventh, Keller appeared to claim that his appellate counsel was ineffective for failing to argue that information concerning the drug dog should not have been admitted at trial because the K-9 handler did not testify. At the evidentiary hearing, counsel testified that he did not raise a claim challenging admission of the information related to the dog sniff because he believed the officers had probable cause to search the vehicle prior to the dog sniff. In addition, counsel testified that he did not believe information from the K-9 handler would have yielded helpful information. In light of counsel's testimony, Keller did not demonstrate that his counsel's

performance fell below an objective standard of reasonableness. In addition, Keller also failed to demonstrate a reasonable probability of success on appeal had counsel raised this issue. Therefore, we conclude the district court did not err by denying this claim.

Eighth, Keller claimed that his appellate counsel was ineffective for failing to assert that his consecutive sentence for the habitual criminal enhancement was illegal. As stated previously, NRS 176.035(1) plainly gives the district court discretion to run subsequent sentences consecutively. Accordingly, Keller did not demonstrate that his counsel's performance fell below an objective standard of reasonableness by failing to raise Keller's underlying argument or a reasonable probability of success on appeal had counsel done so. Therefore, we conclude the district court did not err by denying this claim.

Cumulative errors of counsel

Next, Keller argued he was entitled to relief due to the cumulative effect of counsels' errors. Even assuming any such errors may be cumulated, *see McConnell v. State*, 125 Nev. 243, 259 n.17, 212 P.3d 307, 318 n.17 (2009) (noting the Nevada Supreme Court has never adopted a standard to evaluate such claims in postconviction proceedings), Keller failed to demonstrate multiple errors to cumulate. Therefore, we conclude the district court did not err by denying this claim. *See Burnside v. State*, 131 Nev. 371, 407, 352 P.3d 627, 651 (2015).

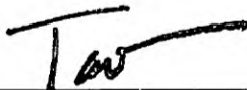
Independent claims

Finally, Keller raised all of the substantive issues underlying his claims of ineffective assistance of trial and appellate counsel as stand-alone claims. These claims are procedurally barred absent a showing of good cause and actual prejudice. *See* NRS 34.810(1)(b)(2); *see also Lader*,

121 Nev. at 690, 120 P.3d at 1169. Keller appeared to claim the ineffective assistance of counsel provided good cause and prejudice to overcome the procedural bars. For the reasons discussed above, we conclude the district court did not err by denying these substantive claims. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Hon. Nancy A. Becker, Senior Judge
Christopher Robert Keller
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk