


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DONTE WOODS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84698-COA

FILED

FEB 14 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Donte Woods appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on April 25, 2018. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

Woods first contends the district court erred by denying his claim that trial counsel was ineffective for failing to investigate and present his alibi defense. Woods alleged that counsel should have investigated all of his alibi witnesses, interviewed the witnesses himself, and investigated Woods' phone and financial records in relation to his alibi defense.

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).

The district court held an evidentiary hearing on this claim. Thereafter, it concluded that counsel made a reasonable, strategic decision not to pursue an alibi defense. The district court's decision is supported by substantial evidence in the record.


At the hearing, Woods admitted into evidence a letter he wrote to counsel before trial containing his alibi defense and a list of six alibi witnesses. Counsel testified that he did not recall receiving the letter before trial but that he was aware Woods had a potential alibi: Woods claimed he was at his grandmother's house for Woods' uncle's funeral. Counsel hired an investigator who interviewed Woods and three of the six people on Woods' list. Counsel or the investigator were in contact with two other people on Woods' list. Counsel explained that after reviewing the investigator's reports and consulting with the investigator, he did not find the alibi credible. Counsel further explained that his decision was also based on the existence of a potential witness who placed Woods at the location of the crime and, the day after the shooting, heard him and others talking about shooting someone.

Woods called only two of the six alibi witnesses he identified in his letter to testify at the hearing: Wood's mother and the mother of Woods' children. Woods' mother testified that Woods was with her at Woods' grandmother's house at the time of the offense. The district court found her testimony was not credible, and 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). The district court also found the evidence related to the mother of Woods' children did not support Woods' alibi except to the extent it showed Woods spent time at his grandmother's house on a regular basis and that Woods' children might

have been present in the home on the offense date and the day before. Substantial evidence supports the district court's finding. Finally, Woods did not testify at the evidentiary hearing, nor did he present evidence regarding his phone or financial records. In light of the evidence presented at the evidentiary hearing, Woods failed to demonstrate that his counsel's performance fell below an objective standard of reasonableness or a reasonable probability of a different outcome had counsel further investigated or presented an alibi defense. Therefore, we conclude the district court did not err by denying this claim.

Woods next contends the district court erred by writing multiple times in its order that Woods was charged with murder when he was charged with attempted murder. Woods alleges this demonstrates the district court did not understand his charges. As previously discussed, the district court properly denied Woods' claim, and thus, any error by the district court in its description of Woods' offense was harmless. See NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."). Therefore, we conclude Woods is not entitled to relief based upon this claim, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Eric Johnson, District Judge
Donte Woods
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk