IN THE SUPREME COURT OF THE STATE OF NEVADA

REED SKENANDORE,
Appellant,
vs.
WARDEN, W.S.C.C.; AND THE STATE OF NEVADA,
Respondents.

No. 84232

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a postconviction petition for a writ of habeas corpus. First Judicial District Court, Carson City; James E. Wilson, Judge. Appellant argues that the district court erred in denying his petition after conducting an evidentiary hearing. We disagree and affirm.[1]

To demonstrate ineffective assistance of counsel, a petitioner must show that counsel's performance was deficient in that it fell below an objective standard of reasonableness and that 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*). To show prejudice to invalidate the decision to enter a guilty plea, a petitioner must demonstrate that he would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985); *Kirksey v. State*, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). The

[1]Appellant has not provided a complete index for the 21-volume appendix. We remind counsel that when an appendix contains multiple volumes, "one alphabetical index for *all* documents shall be prepared and shall be placed in each volume of the appendix." NRAP 30(c)(2) (emphasis added).

23-04876

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), and both components of the inquiry must be shown, *Strickland*, 466 U.S. at 697. For purposes of the deficiency prong, counsel is strongly presumed to have provided adequate assistance and exercised reasonable professional judgment in all significant decisions. *Id.* at 690. We defer to the district court's factual findings that are supported by substantial evidence and not clearly wrong but review its application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

Appellant first argues that counsel provided ineffective assistance because he was not guilty of conspiracy to commit robbery and would not have pleaded guilty to that charge had counsel been willing to proceed to trial. The district court found that this was not the case. Substantial evidence in the record supports this finding and belies this claim, as counsel's contemporaneous notes show that counsel advised appellant that self-defense was not viable because too many people reported that appellant went to the scene to rob the victim, that appellant was leaning toward pleading guilty to first-degree murder with a deadly weapon, and that appellant agreed to plead guilty to first-degree murder after counsel had negotiated away the deadly-weapon enhancement. Appellant therefore has not shown that the district court erred in this regard.

Appellant next argues that counsel should have investigated several purportedly favorable witnesses and that he would have proceeded to trial had they been investigated further. The crux of appellant's argument is that he was unaware of the robbery plan and that he shot the victim in self-defense. He specifically argues that counsel should have

further investigated Keenan Blackmore, Miguel Calderon, and Jonni Escobar Ruiz to set up exculpatory testimony regarding the killing. This claim lacks merit given the following inculpatory evidence that had been anticipated at trial before appellant pleaded guilty.

Keenan Blackmore testified at the preliminary hearing that he, appellant, and other friends were hanging out; several of them discussed a plan to commit a robbery; six of them entered a car to drive to the scene; Blackmore and two others got out shortly before reaching the destination but were still able to see where appellant and the other two coconspirators, who remained in the car, parked nearby. He testified that he heard two shots, the car turned and drove toward them, they all entered the car, appellant explained that he shot the victim because the victim would not take his hands out of his pockets, and the robbery was deliberate while the killing was accidental.

Brandon McGee testified at the preliminary hearing that he had been socializing with the group when appellant's brother Jonathan Skenandore announced a plan to steal three ounces of cannabis and that McGee stayed behind, listening to a police scanner. McGee testified that after hearing a report of gunshots on the police scanner, he called appellant, who confessed to shooting someone. McGee testified that he met up with the group and that appellant told him that he exited the car with his gun drawn and shot the victim after the victim would not take his hands out of his pockets. Both Blackmore and McGee described the group taking measures to destroy evidence after the shooting.

Jesus Garcia Manriquez pleaded guilty after the preliminary hearing and agreed to testify, before appellant decided to plead guilty. In a proffer of his anticipated trial testimony, Garcia Manriquez explained that

the robbery was his idea and he initially proposed to appellant's brother that they rob the victim but that appellant told Garcia Manriquez to ask the victim to bring more cannabis to the purported drug sale. Garcia Manriquez stated that the plan was to steal, not to buy, the cannabis. Garcia Manriquez explained that, before reaching the site, appellant's brother exited the car and that Garcia Manriquez wanted to abandon the plan at the last moment, before appellant insisted on completing the plan. Garcia Manriquez stated that appellant got out of the car with his gun drawn, pointed it at the victim, shot him, took the cannabis, and later explained that he shot the victim because the victim would not take his hands out of his pockets. Miguel Calderon testified at the preliminary hearing that Garcia Manriquez told him that they had planned to steal cannabis and that Garcia Manriquez thought that the victim had a gun.

And Jonni Escobar Ruiz testified at the preliminary hearing that he was the victim's friend, the victim received a phone call setting up a purported cannabis sale, and Escobar Ruiz drove the victim to the site of the purported sale. Escobar Ruiz testified that the victim got out of the car, had his hands in his front sweatshirt pocket, hesitated briefly, and then was shot. Escobar Ruiz testified that one of the purported buyers then approached the victim and took the cannabis. Escobar Ruiz testified that the victim had a pellet gun on his person.

The evidence anticipated to be presented at trial would have established that appellant entered the car with the intent to participate in Garcia Manriquez's robbery plan, that he exited the car to complete that robbery, that he fatally shot the victim in the course of perpetrating that robbery, that he took the cannabis from the victim after shooting him, and that he participated in destroying evidence afterward. The record repels

appellant's contention that further developing the accounts of Blackmore, Escobar Ruiz, or Calderon would have led to a reasonable probability of a different outcome, as the testimony of each contributed to show that appellant participated in a robbery plan during which appellant fatally shot the intended robbery victim. Insofar as appellant argues that their accounts would support a theory of self-defense, he is mistaken because self-defense was not available to him as an original aggressor who had not withdrawn. *See Harkins v. State*, 122 Nev. 974, 990, 143 P.3d 706, 716 (2006) ("[S]elf-defense is not available to an original aggressor."). Insofar as appellant argues that counsel ignored exculpatory evidence in these accounts, appellant has disregarded the abundant inculpatory evidence that would have been levied against him had he proceeded to trial. And to the extent that he relies on Blackmore's evidentiary hearing testimony, that testimony does not show what further investigation would have revealed, as the district court determined that it was not credible. Substantial evidence supports this finding, as the testimony was inconsistent with Blackmore's earlier statements that were corroborated by other witnesses. *See State v. Love*, 109 Nev. 1136, 1139, 865 P.2d 322, 324 (1993) (upholding a district court's credibility finding that was supported by the record, noting that "this court is ill-equipped to reweigh the credibility of these various witnesses on appeal"). Further, insofar as appellant relies on his own evidentiary hearing testimony, the record supports the district court's finding that it was not credible, as it was inconsistent internally as well as with prior statements by appellant and others. Appellant selectively restates the preliminary hearing testimony of Calderon and Escobar Ruiz but does not allege what would have been revealed by further investigation. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) (requiring a

claim of deficient investigation to identify what "a more adequate investigation would have uncovered"). Appellant has not shown deficient performance in this regard or that he would have proceeded to trial but for counsel's omission. The district court therefore did not err in denying this claim.[2]

Appellant next argues that counsel should have retained experts in forensics, self-defense, and toxicology. Appellant argues that such experts would help establish self-defense by supporting that the victim was intoxicated and that appellant shot the victim upon seeing the pellet gun on the victim's person. Self-defense, however, was not available, as appellant shot the victim while perpetrating a robbery, and thus these experts would not have been relevant. *See In re Assad*, 124 Nev. 391, 400, 185 P.3d 1044, 1050 (2008) (providing that irrelevant expert evidence is properly excluded). Appellant has not shown deficient performance in this regard or that he would have proceeded to trial but for counsel's omission. The district court therefore did not err in denying this claim.

Appellant next argues that counsel coerced him to plead guilty and impeded his effort to withdraw the guilty plea. He also argues that his plea was not knowingly, intelligently, and voluntarily entered. The district court's conclusion that appellant freely pleaded guilty is supported by substantial evidence. Appellant acknowledged in the guilty plea agreement and in a thorough canvass that the decision to enter a plea was his own and had been made with an appropriate understanding of the consequences. *See Molina*, 120 Nev. at 191, 87 P.3d at 537-38 ("A thorough plea canvass

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[2]Appellant summarizes the evidentiary hearing testimony of other witnesses without specifically advancing a claim. Having considered that testimony, we conclude that appellant has not shown that counsel rendered ineffective assistance in relation to those witnesses.

coupled with a detailed, consistent, written plea agreement supports a finding that the defendant entered the plea voluntarily, knowingly, and intelligently." (internal quotation marks omitted)). Counsel's notes indicate that counsel explained the strength of the evidence against appellant, that self-defense was not viable, and the nature of the charges and potential sentences. The notes show that appellant deliberated over counsel's advice and elected to plead guilty. And counsel's notes repel appellant's contention that he sought to retain another attorney and withdraw the guilty plea. Rather, appellant consulted with another attorney and raised the possibility of withdrawing the plea; after counsel advised on the possibility of withdrawal and explained that self-defense was not viable, appellant decided against seeking withdrawal. *Cf. McConnell v. State*, 125 Nev. 243, 253, 212 P.3d 307, 314 (2009) (observing that the decision to plead guilty is reserved to the defendant). And further, as noted, substantial evidence supports the district court's finding that appellant's evidentiary hearing testimony suggesting otherwise was not credible. The district court therefore did not err in denying this claim.

Appellant next argues that counsel should have moved to substitute in another attorney. Substantial evidence supports the district court's finding that counsel's notes and the other attorney's evidentiary hearing testimony belie this claim. As noted, counsel's notes indicate that appellant elected to continue with counsel's representation and the negotiated guilty plea agreement after appellant, counsel, and the other attorney discussed appellant's options and the potential consequences. The district court therefore did not err in denying this claim.

Appellant next argues that counsel should not have advised him to admit committing the offenses in the statement he gave for his

presentence investigation report. This claim rests on appellant's evidentiary hearing testimony, which, as stated, was not credible. This claim is repelled by the record. Appellant admitted in the statement to intending to rob the victim before shooting him. Appellant's statement was corroborated by contemporaneous accounts of coperpetrators, and appellant did not challenge the statement or suggest that the statement was not his own at sentencing. The district court therefore did not err in denying this claim.

Appellant next argues that counsel should have opposed entry of judgment and moved to withdraw the guilty plea at sentencing because counsel's argument showed that counsel believed appellant to be innocent of the offenses. The record belies appellant's contention that counsel thought appellant to be innocent. The record shows that counsel argued mitigation, raising appellant's youth, immaturity, lack of sophistication and education, minimal criminal record, good character, difficult upbringing, and prospect of rehabilitation. The arguments counsel chooses to make are tactical decisions that are virtually unchallengeable, absent extraordinary circumstances, which appellant has not shown are present. *See Lara v. State*, 120 Nev. 177, 180, 87 P.3d 528, 530 (2004) ("[C]ounsel's strategic or tactical decisions will be virtually unchallengeable absent extraordinary circumstances." (internal quotation marks omitted)). And after appellant pleaded guilty following a five-day preliminary hearing in which extensive evidence of appellant's guilt was put forward, it would not have been objectively reasonable for counsel to oppose entry of judgment rather than argue mitigation. The district court therefore did not err in denying this claim.

Appellant next argues that counsel should have filed a direct appeal to raise two claims—a conflict of interest with the prosecutor and that the district court should not have entered judgment because he was not guilty. Counsel has a duty to discuss appellate rights with a defendant who has pleaded guilty when the defendant asks about an appeal or would benefit from advice on the matter. *Toston v. State*, 127 Nev. 971, 977, 267 P.3d 795, 799-800 (2011). Appellant has not alleged that he asked counsel about an appeal. And appellant has not shown that either purported appellate challenge would have had merit. First, appellant has not shown that a conflict of interest existed where one of the prosecutors had overseen a case involving appellant while acting as a juvenile master, proffering only a distinguishable authority that addressed when a former criminal defense attorney is barred from later prosecuting a former client. *See generally State v. Eighth Judicial Dist. Court (Zogheib)*, 130 Nev. 158, 159, 321 P.3d 882, 883 (2014). The role of an adjudicator is materially different, and the prosecutor here was not ethically barred from participating in a matter other than that in which she had participated as a juvenile master. *See* RPC 1.12(a) (barring participation as counsel where one previously worked on that matter as a judicial officer). Second, appellant pleaded guilty, and thus it was appropriate for the district court to enter judgment. *Cf.* NRS 176.105 (addressing criminal judgments generally). Further, as stated, appellant's testimony was not credible, and thus we need not credit his allegation that counsel told him that he had no appellate rights, which stands counter to appellant's acknowledgments in the guilty plea agreement that he retained specific, limited appellate rights and during the canvass that he understood the scope of his waiver of rights. The district court therefore did not err in denying this claim.

Appellant next argues that his right to confrontation was violated because he was unable to call trial counsel to testify at the evidentiary hearing, as counsel had passed away before that hearing. The right to confrontation is a trial right, *Sheriff v. Witzenburg*, 122 Nev. 1056, 1060, 145 P.3d 1002, 1004 (2006), and does not apply to postconviction proceedings. *See also Oken v. Warden*, 233 F.3d 86, 93 (1st Cir. 2000) ("[T]he Confrontation Clause does not apply to state post-conviction proceedings."). The district court therefore did not err in denying relief on this basis.

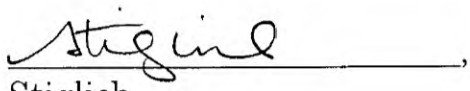
Appellant next argues that the district court should have permitted testing of the pellet gun that the victim was carrying during the shooting for "bullet marks." Appellant requested postconviction testing of the pellet gun and had not sought this testing before pleading guilty. Appellant identifies two authorities relevant to counsel's duty to investigate, but he does not identify relevant authority requiring the district court to take measures to produce additional evidence in the context of a postconviction evidentiary hearing or any standard indicating how such action or inaction should be reviewed. Accordingly, we need not consider this claim. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (providing that the court need not address arguments that are not supported with relevant authority and cogent argument). Appellant therefore has not shown that the district court erred in this regard.

Lastly, appellant argues that one of the prosecutors had a conflict of interest because, as a juvenile master, she had overseen a case involving appellant. This claim falls beyond the scope of claims permitted in a postconviction habeas petition challenging a judgment of conviction arising from a guilty plea. *See* NRS 34.810(1)(a); *see also Gonzales v. State*, 137 Nev. 398, 402-04, 492 P.3d 556, 561-62 (2021) (discussing the scope of

postconviction habeas claims that may be raised following a guilty plea). Appellant therefore has not shown that the district court erred in this regard.

Having considered appellant's contentions and concluded that relief is not warranted, we

ORDER the judgment of the district court AFFIRMED.



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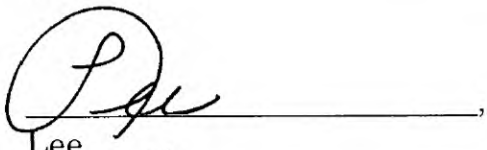

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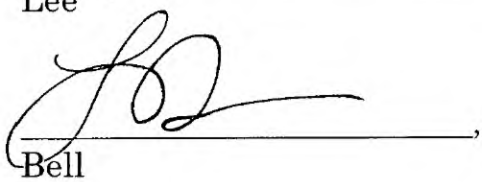

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cc: Hon. James E. Wilson, District Judge
Mary Lou Wilson
Attorney General/Carson City
Carson City District Attorney
Carson City Clerk