

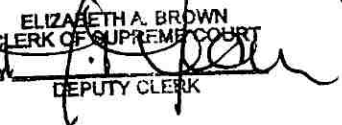
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRANDON JOVAN HILL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85069-COA

FILED

APR 21 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Brandon Jovan Hill appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on March 19, 2018, and supplemental pleadings. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Hill argues the district court erred by denying his claim of ineffective assistance of trial counsel. 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).

Hill claimed his trial counsel was ineffective for conceding during closing argument, without Hill's consent, that Hill was guilty of first-degree murder. A concession of guilt may be a reasonable trial strategy when circumstances dictate. *Armenta-Carpio v. State*, 129 Nev. 531, 535, 306 P.3d 395, 398 (2013). However, counsel may not admit a client's guilt "over the client's intransigent objection to that admission." *McCoy v. Louisiana*, 584 U.S. ____, ____, 138 S. Ct. 1500, 1510 (2018).

The district court conducted evidentiary hearings concerning Hill's claim. Hill testified that lead counsel first told him at the defense table, two days before closing argument, that counsel would be conceding guilt and Hill told him that he did not agree with counsel's strategy. Lead counsel testified that the evidence against Hill informed lead counsel's decision to concede guilt, he discussed the concession strategy with Hill multiple times before trial, and Hill understood what lead counsel was going to do and never objected to it. Co-counsel testified that she sat between Hill and lead counsel at trial, she would have remembered any mid-trial discussion about conceding guilt, and she did not remember any such discussion taking place.

The district court found counsel's testimony 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). Hill thus failed to demonstrate by a preponderance of the evidence that he objected to counsel's decision to concede guilt or that extraordinary circumstances otherwise warrant challenging counsel's strategic decision. *See Lara v. State*, 120 Nev. 177, 180, 87 P.3d 528, 530 (2004) ("[T]rial counsel's strategic or tactical decisions will be virtually unchallengeable absent extraordinary circumstances." (internal quotation

marks omitted)). Accordingly, Hill failed to demonstrate counsel's performance was deficient or a reasonable probability of a different outcome but for counsel's concession of guilt. Therefore, we conclude the district court did not err by denying this claim, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Department 17
Jeannie N. Hua
Clark County District Attorney
Eighth District Court Clerk