


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSHUA J. BALDASSARRE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 85388-COA

**FILED**

**JAN 12 2024**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Joshua J. Baldassarre appeals from orders of the district court denying a postconviction petition for a writ of habeas corpus filed on September 24, 2015, and supplemental pleadings filed on December 28, 2015, May 5, 2016, and April 19, 2019. Eighth Judicial District Court, Clark County; Jerry A. Wiese, Chief Judge.

Baldassarre first argues the district court erred by denying claims 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).

First, Baldassarre claimed in his petition that counsel was ineffective for failing to request a physical and/or neurological evaluation of the victim to ascertain the extent of her memory problems. We remanded this claim for an evidentiary hearing. *See Baldassarre v. State*, No. 72958, 2018 WL 3223301 (Nev. Ct. App. May 17, 2018) (Order Affirming in Part, Reversing in Part and Remanding). At the evidentiary hearing, Baldassarre called no witnesses and offered no evidence in support of his claim.<sup>1</sup> Thus, he failed to prove by a preponderance of the evidence that the victim's medical history impacted her memory.

Baldassarre argues on appeal that he was unable to prove this claim because the district court improperly denied his request for a neurological evaluation of the victim. In our prior order remanding this claim, we noted that a district court “cannot deny an indigent petitioner the means to obtain specific evidence and then use the petitioner’s failure to obtain the evidence to deny relief.” However, we did not order the district court to grant Baldassarre’s request for funds to conduct a neurological evaluation. Rather, we explained that on remand, “the district court might choose to grant counsel limited funds to consult with an examiner to determine the strength of evidence such a backward-looking examination would in fact yield before determining whether the victim must submit for an examination.” *Id.* at \*2 n.2.

The district court complied with this court’s instructions. On remand, Baldassarre was given funds to consult with an expert. He also

---

<sup>1</sup>We note that Baldassarre’s lead counsel at trial has since passed away but that co-counsel was an active participant in Baldassarre’s trial.

made a "limited records request[ ]" and, in response, received two years' worth of records related to the victim's medical event that caused her memory problems. Upon reading these records, Baldassarre determined that they would not "allow meaningful consultation with a medical expert who could shed light on [the victim's] cognitive abilities." At the evidentiary hearing, the district court concluded that the evidence presented did not warrant an order for the victim to undergo a neurological examination. The court further concluded that Baldassarre failed to demonstrate that counsel was objectively unreasonable for not requesting such an evaluation.

In his argument before this court, Baldassarre focuses on statements that the district court made at the evidentiary hearing which he contends demonstrate a need for a neurological evaluation. However, the district court made several contrary findings in its written order which control.<sup>2</sup> First, it found that Baldassarre admitted that the medical records did not support his allegation that the victim suffered from memory problems, nor did Baldassarre offer additional details that would support such an allegation. Second, the district court stated that it had considered the medical evidence contained in the record and found that the information Baldassarre presented "did not provide a strong indication that there was a neurological problem." These findings are supported by substantial evidence in the record. Accordingly, we must affirm the district court's conclusion in its order that "competent trial counsel in possession of [these medical records] would not have requested a neurological physical exam."

---

<sup>2</sup>Findings and/or conclusions in the written order control any contradictory oral findings or conclusions. *See Rust v. Clark Cnty. School Dist.*, 103 Nev. 686, 689, 747 P.2d 1380, 1382 (1987) (explaining that the district court's oral pronouncement from the bench, the clerk's minute order, and even an unfiled written order cannot be appealed).

Thus, Baldassarre failed to demonstrate a reasonable need for a neurological evaluation of the victim or that the district court abused its discretion in denying the evaluation. See NRS 34.780(2) (providing that a party seeking discovery must show good cause); *Widdis v. Second Judicial Dist. Court*, 114 Nev. 1224, 1229 n.2, 968 P.2d 1165, 1168 n.2 (1998) (providing a district court “has the discretion to refuse applications for public assistance” where the defendant fails “to demonstrate both indigency and reasonable need for the services in question”).

In light of these circumstances, Baldassarre failed to demonstrate counsel’s performance was deficient or a reasonable probability of a different outcome at trial had counsel sought a physical and/or neurological evaluation of the victim. Therefore, we conclude the district court did not err by denying this claim.

Second, Baldassarre claimed in his petition that counsel was ineffective for failing to investigate Amber K., who may have been a percipient witness to Baldassarre’s interactions with the victim at a time when the victim claimed Baldassarre sexually assaulted her. Prior to trial, lead counsel represented that his investigator was trying to locate an important witness in Texas and requested a trial continuance for this purpose. We remanded this claim for an evidentiary hearing. See *Baldassarre*, No. 72958, 2018 WL 3223301, at \*2 n.3. At the evidentiary hearing, Baldassarre called no witnesses and offered no evidence as to trial counsel’s efforts to investigate Amber K. Thus, Baldassarre failed to prove by a preponderance of the evidence that counsel failed to investigate Amber K.

Baldassarre argues on appeal that he was unable to prove his claim because the district court improperly denied him additional resources

to further investigate Amber K. On remand, Baldassarre was appointed an investigator who obtained a statement from Amber K., but Baldassarre offered no evidence at the evidentiary hearing regarding whether trial counsel investigated her. Thus, Baldassarre fails to demonstrate that additional investigative resources were reasonably necessary to litigate this claim and that the district court abused its discretion in denying additional resources. In light of these circumstances, Baldassarre failed to demonstrate counsel was deficient for failing to further investigate Amber K., and we conclude the district court did not err by denying this claim.

Third, Baldassarre claimed counsel should not have elicited testimony that (1) Baldassarre had struck the victim's mother in the face and (2) caused the jury to recognize that he had invoked his right to remain silent and right to counsel. We previously addressed these claims. *See id.* at \*3. Thus, the doctrine of law of the case prevents further litigation of these claims. *See Hall v. State*, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975). Therefore, we conclude Baldassarre is not entitled to relief based on these claims.

Next, Baldassarre argues that cumulative error entitles him to relief. This claim was not raised below, and we decline to consider it on appeal in the first instance. *See McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).

Finally, Baldassarre argues the district court erred by denying claims raised in his December 28, 2015, pro se petition. As with his prior appeal, Baldassarre's claim is largely a list of single-sentence issue statements and is entirely devoid of cogent argument and relevant facts. Therefore, we again decline to address these claims on appeal. *See Maresca*

*v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987); *see also Baldassarre*, No. 72958, 2018 WL 3223301, at \*3.

Accordingly, 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  
Law Office of Christopher R. Oram  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk