

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSHUA ROY WARD,  
Appellant,  
vs.  
CHARLES DANIELS, DIRECTOR,  
NEVADA DEPARTMENT OF  
CORRECTIONS AND THE STATE OF  
NEVADA,  
Respondents.

No. 88514-COA

**FILED**

APR 23 2025

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Joshua Roy Ward appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on February 5, 2021. Fourth Judicial District Court, Elko County; William A. Maddox, Senior Judge.

Ward argues the district court erred by denying his claims that 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. 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, Ward argues the district court erred in denying his claim that counsel was ineffective for not presenting a stronger defense based on consent. In particular, he faults counsel for not mentioning consent during opening statements, not referencing consent sufficiently during trial, and not admitting evidence to show the sexual contact was consensual.

The district court conducted an evidentiary hearing during which Ward and Ward's trial counsel testified. Ward's DNA was recovered from the victim; thus, trial counsel pursued a strategy to highlight inconsistencies in the victim's testimony to cultivate doubt as to the victim's account and suggest the victim engaged in consensual sexual contact.

Ward had told trial counsel he contacted the victim in response to a personal ad on a website, arranged to have sex, transported the victim to a friend's home for the encounter, and then dropped the victim off at the park. Despite counsel's efforts, she could not substantiate Ward's explanation. She could not find the personal ad, recover relevant data from Ward's phone, or obtain any phone record that corroborated Ward's narrative. Ward's friend even denied that Ward used her home for the encounter. Ward does not identify any additional evidence that counsel should have discovered. *See Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984) (providing that, where a party's framing of an issue consists primarily of bare and naked allegations unsupported by factual assertions, that party is not entitled to relief). Given the evidentiary weaknesses of Ward's proffered version of events and the significant risk of putting forth a defense relying on readily refutable allegations, Ward did not demonstrate

extraordinary circumstances sufficient to challenge trial counsel's decision. *See Doleman v. State*, 112 Nev. 843, 848, 921 P.2d 278, 280-81 (1996) ("A strategy decision . . . is a tactical decision that is virtually unchallengeable absent extraordinary circumstances." (internal quotation marks omitted)). Therefore, the district court's conclusion is supported by substantial evidence, and it did not err in denying relief on this claim.

Second, Ward contends counsel performed ineffectively in advising him not to testify. A defendant "has the ultimate authority to make certain fundamental decisions regarding the case, including the decision to testify." *Lara v. State*, 120 Nev. 177, 182, 87 P.3d 528, 531 (2004). The record indicates counsel discussed the possibility of Ward testifying several times. She properly advised Ward of his right to testify and the attendant risks of doing so. Ultimately, after discussing the matter with counsel and his family, Ward decided not to testify. Thereafter, the trial court canvassed Ward about his right to testify, he acknowledged he understood his rights, and he then waived the right to testify. Given the credibility hurdles attendant in both Ward's proffered narrative and stemming from his prior conviction, Ward did not demonstrate counsel's advice that he waive the right to testify was objectively unreasonable. *See Browning v. State*, 120 Nev. 347, 360-61, 91 P.3d 39, 49 (2004) (concluding that counsel is not ineffective where counsel's reasons for advising defendant not to testify are valid); *see also Strickland*, 466 U.S. at 689 (holding that there is a strong presumption that counsel was objectively reasonable). Therefore, the district court did not err in denying this claim.

Third, Ward contends counsel was ineffective for failing to substantiate the consent defense. Ward points to counsel's failure to recover

text messages, phone data, and internet searches from the month of the assault. He also contends counsel should have obtained the victim's phone records for that month as well. Counsel was also unfamiliar with the app Ward insists he used to contact the victim, so Ward argues counsel should have hired an expert or asked Ward or his wife to assist counsel with the app.

When a petitioner asserts that counsel should have pursued certain investigations, the petitioner bears the burden of demonstrating what those investigations would have revealed. *Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Ward did not substantiate his claim. He did not introduce any records or data showing that counsel could have obtained the purported evidence and what this evidence would have shown. Therefore, the district court did not err in denying this claim.

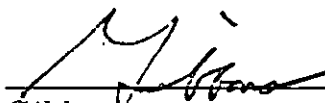
Lastly, Ward argues the district court did not give his claims a full and fair hearing. Specifically, he contends the district court failed to consider the totality of the evidence admitted at trial in evaluating the merits of his petition.


Ward's argument does not identify any portions of the record which the district court failed to consider. Nor does he explain how consideration of those portions of the record would have altered the court's ruling. Ward's argument relies on *Strickland's* holding that "a court hearing an ineffectiveness claim must consider the totality of the evidence before the judge or jury." 466 U.S. at 695. However, this consideration occurs after the petitioner has demonstrated that counsel performed deficiently, and the evaluating court must assess the impact of counsel's errors. As discussed above, Ward failed to demonstrate any deficiency by

counsel necessitating consideration of its impact on the facts at trial. Therefore, the district court did not err in declining to evaluate the prejudice resulting from Ward's allegations. *See Strickland*, 466 U.S. at 687 (requiring both components of an ineffective assistance claim to be shown). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
Bulla, C.J.

  
Gibbons, J.

  
Westbrook, J.

cc: Chief Judge, Fourth Judicial District Court  
Hon. William A. Maddox, Senior Judge  
Hillewaert Law Firm  
Attorney General/Carson City  
Elko County District Attorney  
Elko County Clerk