IN THE SUPREME COURT OF THE STATE OF NEVADA

JACQUIE SCHAFER,
Appellant,
vs.
DWIGHT NEVIN, WARDEN NDOC;
AND THE STATE OF NEVADA,
Respondents.

No. 88288

FILED

MAY 15 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Carli Lynn Kierny, Judge.

The district court initially denied the postconviction petition without conducting an evidentiary hearing. We affirmed in part, reversed in part, and remanded for the district court to conduct an evidentiary hearing on appellant Jacquie Schafer's claims that trial counsel was ineffective for failing to consult with a battered woman syndrome expert. *See Schafer v. State*, No. 84340, 2023 WL 4056925, at *1 (Nev. June 16, 2023) (Order Affirming in Part, Reversing in Part and Remanding). After holding an evidentiary hearing, the district court again denied relief. This appeal followed.

Schafer argues that the district court erred in denying the claims of ineffective assistance of counsel after the evidentiary hearing. To prove ineffective assistance of counsel, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a

reasonable probability that, but for counsel's errors, the outcome of the proceedings would have been different. *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 697, 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). When reviewing the district court's resolution of an ineffective-assistance claim, we give deference to the 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).

Schafer claims that trial counsel's failure to consult an expert on battered woman syndrome was ineffective assistance for three reasons. First, Schafer contends that trial counsel should have relied on battered woman syndrome to explain Schafer's conduct before, during, and after the crimes. Schafer also contends that an expert on battered woman syndrome could have rebutted the State's arguments that her conduct after the murder evidenced guilt.

Schafer has not shown deficient performance. At the evidentiary hearing, Schafer testified that she was not involved in the burglary, robbery, and murder. And trial counsel explained his two-fold trial strategy: to discredit Robert Sitton's accomplice testimony and to have Schafer testify that she had no role in killing the victim. Given the prosecution's reliance on Robert's testimony, Schafer has not demonstrated that counsel's trial strategy was objectively unreasonable. *See Lara v. State*, 120 Nev. 177, 180, 87 P.3d 528, 530 (2004) (holding that counsel's

strategic decisions are "virtually unchallengeable absent extraordinary circumstances" (internal quotation marks omitted)); *Rhyne v. State*, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002) ("[T]he trial lawyer alone is entrusted with decisions regarding legal tactics such as deciding what witnesses to call."). As to Shafer's post-offense conduct, the record reflects that trial counsel anticipated Schafer would testify about those subjects herself. But then Schafer chose not to testify at trial. *Cf. United States v. Ly*, 646 F.3d 1307, 1314-15 (11th Cir. 2011) ("[T]he right to testify is a right to choose between the competing rights of testifying and remaining silent."); *Lara*, 120 Nev. at 182, 87 P.3d at 531 (recognizing that defendants make the decision of whether to testify at trial). After reviewing the evidence supporting the claim of battered woman syndrome, we conclude that trial counsel's decision was objectively reasonable. Therefore, no relief is warranted on this ground.

Schafer also asserts that expert testimony about battered woman syndrome would have supported a duress defense to the forgery charge. *Boykins v. State*, 116 Nev. 171, 176, 995 P.2d 474, 478 (2000) (quotation marks omitted) ("[B]attered woman syndrome is not a complete defense. . . . It is some evidence to be considered to support a defense, such as self-defense, duress, compulsion, and coercion."). We disagree because a duress defense required evidence that Schafer "committed the act or made the omission charged under threats or menaces sufficient to show that [she] had reasonable cause to believe, and did believe, [her life] would be endangered if [she] refused, or that [she] would suffer great bodily harm." NRS 194.010(8). But Schafer failed to demonstrate the underlying facts for a duress defense by a preponderance of the evidence. *See Means*, 120 Nev. at 1012, 103 P.3d at 33. For example, Schafer testified at the evidentiary

hearing that "Robert . . . wanted us to go somewhere to cash the check. I had told him let me go cash it. I'll just do it myself." And Schafer cashed the check herself because she, "just wanted to get away from [Sitton and Robert], even for the time it took to cash a check to get away from them." Schafer's testimony does not suggest she was threatened, believed her life was in danger, or that she would suffer great bodily harm if she did not cash the victim's check. *Cf. Boykins*, 116 Nev. at 177, 995 P.2d at 478 ("Where the 'circumstances [of self-defense]' include domestic violence, the battered woman syndrome is relevant to the reasonableness of an individual's belief that death or great bodily harm is imminent."). Accordingly, Schafer has not demonstrated that trial counsel was objectively unreasonable in omitting a duress defense. Therefore, the district court did not err in denying this claim.

Second, Schafer contends that had trial counsel consulted with an expert on battered woman syndrome, counsel could have made different or additional arguments to support a motion to sever Schafer's trial from Sitton's trial. We conclude Schafer failed to demonstrate prejudice. Schafer's claim hinges on the idea that she was prejudiced because joinder prevented trial counsel from presenting evidence of Sitton's abusive behavior. But we rejected that idea on direct appeal. Specifically, we concluded that Schafer was not prejudiced by the district court's decision not to sever the trials given that the district court "eventually gave her unfettered permission to present evidence regarding the alleged abuse[, and] [t]hus, Schafer was not precluded from presenting evidence supporting her defense." *Schafer v. State*, No. 73334, 2019 WL 300388, at *1 (Nev. Jan. 17, 2019) (Order of Affirmance). Accordingly, we conclude that the district court did not err in denying this claim. *See Hall v. State*, 91 Nev. 314, 316,

535 P.2d 797, 799 (1975) ("The doctrine of the law of the case cannot be avoided by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings.").

Third, Schafer argues trial counsel should have presented evidence of battered woman syndrome at sentencing. Schafer has not shown deficient performance. The decision regarding what evidence to present at sentencing is a tactical one entrusted to defense counsel. *McNelton v. State*, 115 Nev. 396, 410, 990 P.2d 1263, 1273 (1999) ("The decision as to what mitigating evidence to present was a tactical one."). And such decisions are virtually unchallengeable absent extraordinary circumstances. *See Cullen v. Pinholster*, 563 U.S. 170, 196 (2011) ("*Strickland* specifically commands that a court must indulge the strong presumption that counsel made all significant decisions in the exercise of reasonable professional judgment." (internal quotation marks and alteration omitted)). Trial counsel retained a mitigation expert, filed a sentencing memorandum, and introduced a letter from Schafer's son. Trial counsel argued that Schafer only had a prior traffic conviction and was the least culpable of the three perpetrators. Schafer asserts that a battered woman syndrome expert could have addressed specific concerns the district court had at sentencing. We disagree because counsel's decisions at the time were objectively reasonable. *See Yarborough v. Gentry*, 540 U.S. 1, 8 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Therefore, the district court did not err in denying this ineffective-assistance claim.

Lastly, Schafer argues that cumulative error warrants relief. Even assuming that multiple deficiencies in counsel's performance may cumulate to establish prejudice, *see McConnell v. State*, 125 Nev. 243, 259

& n.17, 212 P.3d 307, 318 & n.17 (2009), Schafer has not shown multiple instances of deficient performance to cumulate. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Herndon

_____, J.
Parraguirre

_____, J.
Stiglich

cc: Hon. Carli Lynn Kierny, District Judge
Michael Lasher LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk