

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SEAN PAUL CORDEIRO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89189-COA

FILED

JUL 30 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Meane*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Sean Paul Cordeiro appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on August 15, 2019, and supplemental pleadings. Eighth Judicial District Court, Clark County; Christy L. Craig; Judge.

Cordeiro argues the district court erred by denying his claims of ineffective assistance of trial and appellate counsel.¹ 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*). To demonstrate ineffective assistance of appellate counsel, a petitioner must show that counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that the

¹Cordeiro was represented by the same attorney during trial and on direct appeal.

omitted issue would have a reasonable probability of success on appeal. *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). 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). For purposes of the deficiency prong, counsel is strongly presumed to have provided adequate assistance and exercised reasonable professional judgment in all significant decisions, *Strickland*, 466 U.S. at 690, and “counsel’s strategic or tactical decisions will be virtually unchallengeable absent extraordinary circumstances,” *Lara v. State*, 120 Nev. 177, 180, 87 P.3d 528, 530 (2004) (internal quotation marks omitted). 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, Cordeiro claimed trial counsel was ineffective for failing to investigate and present information concerning Cordeiro’s mental health and drug abuse history and its effect on his mental state at the time of the offenses. Cordeiro alleged that, had counsel presented such information, the jury would have found Cordeiro lacked the requisite specific intent for several unidentified counts. Cordeiro did not allege he told counsel about his mental health issues or their impact on his ability to commit the offenses. Rather, Cordeiro alleged counsel should have conducted an investigation based on descriptions of Cordeiro’s behavior contained in the discovery.

The district court conducted an evidentiary hearing regarding this claim, and Cordeiro did not testify or otherwise offer any additional

evidence regarding his mental health conditions or substance abuse history or how either impacted his state of mind at the time of the offenses.² Further, while counsel testified that he was aware Cordeiro had a history of methamphetamine use, counsel explained that Cordeiro never brought any mental health issues to counsel's attention. Counsel further testified that, during his interactions with Cordeiro, he never noticed anything about his mental health that raised concerns "or called into question his mental processes or his intelligence or anything of that nature." Counsel explained that, while the discovery contained information regarding Cordeiro's behavior which counsel described as "odd," counsel determined after speaking with "various people in the investigation, much of it seemed consistent with somebody being under the influence" of Ambien—which was Cordeiro's defense at trial. In light of these circumstances, Cordeiro failed to demonstrate counsel was deficient or a reasonable probability of a different outcome at trial but for counsel's inaction. Therefore, we conclude the district court did not err by denying this claim.

Second, Cordeiro claimed appellate counsel was ineffective for failing to challenge, on rule of completeness grounds codified in NRS 47.120, the district court's decision to permit the State to introduce portions of Cordeiro's jail phone calls during trial while simultaneously precluding Cordeiro from presenting another portion of one of Cordeiro's jail phone calls in rebuttal. Appellate counsel is not required to raise every non-

²Cordeiro attached to his petition a psychiatric evaluation conducted shortly after Cordeiro's arrest and indicating Cordeiro self-reported (1) suicidal ideation and wanting officers to kill him; (2) first receiving mental health treatment at age 13; (3) a previous "paranoia" diagnosis; (4) taking Seroquel for a short time in 2002; (5) a family history of mental illness (his mother); and (6) a history of methamphetamine and heroin use.

frivolous issue on appeal. *Jones v. Barnes*, 463 U.S. 745, 751 (1983). Rather, appellate counsel will be most effective when every conceivable issue is not raised on appeal. *Ford v. State*, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989). The decision as to what claims to raise on appeal resides within counsel's professional judgment. *Jones*, 463 U.S. at 751-54.

Despite the benefit of an evidentiary hearing on this claim, Cordeiro did not ask counsel why the instant claim was not raised on direct appeal while two other claims were. The district court found that counsel made a strategic decision not to raise this claim on direct appeal. Cordeiro does not challenge this finding on appeal, and we conclude it is not clearly erroneous. Because Cordeiro did not "overcome the presumption that [the] challenged action might be considered sound strategy," *Browning v. State*, 120 Nev. 347, 354, 91 P.3d 39, 45 (2004) (holding "[j]udicial review of a lawyer's representation is highly deferential"), Cordeiro failed to demonstrate deficiency.

Cordeiro is also unable to demonstrate prejudice. During trial, counsel sought to introduce exculpatory statements Cordeiro made during a jail phone call to rebut the inculpatory statements the State introduced during what was purportedly a separate phone call. The State argued during trial, and Cordeiro does not dispute, that the exculpatory statements counsel sought to introduce were made in a separate jail phone call that occurred six days after the inculpatory statements Cordeiro sought to rebut. Cordeiro did not admit into evidence at the evidentiary hearing a copy of the jail call document counsel relied on at trial. Thus, Cordeiro failed to demonstrate that the exculpatory statements he sought to introduce were part of the same writing or recorded statement. See NRS 47.120(1) ("When any part of a writing or recorded statement is introduced by a party, the

party may be required at that time to introduce any other part of it which is relevant to the part introduced, and any party may introduce any other relevant parts.”). Accordingly, we conclude Cordeiro failed to demonstrate a reasonable probability of a different outcome on appeal but for counsel’s inaction. Therefore, we conclude the district court did not err by denying this claim.

Third, Cordeiro claimed trial and appellate counsel were ineffective for failing to object to and challenge on direct appeal police officers’ “exciting” summary of the investigation. The district court found that counsel made a strategic decision to not challenge this testimony during trial or on appeal. Cordeiro does not challenge this finding on appeal, and we conclude it is not clearly erroneous. Therefore, Cordeiro failed to demonstrate deficiency.

Cordeiro is also unable to demonstrate prejudice. In support of his claim, Cordeiro cited *Sandersfield v. State*, 461 P.2d 1019 (Okla. Crim. App. 1969), *Abram v. State*, 95 Nev. 352, 594 P.2d 1143 (1979), and *United States v. Reyes*, 18 F.3d 65 (2d Cir. 1994). *Sandersfield* involved an officer’s improperly prejudicial testimony that the defendant had been arrested for murder where the charge before the jury was misdemeanor assault. 461 P.2d at 1019-20. *Abram* involved an officer’s improperly prejudicial testimony regarding inadmissible character evidence that was not relevant to the State’s theory of the case. 95 Nev. at 355, 594 P.2d at 1144-45. And *Reyes* involved the government’s improper use of hearsay statements from investigating agents in the form of a “narration of the exciting story of the investigation” during trial to provide background for the agents’ actions during their investigation of the case. 18 F.3d at 67-70.

With regard to Officers Hansen, Landers and Susich, Cordeiro failed to identify in his petition any testimony that was similar to the testimony at issue in *Sandersfield*, *Abram*, and *Reyes* in that it described an unrelated arrest or constituted inadmissible character evidence or hearsay. With regard to Detective Miller, the testimony identified in Cordeiro's petition did include inadmissible hearsay. However, trial counsel objected to this testimony multiple times on the grounds that Miller's testimony had already been presented by other witnesses. The trial court overruled the first objection "for now," but after Miller continued to testify in a similar manner, the trial court conducted a sidebar where it stated that it would not allow the State to elicit testimony from Miller that was "just repeat what the witnesses already said" because it was hearsay. Thereafter, the State represented it would move to a different form of questioning, but after the State again elicited similar testimony from Miller, the trial court sustained Cordeiro's objection. Based on the challenged testimony, counsel's objections, and the trial court's responses, we conclude Cordeiro failed to demonstrate a reasonable probability of a different outcome at trial or on appeal but for counsel's inaction. Therefore, we conclude the district court did not err by denying this claim.

Fourth, Cordeiro claimed trial and appellate counsel were ineffective for failing to object to and challenge on direct appeal the State's introduction of evidence of Cordeiro's in-custody status, including the process of his in-custody mail and the screening process and summarization of his "jail calls." A defendant is "entitled to not only the presumption of innocence, but also to indicia of innocence." *Haywood v. State*, 107 Nev. 285, 288, 809 P.2d 1272, 1273 (1991). "Informing the jury that a defendant is in

jail raises an inference of guilt, and could have the same prejudicial effect as bringing a shackled defendant into the courtroom.” *Id.*

Counsel testified that his decision not to challenge this evidence was strategic. Counsel explained that the jury would assume Cordeiro was in custody based on the charged crimes, that the defense theory was that Cordeiro was improperly in custody because he had been unknowingly given Ambien by his girlfriend which had serious side effects, and that the evidence corroborated his defense theory. Further, because the evidence related to a time period nearly two years before trial, any inference of Cordeiro’s custodial status at that time did not necessarily indicate that he was in custody at the time of trial. In light of these circumstances, Cordeiro failed to demonstrate deficiency or a reasonable probability of a different outcome at trial or on appeal but for counsel’s inaction. Therefore, we conclude the district court did not err by denying this claim.

Fifth, Cordeiro claimed trial and appellate counsel were ineffective for failing to object to and challenge on direct appeal the “reasonable doubt” and “equal and exact justice” jury instructions. Both instructions have been repeatedly upheld, and Cordeiro failed to demonstrate deficiency or a reasonable probability of a different outcome at trial or on appeal but for counsel’s inaction. See NRS 175.211 (defining reasonable doubt and providing that no other definition may be given to a jury); *Chambers v. State*, 113 Nev. 974, 982-83, 944 P.2d 805, 810 (1997) (upholding the reasonable doubt instruction provided in NRS 175.211); *Leonard v. State*, 114 Nev. 1196, 1209, 969 P.2d 288, 296 (1998) (providing that where the jury has been instructed that the defendant is presumed innocent and that the State bears the burden of proving guilt beyond a reasonable doubt, the equal-and-exact-justice instruction does not deny

defendant the presumption of innocence or lessen the burden of proof). Therefore, we conclude the district court did not err by denying this claim.

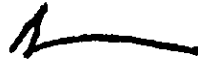
Cordeiro also claimed the cumulative errors of counsel entitled him to relief. Even if multiple instances of deficient performance could be cumulated for purposes of demonstrating prejudice, *see McConnell v. State*, 125 Nev. 243, 259 & n.17, 212 P.3d 307, 318 & n.17 (2009), Cordeiro failed to demonstrate any errors to cumulate. Therefore, we conclude the district court did not err by denying this claim.

Cordeiro also argues the district court erred by denying claims raised in his pro se petition. Cordeiro's claim on appeal is largely a list of single-sentence issue statements and is entirely devoid of cogent argument and relevant facts. We therefore decline to address this claim on appeal. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987). To the extent Cordeiro attempts to incorporate these claims on appeal by referencing his pro se petition filed below rather than providing specific argument or citation to authority, such incorporation is not allowed. *See* NRAP 28(e)(2) ("Parties must not incorporate by reference briefs or memoranda of law submitted to the district court or refer the Supreme Court or Court of Appeals to such briefs or memoranda for the arguments on the merits of the appeal.").

Finally, in his reply brief, Cordeiro argues counsel was ineffective for failing to investigate two separate brain injuries. Cordeiro also contends he was not given the opportunity to plead his postconviction case because the district court improperly denied him the ability to receive a brain scan. We decline to consider issues raised for the first time in a reply brief. *See LaChance v. State*, 130 Nev. 263, 277 n.7, 321 P.3d 919, 929

n.7 (2014); *see also* NRAP 28(c) (stating a reply brief is "limited to answering any new matter set forth in the opposing brief"). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Christy L. Craig, District Judge
Law Office of Christopher R. Oram
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk