

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TYRONE D. JAMES, SR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 71935

FILED

NOV 14 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

Tyrone D. James, Sr. appeals from a district court order denying the petition for a writ of habeas corpus he filed on March 14, 2013. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

James claims the district court erred by rejecting his claims of effective assistance of counsel. To establish ineffective assistance of counsel, a petitioner must demonstrate 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, but for counsel's errors, the outcome of the proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Both components of the ineffective-assistance inquiry—deficiency and prejudice—must be shown. *Id.* at 697. We review the district court's resolution of ineffective-assistance claims de novo, giving deference to the district court's factual findings if they are supported by substantial evidence and not clearly wrong. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

First, James claimed trial counsel was ineffective for failing to retain an expert witness to review Dr. Theresa Vergara's medical

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examination of the victim and rebut her conclusion the victim had been sexually assaulted. The district court conducted an evidentiary hearing on this claim and made the following findings: Counsel determined that James' case would not turn on physical evidence and made a reasonable strategic decision to attack Dr. Vergara's expert testimony through cross-examination. Counsel was able to get Dr. Vergara to testify that her findings were not conclusive and had alternative explanations. Even assuming counsel had retained an expert witness, the result of the trial would have been the same. This case did not hinge on Dr. Vergara's physical findings but rather the damning testimony of the victim and the other-bad-acts testimony of a similarly-situated victim. The district court's factual findings are supported by the record and are not clearly wrong, and we conclude the district court did not err by rejecting this claim. See *Doleman v. State*, 112 Nev. 843, 848, 921 P.2d 278, 280-81 (1996) (observing that strategic decisions are virtually unchallengeable under most circumstances).

Second, James claimed trial counsel was ineffective for failing to challenge the admission of the latex gloves the police recovered from the victim's residence. The district court made the following findings: James failed to demonstrate the gloves were more prejudicial than probative. The gloves were relevant as they tended to corroborate the victim's account of the assault. The State laid a sufficient foundation for admitting the gloves into evidence. And any objection to the admissibility of the gloves would have been futile. The district court's factual findings are supported by the record and are not clearly wrong, and we conclude the district court did not err in rejecting this claim. See *Ennis v. State*, 122 Nev. 694, 706, 137 P.3d

1095, 1103 (2006) (counsel cannot be deemed ineffective for failing to make futile objections).

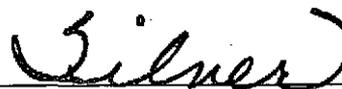
Third, James claimed trial counsel was ineffective for failing to conduct an adequate investigation. The district court found this to be a bare allegation because James failed to demonstrate what further investigation would have revealed and how it would have rendered a more favorable outcome at trial. The district court's factual finding is supported by the record and is not clearly wrong, and we conclude the district court did not err by rejecting this claim. See *Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) (a petitioner claiming counsel did not conduct an adequate investigation must specify what a more thorough investigation would have revealed); *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984) (a petitioner is not entitled to postconviction relief if his claims are bare or belied by the record).

Fourth, James claimed trial counsel was ineffective for failing to object to the State's PowerPoint presentation during closing argument because it included a slide of his booking photograph with the word "GUILTY" superimposed across it. The district court found this to be a bare allegation because James failed to demonstrate counsel's performance was objectively unreasonable and how he was prejudiced. The district court's factual finding is supported by the record and is not clearly wrong, and we conclude the district court did not err in rejecting this claim. See *Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225; see generally *Artiga-Morales v. State*, 130 Nev. \_\_\_, \_\_\_, 335 P.3d 179, 182 (2014) (the State's limited use of the defendant's photograph during closing argument, with the word "guilty" across the front, does not present the impropriety and prejudice discussed in *Watters v. State*, 129 Nev. 886, 313 P.3d 243 (2013)).

James also claims the district court erred by rejecting his claim that the cumulative effect of trial counsel's errors violated his right to due process and a fair trial. However, even assuming multiple deficiencies in trial counsel's performance may be cumulated to find prejudice under the *Strickland* test, see *McConnell v. State*, 125 Nev. 243, 259 n.17, 212 P.3d 307, 318 n.17 (2009), the district court did not find any such deficiencies, so there is nothing to cumulate.

James further claims the district court erred by limiting the scope of the evidentiary hearing to only one of his ineffective-assistance-of-counsel claims because the remaining three claims were not repelled by the record. We review a district court's determination that a petitioner is not entitled to an evidentiary hearing for abuse of discretion. *Berry v. State*, 131 Nev. \_\_\_, \_\_\_, 363 P.3d 1148, 1156 (2015). We conclude the district court did not abuse its discretion by limiting the evidentiary hearing to James' first claim because his remaining claims were either bare allegations or would not have entitled him to relief. See *Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225.

Having concluded James is not entitled to relief, we  
ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Elizabeth Goff Gonzalez, Chief Judge  
McLetchie Shell LLC  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk