

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DUANE ANDREW JOHNSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82579-COA

FILED

FEB 18 2022

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

ORDER OF AFFIRMANCE

Duane Andrew Johnson appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on November 14, 2019. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

Johnson claims the district court erred by denying his claim of ineffective assistance of 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. 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).

Johnson claimed his counsel was ineffective for failing to call an expert witness at sentencing to challenge the accuracy of drug tests. Johnson failed the drug tests, which subjected him to sentencing consequences for violating a "trap door" clause in his guilty plea agreement. The district court determined that counsel's decision was strategic, and this finding is supported by the record. At the sentencing hearing, counsel stated that he had retained an expert to testify that the drug test results were unreliable. Counsel further stated at the sentencing hearing that there was an equivalent amount of evidence that supported the reliability of the results and counsel did not want to waste the court's time by challenging the results. Counsel did not call the expert to testify but instead argued that Johnson should be sentenced to drug court. Johnson failed to demonstrate this was one of the extraordinary circumstances in which counsel's strategic decision could be challenged. 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)). Therefore, we conclude Johnson failed to demonstrate that counsel's decision not to call an expert at the sentencing

hearing to challenge failed drug tests was objectively unreasonable. Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Robert W. Lane, District Judge
TCM Law
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk

¹Our review of the district court's decision was hampered by Johnson's failure to provide this court with copies of the postconviction pleadings filed below or any of the evidence offered in support of his petition. It is Johnson's burden to provide this court with an adequate record for review. *See McConnell v. State*, 125 Nev. 243, 256 n.13, 212 P.3d 307, 316 n.13 (2009); *see also* NRAP 30(b)(3) (stating appellant's appendix filed on appeal shall include "any other portions of the record essential to determination of issues raised in appellant's appeal").