

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JESSE D. NOBLE, A/K/A JESSE
NOBEL, JR.,
Appellant,
vs.
CALVIN JOHNSON, WARDEN,
Respondent.

No. 83024-COA

FILED

JUL 08 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING*

Jesse D. Noble appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on November 18, 2019.¹ Eighth Judicial District Court, Clark County; Cristina D. Silva, Judge.

Noble argues the district court erred by denying his claims that counsel was ineffective without first conducting an evidentiary hearing. 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*,

¹Noble's initial pleading, filed pro se, is titled "Motion for New Trial." The district court construed it as a postconviction petition for a writ of habeas corpus, and Noble does not challenge this decision on appeal.

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). To warrant an evidentiary hearing, a petitioner must raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Noble claimed counsel was ineffective for failing to investigate, interview, or impeach four witnesses. Noble claimed these witnesses would have contradicted the testimony presented at trial. The four witnesses named in Noble's petition did not testify at trial, and Noble did not state what these witnesses would have testified to or how their testimony would have been contradictory. Therefore, he failed to support this claim with specific facts. Thus, he failed to demonstrate counsel was deficient or that he was prejudiced by counsel's failure to investigate, interview, or impeach the witnesses. Accordingly, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Second, Noble claimed counsel was ineffective for failing to properly impeach the victim. Specifically, Noble claimed counsel should have impeached the victim regarding which of Noble's hands he grabbed during the incident. Further, he claimed that the testimony at trial regarding the victim blacking out differed from the victim's statement made at the time of the incident. Noble failed to demonstrate that the victim's

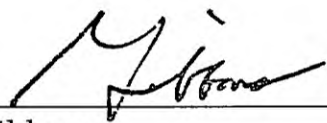
confusion regarding which hand of Noble's he grabbed was impeachment evidence that would have resulted in a reasonable probability of a different outcome at trial. Thus, Noble failed to demonstrate he was prejudiced. Further, Noble failed to allege how the victim's testimony regarding blacking out differed from the victim's statement made at the time of the incident. Therefore, he failed to support this part of the claim with specific facts. Accordingly, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Third, Noble claimed counsel was ineffective for failing to present a video of the incident that would show he did not participate in the criminal activity. Noble claimed he told counsel about the video, but counsel refused to present it at trial. The district court made no definitive findings of fact regarding the existence of the video but nevertheless concluded it was a strategic decision of counsel not to present it. The record does not indicate whether counsel investigated or made a strategic decision to not investigate the existence of the video.

The State argues on appeal that the claim is belied by the record because the victim, who worked at the facility where the incident occurred, testified at Noble's preliminary hearing that there were no security cameras in the area. The State also argues that it was a strategic decision of counsel not to investigate the video. The victim's testimony does not belie the record because it was made without a complete foundation. The possibility of cameras that had a view of that area was not repelled. Rather the testimony created a question that results in a factual dispute that can only be resolved by an evidentiary hearing. *See Cortes v. State*, 127 Nev. 505, 509, 260 P.3d 184, 187-88 (2011) (noting that a district court must conduct an evidentiary

hearing "when a substantial claim is presented and there are disputed issues of material fact that will affect the outcome" (quotation marks omitted)). Without knowing whether the video exists, what the content of the video is, and why counsel may not have investigated the existence of the video and its content, this court cannot affirm the finding of the district court that this was a strategic decision of counsel. Noble supported his claim with specific facts that are not belied by the record and, if true, would entitle him to relief. Thus, we conclude the district court erred by denying this claim without first conducting an evidentiary hearing. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Dept. 9
The Gersten Law Firm PLLC
Attorney General/Carson City

Attorney General/Las Vegas
Eighth District Court Clerk