EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT

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Steven D. Grierson
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Anntoinette Naumec-Miller
Court Division Administrator

July 22, 2022

Elizabeth A. Brown
Clerk of the Court
201 South Carson Street, Suite 201
Carson City, Nevada 89701-4702

RE: GENARO RICHARD PERRY vs. STATE OF NEVADA; WARDEN HOWELL
S.C. CASE: 85042
D.C. CASE: A-22-851874-W

Dear Ms. Brown:

In response to the e-mail dated July 21, 2022, enclosed is a certified copy of the Findings of Fact, Conclusions of Law, and Order filed July 14, 2022 in the above referenced case. If you have any questions regarding this matter, please do not hesitate to contact me at (702) 671-0512.

Sincerely,
STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Heather Ungermann
Heather Ungermann, Deputy Clerk

FCL
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DISTRICT COURT
CLARK COUNTY, NEVADA

GNERARO RICHARD PERRY
ID#1456173

Petitioner,

-vs-

THE STATE OF NEVADA.

Respondent.

CASE NO: A-22-851874-W
C-14-298879-1

DEPT NO: XVII

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

DATE OF HEARING: June 7, 2022
TIME OF HEARING: 11:00 AM

THIS CAUSE having come on for hearing before the Honorable MICHAEL VILLANI, District Judge, on the 7th day of June 2022, the matter heard in Chambers, and this Court having considered the matter, including briefs, transcripts, and documents on file herein, now therefore, this Court makes the following findings of fact and conclusions of law:

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY

On June 25, 2014, Genaro Perry (hereinafter "Petitioner") was charged by way of Information with Count One: Robbery with Use of a Deadly Weapon (Category B Felony – NRS 200.380), Count Two: False Imprisonment with Use of a Deadly Weapon (Category B Felony – NRS 200.460), Count Three: Grand Larceny Auto (Category B Felony – NRS 200.460), Count Four: Assault with a Deadly Weapon (Category B Felony – NRS 207.190), Count Five: Coercion (Category B Felony – NRS 207.190), Count Six: Battery Resulting in Substantial Bodily Harm Constituting Domestic Violence (Category C Felony – NRS 200.481, 200.485) and Count Seven: Preventing or Dissuading Witness or Victim from Reporting Crime or Commencing Prosecution (Category D Felony – NRS 199.305).

On October 1, 2015, after a three-day bench trial, the district court found Petitioner guilty on all counts. On January 6, 2016, Petitioner was sentenced to an aggregate total of a maximum of three hundred thirty-six (336) months and a minimum of ninety-six (96) months in the Nevada Department of Corrections, with five hundred ninety-seven (597) days credit for time served. Petitioner's Judgment of Conviction was filed on January 22, 2016. An Amended Judgment of Conviction was filed on April 28, 2017. A second Amended Judgment of Conviction striking verbiage referencing an aggregate total sentence in Petitioner's Amended Judgment of Conviction was filed on August 8, 2017.

Petitioner filed a Notice of Appeal on November 4, 2015, appealing this Court's guilty verdict. On December 14, 2016, the Nevada Supreme Court affirmed this Court's verdict and issued Remittitur on January 10, 2017.

On February 7, 2017, Petitioner filed a Petition for Writ of Habeas Corpus (Post-conviction) (hereinafter "First Petition"), Motion for Appointment of Attorney, Motion to Dismiss Counsel, and Motion for a New Trial. The State filed its response on April 7, 2017. On April 24, 2017, the district court denied Petitioner's Motion for New Trial but granted Petitioner's Motion to Withdraw Counsel and Motion to Appoint Counsel. The court appointed

Jean Schwartzer Esq. as counsel for the purposes of filing a supplement to the First Petition.

On February 3, 2021, Petitioner filed a Motion Requesting Order Directing the Las Vegas Metropolitan Police Department to Conduct Genetic Marker and Latent Print Analysis of Evidence Impounded at Crime Scene and requested a hearing. The State filed its Response on February 11, 2021. On February 17, 2021, Petitioner's Motion was denied, and the district court issued its Order on April 16, 2021.

On August 16, 2021, Petitioner filed a Motion to Withdraw Counsel, which was granted by the district court. Counsel never filed a supplement to the First Petition before withdrawing. Petitioner filed a Pro Per Supplement to his own Petition on November 29, 2021.

On November 29, 2021, Petitioner filed a Motion to Modify and/or Correct Illegal Sentence. The State filed its Opposition on December 15, 2021. This Court denied Petitioner's Motion on December 20, 2021, and issued its Order on December 29, 2021.

Petitioner filed a second Notice of Appeal on January 27, 2022, appealing this Court's decision to deny his Motion to Modify and/or Correct Illegal Sentence. On February 18, 2022, the Nevada Supreme Court affirmed the district court's denial of Petitioner's Motion and issued Remittitur on March 15, 2022. However, that Remittitur was recalled by the Nevada Court of Appeals and is currently still on appeal.

Petitioner filed the instant Petition (hereinafter "Second Petition") on April 29, 2022. The State filed its Response on June 6, 2022. On June 29, 2022, this Court denied both Petitioner's First and Second Petitions. This Court's Findings of Fact, Conclusions of Law and Order now follows.

STATEMENT OF THE FACTS

Petitioner's Presentence Investigation Report (hereinafter "PSI") summarized the facts of the crime as follows:

> Petitioner and Carla Carpenter (hereinafter "Carpenter") were involved in a six-month relationship. On April 20, 2014, Petitioner came over to Carpenter's house to get his property. He ended up spending the night at her house because it was late. The following morning, Petitioner asked Carpenter for $5,000.00 to buy drugs. When she refused to lend him the money, Petitioner grabbed a steak knife and threatened to kill her and her family. He then

> lunged at Carpenter with the knife.
>
> Next, Petitioner banged Carpenter's head against the kitchen floor and kicked her in the face several times. When she tried to call the police, Petitioner threw her phone against the wall. Petitioner would not allow her to leave.
>
> Petitioner then picked up Carpenter's car keys, held the knife to her and said, "I will take these." Before he left in her car, he threw her phone in the toilet and threatened to kill her and her ex-husband if she called the police. Carpenter suffered numerous injuries as well as damage to her house.

PSI 6-7.

ANALYSIS

I. PETITIONER RECEIVED THE EFFECTIVE ASSISTANCE OF COUNSEL

Petitioner alleges nineteen instances of ineffective assistance of counsel. Nevada has adopted the standard outlined in Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984), for determinations regarding the effectiveness of counsel. Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984); Kirksey v. State, 112 Nev. 980,998, 923 P.2d 1102, 1113 (1996). Under Strickland, in order to assert a claim of ineffective assistance of counsel, the defendant must prove that he was denied "reasonably effective assistance" of counsel by satisfying a two-pronged test. Strickland, 466 U.S. at 686-687, 104 S. Ct. at 2064; see State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Under this test, the defendant must show that his counsel's representation fell below an objective standard of reasonableness, and that, but for counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. See Strickland, 466 U.S. at 687-688, 694, 104 S. Ct. at 2064, 2068.

"Surmounting Strickland's high bar is never an easy task." Padilla v. Kentuck, 559 U.S. 356, 371, 130 S. Ct. 1473, 1485 (2010). The question is whether an attorney's representations amounted to incompetence under prevailing professional norms, "not whether it deviated from best practices or most common custom." Harrington v. Richter, 562 U.S. 86, 88, 131 S. Ct. 770, 778 (2011). Furthermore, "[e]ffective counsel does not mean errorless counsel, but rather counsel whose assistance is ' [w]ithin the range of competence demanded of attorneys in criminal cases.'" Jackson v. Warden, Nevada State Prison, 91 Nev. 430,432, 537 P.2d 473,474

(1975) (quoting McMann v. Richardson, 397 U.S. 759, 771, 90 S. Ct. 1441, 1449 (1970)).

A court begins with a presumption of effectiveness and then must determine whether the defendant has demonstrated by a preponderance of the evidence that counsel was ineffective. Means v. State, 120 Nev. 1001, 1011-12, 103 P.3d 25, 35 (2004). The role of a court in considering allegations of ineffective assistance of counsel is "not to pass upon the merits of the action not taken but to determine whether, under the particular facts and circumstances of the case, trial counsel failed to render reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (emphasis added) (citing Cooper v. Fitzharris. 551 F .2d 1162, 1166 (9th Cir. 1977)).

In considering whether trial counsel was effective, the court must determine whether counsel made a "sufficient inquiry into the information ... pertinent to his client's case." Doleman v State, 112 Nev. 843, 846, 921 P.2d 278, 280 (1996); citing. Strickland, 466 U.S. at 690-691, 104 S. Ct. at 2066. Once this decision is made, the court will consider whether counsel made "a reasonable strategy decision on how to proceed with his client's case." Doleman, 112 Nev. at 846,921 P.2d at 280; citing Strickland, 466 U.S. at 690-691, 104 S. Ct. at 2066. Counsel's strategy decision is a "tactical" decision and will be "virtually unchallengeable absent extraordinary circumstances." Doleman, 112 Nev. at 846, 921 P.2d at 280; see also Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990); Strickland, 466 U.S. at 691, 104 S. Ct. at 2066.

This analysis does not indicate that the court should "second guess reasoned choices between trial tactics, nor does it mean that defense counsel, to protect himself against allegations of inadequacy, must make every conceivable motion no matter how remote the possibilities are of success." Donovan, 94 Nev. at 675, 584 P.2d at 711; citing Cooper, 551 F .2d at 1166 (9th Cir. 1977). In essence, the court must "judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. However, counsel cannot be deemed ineffective for failing to make futile objections, file futile motions, or for failing to make futile arguments. Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006).

Even if a defendant can demonstrate that his counsel's representation fell below an objective standard of reasonableness, he must still demonstrate prejudice and show a reasonable probability that, but for counsel's errors, the result of the trial would have been different. McNelton v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing Strickland, 466 U.S. at 687). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694, 104 S. Ct. at 2068. A defendant who contends his attorney was ineffective because he did not adequately investigate must show how a better investigation would have rendered a more favorable outcome probable. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).

Finally, claims asserted in a petition for post-conviction relief must be supported with specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P .2d 222, 225 (1984). "Bare" and "naked" allegations are not sufficient, nor are those belied and repelled by the record. Id.

1. Ground 1

Petitioner complains that counsel was ineffective for failing to list or call the TJ Maxx security guard or Dr. Gabaeff. Motion at 7-9. However, Petitioner cannot demonstrate deficient performance because counsel retains the authority to determine what witnesses to call at trial. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002). Moreover, counsel did try to call the security guard, but the Court declined his request. RT, 09/30/15, at 62-64. Counsel was not ineffective for failing to challenge the Court's ruling, as it would have been futile. Ennis, 122 Nev. at 706, 137 P.3d at 1103.

Moreover, Petitioner fails to establish prejudice. Petitioner asserts that counsel was ineffective for failing to call Dr. Gabaeff because counsel told the Court that "having no doctor [at trial] to talk about anything for the jury is a little too risky ... " RT, 05/07/15, at 2; Motion at 8. However, a review of the record belies Petitioner's claim. Hargrove, 100 Nev. at 502,686 P.2d at 225. On the second day of trial, during jury selection, the State and counsel discussed with the Court last-minute witness issues. Id. at 2-9. Counsel's discussed strategy was not to call Dr. Gabaeff, but to introduce Gabaeff's reports through the State's expert and to argue. Id.

at 2-3. Moreover, counsel repeatedly discussed cross- examining the State's expert, who was the victim's attending physician. Id. at 3, 9. In context, counsel was more concerned about cross-examining the State's expert than calling his own. Id. at 9. Moreover, the "Court indicated to [counsel] that he knew his doctor would not be available and that he would be using the State's witness .... " Court Minutes, 05/07/15.

Further, Petitioner fails to demonstrate what Dr. Gabaeffs testimony would have rendered a more favorable outcome probable. See Molina, 120 Nev. at 192, 87 P.3d at 538. Petitioner argues that Dr. Gabaeff would have impeached the credibility of State's expert because Dr. Gabaeffs notes alleged false billing. Motion at 7-8. First, Petitioner fails to establish how Dr. Gabaeff, having never treated the victim, would establish false billing for her ailments. Moreover, even Dr. Gabaeff's notes confirm there was a severe fracture to the orbital structure of the victim's right eye. See Exhibit 1. Indeed, there was substantial testimony and photographic evidence presented at the bench trial, with respect to the victim's injuries. RT, 09/29/15, at 14-25, 51-55, 65-72, 76-79. As such, Petitioner cannot establish a more favorable outcome had Dr. Gabaeff testified.

Similarly, Petitioner cannot establish prejudice for the failure to call the TJ Maxx security guard. At trial, the victim, Coria Carpenter, testified that she "lost it" in the store and chased a woman through the store with a crowbar over money. Id at 74-76, 80-82. As such, Petitioner fails to demonstrate what else the security guard would have testified to at trial. See Molina, 120 Nev. at 192, 87 P.3d at 538. Accordingly, Petitioner's claim is denied.

2. Ground 2

In Ground 2, Petitioner complains that counsel was ineffective for failing to have the knife tested for DNA and fingerprints. Motion at 10. However, Petitioner fails to demonstrate how further forensic investigation would have rendered a more favorable outcome probable. Molina, 120 Nev. at 192, 87 P.3d at 538. Indeed, based on the testimony presented at trial, the results would have confirmed the presence of both the victim's and Petitioner's blood and fingerprints on the knife. See RT, 09/29/15, at 53. Further, Petitioner's assertion that "this evidence would have had the charges lowered to a simple domestic violence on both people

involved" is nothing more than a naked assertion suitable only for summary dismissal. Hargrove, 100 Nev. at 502, 686 P.2d at 225. As such, this claim is denied.

3. Ground 3

Petitioner next complains that the counsel was ineffective for not challenging the Criminal Complaint, which failed to list the location of the incident. Motion at 11. However, a specific address is not required. A criminal complaint is intended solely to put the defendant on formal written notice of the charge he must defend; it need not show probable cause for arrest on its face and may simply be drawn in the words of the statute so long as the essential elements of the crime are stated. Sanders v. Sheriff, 85 Nev. 179,451 P.2d 718 (1969). As the victim's address is not an essential element of the crime, it would have been futile to challenge the lack of address. Ennis, 122 Nev. at 706, 137 P.3d at 1103. Moreover, Petitioner has consistently claimed self-defense; surely, he did not need notice of the place where he was allegedly defending himself. Accordingly, the claim is denied.

4. Ground 4

In Ground 4, Petitioner argues that counsel was ineffective for failing to object to the removal of self-defense instructions. Motion at 12. Petitioner waived his right to a jury trial so that he could put on a self-defense case and testify without a jury learning about his criminal record. However, at the conclusion of the trial, the Court determined that there was no evidence of self-defense, so a formal objection by counsel would have been futile. RT, 10/01/15, at 3; Ennis, 122 Nev. at 706, 137 P.3d at 1103. Moreover, Petitioner fails to establish prejudice because the Nevada Court of Appeals addressed the issue on direct appeal, under the abuse of discretion standard-as if an objection had been made. Perry v. State, Docket No. 69139 (Order of Affirmance, Dec. 14, 2016). While the Court of Appeals determined that it was error to reject the self-defense instructions, such error was harmless. Id at 2-3. Therefore, he cannot demonstrate a reasonable probability that, but for counsel's errors, the result of the trial would have been different. McNelton, 115 Nev. at 403, 990 P.2d at 1268. Thus, Petitioner’s claim is denied.

5. Ground 5

Petitioner next asserts counsel's ineffectiveness for waiving the preliminary hearing. Motion at 13. Petitioner fails to recognize that it was he, not counsel, who waived the preliminary hearing. Reporter's Transcript, 06/19/14, at 2-3. As such, counsel cannot be deemed ineffective for a decision that belonged solely to Petitioner. See Rhyne, 118 Nev. at 8, 38 P.3d at 167. As such, Petitioner's claim is denied.

6. Ground 6

In Ground 6, Petitioner claims counsel was ineffective for failing to have the Court order a psychiatric examination of the victim. Motion at 13-14. However, the record fails to demonstrate a compelling need for an examination. A compelling need for an examination exists if: (1) the State has called or obtained some benefit from a psychological or psychiatric expert; (2) the evidence of the crime is supported by little or no corroboration beyond the testimony of the victim; and (3) a reasonable basis exists to believe that mental or emotional state of the victim may have affected her veracity. Abbott v. State, 122 Nev. 715, 727-32, 138 P .3d 462, 470-73 (2006). As the record is completely bare of evidence supporting any of the three Abbott factors, such a request would have been futile. Ennis, 122 Nev. at 706, 137 P .3d at 1103. As counsel cannot be ineffective for failing to make futile requests, Petitioner's claim is denied.

7. Ground 7

Petitioner complains that counsel was ineffective for calling him a "drug-addled maniac," which "destroyed any possibility of showing [] self-defense." Motion at 14-15. First, counsel was not ineffective for using the term. During the trial, the victim testified on cross-examination that Petitioner had "erratic behaviors" and used and sold drugs. RT, 09/29/15, at 84-86, 88. Moreover, in context, counsel's closing argument focused primarily on the victim's credibility. Counsel highlighted what he believed to be the unreasonableness of her testimony in an attempt to discredit her. Id at 18-20. He focused on the victim's description of past abuse, but the seemingly unreasonable act of allowing Petitioner to come over and sleep in her bed with her. RT, 10/01/15, at 19. And although she denied that Petitioner was a "drug-addled maniac," counsel's point was that, even if Petitioner was a "drug-addled maniac," the victim's

actions became even more inconsistent and unreasonable. Id.

Further, counsel's comment did not "destroy" Petitioner's self-defense claim. The Court previously denied the requested instructions, finding there was no evidence. RT, 10/01/15, at 3. Indeed, the Nevada Court of Appeals determined that it was "clear beyond a reasonable doubt that a rational trier of fact would have found Perry guilty" even if the instruction had been given. Perry v. State, Docket No. 69139 (Order of Affirmance, Dec. 14, 2016). Accordingly, the claim is denied.

8. Ground 8

In Ground 8, Petitioner complains that counsel's failure to investigate "Carpenter's life/past" was ineffective. Motion at 15. He asserts that she has mental health issues and is engaged in fraudulent activity selling prescription pills. Id. These are bare assertions suitable only for summary dismissal. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Accordingly, the claim is denied.

9. Ground 9

Petitioner next complains that counsel was ineffective for failing to interview the State's expert, Dr. Leibowitz. Motion at 16. However, Petitioner fails to show how a better investigation would have rendered a more favorable outcome probable. Molina, 120 Nev. at 192, 87 P.3d at 538. Indeed, Petitioner's claim is a naked assertion, belied by the record. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

At trial, counsel thoroughly cross-examined Dr. Leibowitz regarding the conclusion that the victim's injuries made it obvious this was an abuse situation. RT, 09/29/15, at 25-28. During counsel's cross-examination, he effectively attacked the doctor's credibility by getting the doctor to discuss potential bias; Dr. Leibowitz told the Court he came to testify because "I have, you know, a sister and daughter and I wouldn't want them punched out and that's how I look at it." Id. at 25-26. Similarly, counsel's cross-examination attacked Dr. Leibowitz's conclusion that this was definitively abuse. See id at 27-28. As the record demonstrates, counsel was more than prepared to cross-examine Dr. Leibowitz. As such, Petitioner's claim is belied by the record and denied. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

10. Ground 10

Petitioner further asserts counsel failed to interview the TJ Maxx security guard. Motion at 16. However, Petitioner cannot demonstrate prejudice because the Court precluded the security guard's testimony. RT, 09/30/15, at 62-64. As interviewing the guard was ultimately unnecessary, counsel cannot be deemed ineffective. See Ennis, 122 Nev. at 706, 137 P.3d at 1103.

Moreover, Petitioner fails to show how a better investigation would have rendered a more favorable outcome probable. Molina, 120 Nev. at 192, 87 P.3d at 538. At trial, Carpenter testified that she "lost it" in the store and chased a woman through the store with a crowbar over money. Id. at 74-76, 80-82. As such, it is unclear what the security guard would have stated that would have been more favorable to Petitioner. Thus, his claim is denied.

11. Ground 11

In Ground 11, Petitioner claims that counsel was ineffective for failing to raise the court-appointed investigator's "conflict of interest," which resulted in an incomplete investigation and his waiver of the preliminary hearing. Motion at 17-18. First, Petitioner's claims that the investigator had a conflict of interest and that the charges might have been reduced are bare assertions. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Further, as discussed, supra, Petitioner chose to waive his preliminary hearing. Reporter's Transcript, 06/19/14, at 2-3. As such, counsel cannot be deemed ineffective for a decision that belonged solely to Petitioner. See Rhyne, 118 Nev. at 8, 38 P.3d at 167. Accordingly, Petitioner's claim is denied.

12. Ground 12

Petitioner claims that counsel was ineffective for failing to challenge "overlapping charges" of assault and battery. Motion at 18-19. First, the Assault with a Deadly Weapon and Battery Resulting in Substantial Bodily Harm charges were based on separate allegations- Petitioner was charged with Assault with a Deadly Weapon for threatening to kill Carpenter with the knife and the Battery Resulting in Substantial Bodily Harm was because Petitioner kicked and punched Carpenter in every room of her home. Moreover, challenging the charges would have been futile because the Nevada Supreme Court has held that dual convictions

under the assault and battery statutes can stand as each crime includes elements the other does not. Jackson v. State, 128 Nev. 598, 606-07, 291 P.3d 1274, 1279-80 (2012) (citing Blockburger v. United States, 284 U.S. 299, 52 S. Ct. 180 (1932)). Accordingly, Petitioner's claim is denied. Ennis, 122 Nev. at 706, 137 P.3d at 1103.

13. Ground 13

Petitioner further argues that counsel was ineffective for failing to investigate his claim that Carpenter poured bleach on his clothes, which would have supported his claim of self-defense. Motion at 19. However, the only evidence that Petitioner cites to support his claim is his own statement. See Exhibit 1. As such, this is a bare assertion, and his claim is denied. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

14. Ground 14

In Ground 14, Petitioner asserts counsel failed to investigate the "fabricated [] crime scene." Motion at 20. Specifically, Petitioner focuses on Carpenter's "placing blood in specific places" and taking of pictures. Id. However, Carpenter testified at trial that she purposefully left blood evidence throughout the house because she thought she was going to die and wanted to leave a sign that "there was a struggle." RT, 09/12, 9/15, at 56. Because Carpenter fully admitted to purposefully leaving blood evidence, it is unclear what further investigation would have shown. Molina, 120 Nev. at 192, 87 P.3d at 538.

Moreover, Petitioner's claim that counsel was ineffective because Carpenter took all of the pictures is belied by the record. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Indeed, Crime Scene Analyst Danielle Keller testified that she took photographs of the scene and of Carpenter. RT, 09130/15, at 48, 54-55. As such, Petitioner cannot establish ineffectiveness.

Finally, Petitioner's assertion that he was maliciously prosecuted is a bare assertion suitable only for summary dismissal. Hargrove, 100 Nev. at 502,686 P.2d at 225. Accordingly, Ground 14 is denied.

15. Ground 15

Petitioner also claims that counsel's failure to cross-examine the victim "about the bleach she used" was ineffective. Motion at 21. However, Petitioner cannot demonstrate

deficient performance because counsel retains the authority to determine what questions to ask of witnesses. Rhyne, 118 Nev. at 8, 3 8 P .3d at 167. Moreover, Petitioner fails to show what questioning Carpenter about pouring bleach on his clothes in a bathtub would have revealed. Thus, he cannot establish the result of the trial would have been different had counsel asked about the alleged bleaching. McNelton, 115 Nev. at 403, 990 P .2d at 1268. Thus, Petitioner's claim is denied.

16. Ground 16

Next, Petitioner asserts that trial counsel failed to correct incorrect dates in his PSI. Motion at 22. Yet Petitioner fails to state what the alleged errors were or how they "added many more years on [his] sentence." Id. Accordingly, Petitioner's assertion is a bare and naked claim that is denied. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

17. Ground 17

Petitioner also asserts that counsel should have filed a motion for a new trial because the Court rejected his proposed self-defense instructions. Motion at 22-23. Filing such a motion would have been futile because the Court already rejected Petitioner's first request for those instructions. Ennis, 122 Nev. at 706, 137 P.3d at 1103. Consequently, Petitioner fails to show deficient performance.

Moreover, Petitioner fails to demonstrate prejudice because the Nevada Court of Appeals determined that the presence of a self-defense instruction would not have made any difference in light of the overwhelming evidence of Petitioner's guilt. Perry v. State, Docket No. 69139 (Order of Affirmance, Dec. 14, 2016) (harmless error to reject the self-defense instructions in light of evidence of guilt). Accordingly, Petitioner's claim is denied.

18. Ground 18

Petitioner again complains that counsel was ineffective for not investigating Carpenter's alleged prescription pill fraud with "Dr. Bruce." Motion at 23. It is unclear who "Dr. Bruce" is; moreover, Petitioner's claim is a bare assertion suitable only for summary dismissal. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Accordingly, the claim is denied.

19. Ground 19

Petitioner asserts he is entitled to relief because of the cumulative effect of counsel's ineffectiveness. Motion at 24. While the Nevada Supreme Court has noted that some courts do apply cumulative error in addressing ineffective assistance claims, it has not specifically adopted this approach. See McConnell v. State, 125 Nev. 243,250 n.17, 212 P.3d 307,318 n.17 (2009). Nevada is not alone; with respect to claims of cumulative Strickland error, the Eighth Circuit Court of Appeals has concluded that "a habeas petitioner cannot build a showing of prejudice on a series of errors, none of which would by itself meet the prejudice test." Middleton v. Roper, 455 F .3d 83 8, 851 (8th Cir. 2006), cert. denied, 549 U.S. 1134, 127 S. Ct. 980 (2007).

However, the Nevada Supreme Court has noted that that other courts have held that "multiple deficiencies in counsel's performance may be cumulated for purposes of the prejudice prong of the Strickland test when the individual deficiencies otherwise would not meet the prejudice prong." McConnell, 125 Nev. at 259 n.17, 212 P.3d at 318 n.17 (utilizing this approach to note that the defendant is not entitled to relief). Even if the Court applies cumulative error analysis to Petitioner's claims of ineffective assistance, Petitioner fails to demonstrate cumulative error warranting reversal. A cumulative error finding in the context of a Strickland claim is extraordinarily rare and requires an extensive aggregation of errors. See, e.g., State v. Hester, 127 N.M. 218, 222, 979 P.2d 729, 733 (1999); Harris by and Through Ramseyer v. Wood, 64 F.3d 1432, 1438 (9th Cir. 1995); Derden v. McNeel, 978 F.2d 1453, 1461 (5th Cir. 1992).

Under cumulative error analysis, a defendant must first make a threshold showing that counsel's performance was deficient and counsels representation fell below an objective standard of reasonableness. State v. Sheahan, 139 Idaho 267, 287, 77 P.3d 956, 976 (2003); State v. Savo, 108 P.3d 903, 916 (Alaska 2005); State v. Maestas, 299 P.3d 892, 990 (Utah 2012). In fact, logic dictates that cumulative error cannot exist where the defendant fails to show that any violation or deficiency existed under Strickland. McConnell, 125 Nev. at 259, 212 P.3d at 318; United States v. Franklin, 321 F.3d 1231, 1241 (9th Cir. 2003); Turner v. Quarterman, 481 F.3d 292, 301 (5th Cir. 2007); Pearson v. State, 12 P.3d 686, 692 (Wyo.

2000); Hester, 979 P .2d at 733. Further, in order to cumulate errors, the defendant must not only show that an error occurred regarding counsel's representation, but that at least two errors occurred. Rolle v. State, 236 P.3d 259, 276-77 (Wyo. 2010); Hooks v. Workman, 689 F.3d 1148, 1194-95 (10th Cir. 2012).

If the defendant can show that two or more errors existed in counsel's representation, then he must next show that cumulatively, the errors prejudiced him. McConnell, 125 Nev. at 259n.17,212P.3d at 318 n.17; Doylev. State, 116 Nev.148, 163,995 P.2d 465,474 (2000); State v. Novak, 124 P .3d 182, 189 (Mont. 2005); Savo, 108 P .13d at 916. A defendant can only demonstrate the existence of prejudice when he has shown that the cumulative effect of the errors "were sufficiently significant to undermine [the court's] confidence in the outcome of the … trial." In re Jones, 13 Cal.4th 552, 584, 917 P.2d 1175, 1193 (1996); Collins v. Sec'y of Pennsylvania Dep't of Corr., 742 F.3d 528, 542 (3d Cir. 2014). "[M]ere allegations of error without proof of prejudice" are insufficient to demonstrate cumulative error. Novak, 124 P.3d at 189. Further, "in most cases errors, even unreasonable errors, will not have a cumulative impact sufficient to undermine confidence in the outcome of the trial, especially if the evidence against the defendant remains compelling." Theil, 665 N.W.2d at 322-23; see also Maestas, 299 P.3d at 990 (holding that errors resulting in no harm are insufficient to demonstrate cumulative error).

As discussed, supra, Petitioner has failed to make a single showing that counsel's representation was objectively unreasonable. Further, even if Petitioner had made such a showing, he has failed to demonstrate that the cumulative effect of these errors was so prejudicial as to undermine this Court's confidence in the outcome of Petitioner's case. Collins, 742 F.3d at 542. Therefore, his claim of cumulative error is without merit and is denied.

20. Claim 20

In Claim 20, Petitioner claims his appellate counsel was ineffective for failing to include a certificate of service in his motion requesting order directing the Las Vegas Metropolitan Police Department to Conduct Genetic Marker and Latent Print Analysis of Evidence Impounded at the Crime Scene, which therefore invalidated the Motion. Second

Petition at 25-27. However, the State did not argue that the failure to include a certificate of service invalidated his Motion, and the district court did not cite that failure in its ruling. There is no evidence counsel's failure to include a certificate of service in Petitioner's Motion had any effect on the court's denial of his Motion.

21. Claims 21-22

In Claims 21-22, Petitioner claims counsel "failed to use Nevada statutes or NRS to support [his Motion] for fingerprint analysis." Second Petition at 26-27. To the contrary, his counsel cited Nevada statutes and Nevada Supreme Court cases as controlling authority in his Motion. Additionally, Petitioner fails to identify what statutes or authority his counsel should have included in his Motion. Therefore, his claims are summarily denied as they are bare and naked. Further, he cannot demonstrate good cause to overcome the procedural bar because he was not entitled to effective post-conviction counsel, thus his claims of ineffective assistance of counsel are without merit and are denied.

ORDER

THEREFORE, IT IS HEREBY ORDERED that this Petition for Writ of Habeas Corpus (Post-Conviction) shall be, and is, hereby DENIED.

Dated this 14th day of July, 2022

DISTRICT JUDGE

53A 50C E539 063F
Michael Villani
District Court Judge

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY */s/ John Afshar*
JOHN AFSHAR
Deputy District Attorney
Nevada Bar #14408

July 22, 2022

UNITED STATES OF AMERICA DISTRICT COURT OF THE EIGHTH JUDICIAL DISTRICT COUNTY OF CLARK STATE OF NEVADA

CERTIFIED COPY
ELECTRONIC SEAL (NRS 1.190(3))

CERTIFICATE OF SERVICE

I hereby certify that service of Findings of Fact, Conclusions of Law and Order, was made this 13th day of July, 2022, by Mail via United States Postal Service to:

Genaro Richard Perry #1153366
SDCC
P.O. BOX 208
Indian Springs, NV 89070

/s/ Kristian Falcon

Secretary for the District Attorney's Office

JA/kf/Appeals/DVU

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Genaro Perry, Plaintiff(s)	CASE NO: A-22-851874-W
vs.	DEPT. NO. Department 17
State of Nevada, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Finding of Fact and Conclusions of Law was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 7/14/2022

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