

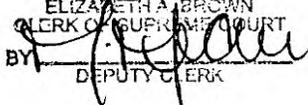
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IVONNE CABRERA, A/K/A YVONNE  
CABRERA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 85628-COA

FILED

APR 05 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

Ivonne Cabrera appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed November 19, 2020, and a supplemental petition filed on April 11, 2022. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

Cabrera argues the district court erred by denying her claims that counsel was ineffective. 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).

Cabrera argued that counsel was ineffective for failing to prevent the giving of a jury instruction that improperly instructed the jury

that it could only consider duress with respect to the charge of burglary. As part of the jury instructions, an instruction was prepared that stated that duress was not a defense to any of the charged crimes except for the charge of burglary. Prior to the giving of this instruction, counsel objected and asked that it not be given. The district court overruled counsel and gave the instruction with only a slight modification.

Cabrera failed to demonstrate what more counsel could have done to prevent the giving of this instruction to the jury. Therefore, she failed to demonstrate that counsel's performance was deficient. See *Chappell v. State*, 137 Nev. 780, 788, 501 P.3d 935, 950 (2021) (stating that, to overcome the presumption that counsel performed effectively, "a petitioner must do more than baldly assert that his attorney could have, or should have, acted differently" but that "he must *specifically explain* how his attorney's performance was objectively unreasonable" (quotation marks omitted)). Further, she failed to demonstrate a reasonable probability of a different outcome had counsel further objected. Thus, we conclude that the district court did not err by denying this claim.

Next, Cabrera argued that counsel was ineffective because the district court's order regarding the State's motion prevented counsel from arguing duress. Cabrera failed to demonstrate it was objectively unreasonable for counsel to comply with the district court's order. Thus, she failed to demonstrate that counsel's performance was deficient. Therefore, we conclude the district court did not err by denying this claim.<sup>1</sup>

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<sup>1</sup>Cabrera argued this case was analogous to a conflict-of-interest case where counsel brought a clear conflict of interest to the trial court's attention but the trial court forced counsel to continue with the conflicted representation. See generally *Holloway v. Arkansas*, 435 U.S. 475 (1978).

Next, Cabrera claimed counsel was ineffective for failing to object to jury instructions on reasonable doubt and equal and exact justice. Cabrera failed to demonstrate the statutorily mandated reasonable doubt instruction or the equal-and-exact-justice instruction were improperly given. We conclude the district court did not err by making these determinations. *See* NRS 175.211; *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 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, Cabrera failed to demonstrate counsel's performance was deficient or a reasonable probability of a different outcome at trial had counsel objected to these instructions. Accordingly, we conclude the district court did not err by denying this claim.

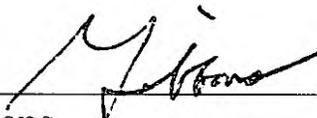
Finally, Cabrera claimed the cumulative errors of counsel warrant relief. Even assuming that multiple deficiencies in counsel's performance may be cumulated to establish prejudice, *see McConnell v. State*, 125 Nev. 243, 259 & n.17, 212 P.3d 307, 318 & n.17 (2009), Cabrera failed to demonstrate multiple errors to cumulate, *see Burnside v. State*, 131

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However, actual conflict of interest cases are different than other ineffective assistance of counsel cases because an actual conflict can be a complete denial of the right to counsel, *see id.* at 484-85, and cause counsel to not be "able to invoke the procedural and substantive safeguards that distinguish our system of justice," *Cuyler v. Sullivan*, 446 U.S. 335, 343 (1980). Cabrera has not demonstrated that the denial of the ability to present a duress defense was analogous to an actual conflict of interest such that she was denied her right to counsel.

Nev. 371, 407, 352 P.3d 627, 651 (2015) (stating a claim of cumulative error requires multiple errors to cumulate). Therefore, we conclude the district court did not err by denying this claim.

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

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

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Kathleen E. Delaney, District Judge  
Law Office of Christopher R. Oram  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk