

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TOMMY LAQUADE STEWART,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 80084-COA

FILED

JUN 07 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *E.A. Brown*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

Tommy Laquade Stewart appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on March 18, 2018, and various supplemental petitions. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Stewart first claimed trial and appellate counsel were ineffective for failing to meaningfully argue the necessity of a jury instruction for second-degree kidnapping as a lesser-included offense of first-degree kidnapping. To demonstrate ineffective assistance of 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*). To show prejudice by the deficient performance of appellate counsel, a petitioner must show that the omitted issue would have had a reasonable probability of success on appeal. *Kirksey v. State*, 112 Nev.

980, 998, 923 P.2d 1102, 1114 (1996). Both components of the inquiry—deficiency and prejudice—must be shown. *Strickland*, 466 U.S. at 687. Appellate counsel is not required to raise every non-frivolous issue on appeal. *Jones v. Barnes*, 463 U.S. 745, 751 (1983). Rather, appellate counsel will be most effective when every conceivable issue is not raised on appeal. *Ford v. State*, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989). We give deference to the district court’s factual findings that are supported by substantial evidence and not clearly wrong 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).

The jury found Stewart guilty of the greater offense of first-degree kidnapping beyond a reasonable doubt, and the Nevada Supreme Court concluded that sufficient evidence supported Stewart’s conviction. *See Stewart v. State*, 133 Nev. 142, 145, 393 P.3d 685, 688 (2017). Stewart thus failed to demonstrate he was prejudiced by the allegedly deficient performance of either trial or appellate counsel’s representation. Therefore, we conclude the district court did not err in denying these claims.<sup>1</sup>

Stewart next claimed that insufficient evidence supported his first-degree kidnapping conviction. However, the Nevada Supreme Court concluded that sufficient evidence supported Stewart’s conviction for first-

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<sup>1</sup>To the extent Stewart argues counsel was ineffective for failing to similarly litigate a jury instruction for the lesser-included offense of false imprisonment, Stewart did not raise this claim below, and we decline to consider it on appeal in the first instance. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

degree kidnapping. *Id.* Because this claim has already been considered and rejected by the Nevada Supreme Court, the doctrine of the law of the case prevents further consideration of this issue. *See Hall v. State*, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975). Therefore, we conclude the district court did not err by denying this claim.

On appeal, Stewart claims the district court erred by dismissing the supplemental petitions he filed in pro se. Because Stewart did not first obtain the district court's permission to file the pro se pleadings, *see* NRS 34.750(3), he failed to demonstrate the district court abused its discretion. Moreover, the district court also addressed the claims raised in those pleadings and determined them to be without merit. We therefore conclude Stewart is not entitled to relief on this claim.

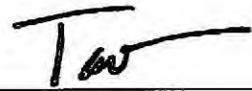
Stewart also claims that postconviction counsel was ineffective for failing to incorporate the claims in Stewart's pro se supplemental petitions into the supplemental petition filed by counsel. Stewart has no right to the effective assistance of postconviction counsel. *See Brown v. McDaniel*, 130 Nev. 565, 569, 331 P.3d 867, 870 (2014). We therefore conclude Stewart is not entitled to relief on this claim.

Finally, Stewart claims the district court erred by merely copying the State's response to Stewart's pleadings in its order and not giving Stewart the opportunity to rebut the State's proposed order. The district court properly directed the State to prepare an order consistent with its response. *See Byford v. State*, 123 Nev. 67, 69, 156 P.3d 691, 692 (2007) ("[T]he district court may request a party to submit proposed findings of facts and conclusions of law. . . ."). Even assuming the district court erred

by failing to allow Stewart an opportunity to review and respond to the proposed draft order, Stewart fails to demonstrate how the error affected his substantial rights. See NRS 178.598 (“Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.”). We therefore conclude Stewart is not entitled to relief on this claim. For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Chief Judge, Eighth Judicial District Court  
Eighth Judicial District Court, Dept. 21  
AMD Law, PLLC  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk