

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ARNOLD KEITH ANDERSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82917-COA

FILED

NOV 05 2021

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

ORDER OF AFFIRMANCE

Arnold Keith Anderson appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on January 5, 2021. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Anderson contends the district court erred by denying his claims of ineffective assistance of appellate counsel without first conducting an evidentiary hearing. To demonstrate ineffective assistance of appellate counsel, a petitioner must show that counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that the omitted issue would have 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 must be shown. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). 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 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, Anderson claimed appellate counsel was ineffective for lying in his petition for rehearing/request for en banc reconsideration of the Nevada Supreme Court's opinion affirming Anderson's judgment of conviction. Anderson claimed that counsel improperly represented in the petition that Anderson's daughter said he was the shooter when he was actually in California at the time of the offenses. Counsel's statement was supported by evidence adduced at trial, and Anderson himself provided correspondence from counsel explaining her actions. Moreover, the jury's verdict was supported by evidence independent of Anderson's daughter's statements, including the testimony of two witnesses identifying Anderson as the shooter. Accordingly, Anderson failed to demonstrate counsel was deficient or a reasonable probability of success on appeal absent counsel's alleged error. We therefore conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Second, Anderson claimed appellate counsel was ineffective for failing to communicate with him. Anderson claimed counsel told him to limit his letters to one or two issues and to one page in length. Anderson's bare claim failed to explain how counsel's request for short correspondence rendered counsel deficient or to demonstrate a reasonable probability of success on appeal had Anderson drafted longer letters. We therefore conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Third, Anderson claimed appellate counsel was ineffective for failing to challenge his detention and arrest. In a letter Anderson attached to his petition, counsel explained that this issue was not appealable because there was probable cause for Anderson's detention and arrest because two witnesses identified Anderson as the shooter. Anderson's bare claim did not explain how counsel's decision was objectively unreasonable. Accordingly, Anderson failed to demonstrate counsel was deficient or a reasonable probability of success had counsel raised these issues on appeal. We therefore conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Anderson also contends on appeal that the district court erred by denying several claims of trial court error. Anderson could have raised these claims on appeal, and accordingly, they were procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.810(1)(b). Anderson did not attempt to demonstrate either. We therefore conclude the district court did not err by denying these claims without first conducting an evidentiary hearing.¹ *See Rubio v. State*, 124 Nev. 1032, 1046 n.53, 194 P.3d 1224, 1234 n.53 (2008).

Finally, Anderson claims on appeal that the district court erred by denying his petition where the State did not respond to all of his claims. The district court was able to dispose of Anderson's petition without the

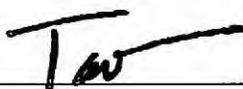
¹Anderson also claimed that the trial court erred by declining to substitute appointed counsel. The district court determined this claim was addressed on direct appeal, and its finding is supported by substantial evidence. We therefore conclude the district court did not err by denying this claim without first conducting an evidentiary hearing. *See Anderson v. State*, 135 Nev. 417, 424, 453 P.3d 380, 386 (2019); *Hall v. State*, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975).

State's response to each of Anderson's claims. To the extent this was error, it was harmless. See NRS 178.598.

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Michelle Leavitt, District Judge
Arnold Keith Anderson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk