

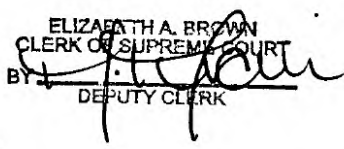
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GERMAINE HAMPTON, A/K/A
JERMAINE HAMPTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86586-COA

FILED

APR 25 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Germaine Hampton appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on November 22, 2021. Eighth Judicial District Court, Clark County; Tara D. Clark Newberry, Judge.

This court previously affirmed the denial of most of Hampton's postconviction claims on the merits, but we determined the district court erred by denying two of the claims without first conducting an evidentiary hearing. *See Hampton v. State*, No. 84360-COA, 2022 WL 4129218 (Nev. Ct. App. Sep. 9, 2022) (Order Affirming in Part, Reversing in Part and Remanding). On remand, the district court conducted an evidentiary hearing on the two claims and again denied them. This appeal follows.

First, Hampton argues the district court erred by denying his claim that appellate counsel were ineffective for failing to provide an adequate record on appeal. 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), and the petitioner must demonstrate the underlying facts by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). 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).

Hampton claimed that counsel failed to provide a transcript that would have supported his appellate claim that the district court erred by denying him his right to represent himself pursuant to *Faretta*.¹ Specifically, he claimed the transcript would have supported his claim that reasonable cause existed for his untimely request to represent himself.

Criminal defendants have a Sixth Amendment right to represent themselves so long as the waiver of the right to counsel is intelligent and voluntary. *See O'Neill v. State*, 123 Nev. 9, 17, 153 P.3d 38, 43 (2007). "Upon invocation of the right to self-representation, the district court should conduct a *Faretta* canvass to ensure the waiver of the right to counsel is made knowingly, voluntarily, and intelligently." *Sims v. State*, 139 Nev., Adv. Op. 55, 541 P.3d 130, 133 (2023). "A district court

¹*Faretta v. California*, 422 U.S. 806 (1975).

may . . . deny a defendant's request for self-representation where the request is untimely, the request is equivocal, the request is made solely for the purpose of delay, the defendant abuses his right by disrupting the judicial process, or the defendant is incompetent to waive his right to counsel." *O'Neill*, 123 Nev. at 17, 153 P.3d at 44 (internal quotation marks omitted). The Nevada Supreme Court created a test to determine whether a request for self-representation is untimely. *See Lyons v. State*, 106 Nev. 438, 445-46, 796 P.2d 210, 214 (1990), *abrogated on other grounds by Vanisi v. State*, 117 Nev. 330, 341, 22 P.3d 1164, 1172 (2001). The district court may "deny a request for self-representation on the ground of untimeliness alone, if the request is not made within a reasonable time before commencement of trial or hearing and there is no showing of reasonable cause for the lateness of the request." *Id.*

The district court held an evidentiary hearing where only one of Hampton's counsel testified. When asked why they did not include the sealed transcript, counsel testified, "I don't have an explanation," and then speculated that "we did not think it was necessary." It was counsel's responsibility to provide "any . . . portions of the record essential to determination of issues raised in [the appeal]." NRAP 30(b)(3). Counsel's failure to provide this court on direct appeal with a copy of the transcript from a sealed hearing resulted in this court having to presume that the missing transcript supported the district court's conclusion that the request was untimely and there was no reasonable cause to excuse the untimely request. *Hampton v. State*, No. 79683-COA, 2020 WL 6955398, *2 (Nev. Ct. App. Nov. 25, 2020) (Order of Affirmance). The transcript that was not

provided would have aided this court in determining the *Faretta* issue raised on appeal. Therefore, we conclude that counsels' performance was objectively unreasonable.

However, we conclude that Hampton failed to demonstrate his claim had a reasonable probability of success on appeal had counsel provided the transcript to this court. Hampton claimed that he had reasonable cause for the lateness of his request to represent himself because of irreconcilable differences with his counsel. After reviewing the transcripts and holding an evidentiary hearing, the district court found that Hampton failed to demonstrate that he had reasonable cause to justify the late request to represent himself because the differences appeared to be resolved after the sealed hearing. This finding is supported by the record. The record shows that at the end of the sealed hearing, counsel and Hampton agreed to meet and discuss his case and the district court set a status check to see whether Hampton and counsel were able to work out their differences. At the hearing a week later, counsel stated they had met with Hampton and ultimately did further investigation. Hampton did not renew his request to represent himself or otherwise indicate the differences were not resolved. Accordingly, we conclude that Hampton failed to demonstrate he was prejudiced by counsel's deficient performance, and the district court did not err by denying this claim.

Second, Hampton argues the district court erred by denying his claim that trial counsel were ineffective for failing to object to the trial court's actions during his testimony at trial. 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*, 466 U.S. at 687-88; *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*).

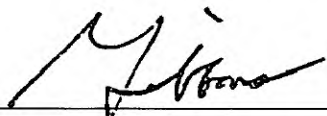
Hampton claimed that the trial judge acted differently during his testimony than she did during other witnesses' testimony, which could have signaled to the jury to not believe Hampton's testimony. Even assuming counsel should have objected to the trial judge's behavior during his testimony, Hampton failed to demonstrate a reasonable probability of a different outcome at trial had counsel objected. As this court concluded on direct appeal, overwhelming evidence was presented of Hampton's guilt. *See Hampton*, No. 79683-COA, 2020 WL 6955398, at *4. This court summarized the evidence as follows. The victim testified that Hampton and his codefendant appeared to be working together. They approached the victim's car together, threatened the victim, and stole items out of the victim's vehicle. Within minutes after the incident, Hampton and his codefendant were located by police driving in a car that matched the description given by the victim. Hampton was driving and led the police on a high-speed chase. When the police got the car to stop, the codefendant fled the car. Hampton was arrested and stolen items were found in the car. Hampton admitted he took items from the victim's car. Therefore, we conclude the district court did not err by denying this claim.


On appeal, Hampton argues that the district court erred at the evidentiary hearing by not allowing him to introduce a video of other

witnesses testifying because it was relevant to his allegation that the trial judge behaved so differently during their testimony that it prejudiced Hampton. Even assuming this was error, Hampton fails to demonstrate this error affected his substantial rights given our conclusion that Hampton could not demonstrate he was prejudiced due to the overwhelming evidence of his guilt. *See* NRS 178.598 (“Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.”). Therefore, Hampton fails to demonstrate he is entitled to relief on this claim.

Finally, Hampton argues that the district court erred by denying his motion for bail pending appeal. NRS 178.4873 specifically prohibits release on bail of a petitioner whose postconviction petition has been denied. Therefore, we conclude that the district court did not err by denying Hampton’s motion.

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


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Tara D. Clark Newberry, District Judge
Germaine Hampton
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk