


IN THE SUPREME COURT OF THE STATE OF NEVADA

TERRANCE LAVOLL A/K/A
TERRANCE L. LAVOLL A/K/A
TERRANCE LEDERR LAVOLL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48899

FILED

NOV 16 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

On January 6, 1998, the district court convicted appellant, pursuant to a jury verdict, of sexual assault of a minor under sixteen years of age (Count 1); sexual assault of a minor under sixteen years of age with the use of a deadly weapon (Counts 2 and 3); and solicitation of a minor to engage in acts constituting a crime against nature (Count 4). The district court sentenced appellant to serve three consecutive terms of life in the Nevada State Prison with the possibility of parole. The remaining terms were imposed concurrently. This court dismissed appellant's appeal.¹ The remittitur issued on May 23, 2000.

¹Lavoll v. State, Docket No. 31779 (Order Dismissing Appeal, April 27, 2000).

On February 2, 2001, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. The district court appointed counsel to represent appellant. On October 24, 2005, and July 21, 2006, appellant's counsel filed supplemental memoranda in support of appellant's petition. On February 8, 2007, the district court denied appellant's petition after conducting an evidentiary hearing. This appeal followed.

In his petition, appellant contended that (1) the district court lacked jurisdiction because the State had not filed a complaint at the time of appellant's first appearance in the Justice Court; (2) the prosecutor improperly amended the information on the day of trial; (3) the district court's jury instructions were erroneous; (4) the prosecutor committed misconduct during closing arguments; (5) hearsay testimony was improperly admitted; and (6) appellant's sentence was not fair and reliable. These claims were waived as they could have been raised on appellant's direct appeal, and appellant failed to demonstrate good cause for his failure to do so.² Therefore, the district court did not err in denying these claims.

Appellant also asserted that the district court should reconsider the claims that he argued on direct appeal. On direct appeal, appellant argued that (1) there was insufficient evidence to convict him of sexual assault; (2) there was insufficient evidence to support the deadly weapon enhancement; and (3) the district court erred in giving the instruction for statutory sexual seduction. The doctrine of the law of the

²NRS 34.810(1)(b)(2).

case prevents further litigation of these issues and cannot be avoided by a more detailed and focused argument.³ Therefore, the district court did not err in denying these claims.

Next, appellant claimed that he received ineffective assistance of trial counsel. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and prejudice such that counsel's errors were so severe that they rendered the result of the proceedings unreliable.⁴ The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.⁵ "[A] habeas corpus petitioner must prove the disputed factual allegations underlying his ineffective-assistance claim by a preponderance of the evidence."⁶ Factual findings of the district court that are supported by substantial evidence and are not clearly wrong are entitled to deference when reviewed on appeal.⁷

First, appellant claimed that his trial counsel was ineffective for failing to assert that the district court was without jurisdiction as the State failed to file a complaint at appellant's first appearance in the justice

³Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

⁴Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

⁵Strickland, 466 U.S. at 697.

⁶Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).

⁷Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

court. He asserted that NRS 171.178(4) mandated that a complaint must have been filed when he was presented before the magistrate for the first time.⁸ Appellant did not establish that his counsel was deficient or that he was prejudiced by his counsel's actions. Appellant appeared before the justice court within forty-eight hours of his arrest, and the justice court determined that appellant's arrest was supported by probable cause.⁹ The justice court further ordered the State to file a complaint within four days. The State filed a complaint, and later filed an amended complaint, and the justice court bound over appellant based on the charges in the amended complaint after a preliminary hearing. Appellant failed to demonstrate that the district court did not have jurisdiction to proceed because the State had not filed a complaint by the time appellant was first presented in the justice court. Therefore, the district court did not err in denying this claim.

Second, appellant claimed that his trial counsel was ineffective for failing to object to the filing of the amended information that added a charge inadvertently omitted from the original information. Appellant failed to establish that his counsel was deficient or that he was

⁸1979 Nev. Stat., ch. 589, § 1 at 1190-91 (NRS 171.178(4)) (providing that "[w]hen a person arrested without a warrant is brought before a magistrate, a complaint must be filed forthwith").

⁹See NRS 171.178(1) (providing that an officer who arrests an individual without a warrant "shall take the arrested person without unnecessary delay before . . . the nearest available magistrate empowered to commit persons charged with offenses against the laws of the State of Nevada."); County of Riverside v. McLaughlin, 500 U.S. 44, 56 (1991) (holding that a judicial probable cause determination must generally be made within forty-eight hours of a warrantless arrest).

prejudiced by his counsel's actions. At the preliminary hearing, the district court found that there was probable cause to proceed to trial on all four counts of the amended complaint. Several days later, the State filed an information that omitted the first count of the amended complaint. Then, on the first day of trial, the State filed an amended information to include all of the counts in the amended complaint, the counts upon which the justice court had bound over appellant. The amended information merely corrected a clerical error within the original information prepared by the State. Therefore, the filing of the amended information did not add an "additional or different offense," to those for which appellant had already been bound over and provided notice.¹⁰ Further, as he was aware of the amended count, appellant's substantial rights were not prejudiced. Therefore, the district court did not err in denying this claim.

Third, appellant claimed that his trial counsel was ineffective for failing to file motions to discover his prior bad acts and prevent the State from introducing those acts into evidence. Specifically, he asserted that the conduct charged in Count 1 of the amended information should not have been introduced into evidence. Appellant failed to establish that his counsel was deficient or that he was prejudiced. We have stated "that the use of uncharged bad act evidence to convict a defendant is heavily disfavored."¹¹ However, the evidence related to the acts described in

¹⁰NRS 173.095(1).

¹¹Tavares v. State, 117 Nev. 725, 730, 30 P.3d 1128, 1131 (2001); see also NRS 48.045(2) ("Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith").

Count 1, did not relate to an uncharged bad act, but to a charged crime. Therefore, the district court did not err in denying this claim.

Fourth, appellant claimed that his trial counsel was ineffective for failing to object to the jury instruction for reasonable doubt. Appellant failed to demonstrate that his counsel's performance was deficient or that he was prejudiced. The district court gave Nevada's statutory reasonable doubt instruction as set forth in and mandated by NRS 175.211. This court has repeatedly held that the current statutory definition is constitutional.¹² Therefore, the district court did not err in denying this claim.¹³

Fifth, appellant claimed that his trial counsel was ineffective for failing to object to the jury instructions for sexual assault and solicitation of a minor. Specifically, appellant claimed that (1) the instruction for sexual assault was defective as it failed to define "sexual aberration," and (2) the solicitation and sexual assault instructions, when read together, improperly implied that the crime of sexual assault was gender neutral. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. The district court gave instructions for sexual assault and solicitation of a minor that

¹²See, e.g., Chambers v. State, 113 Nev. 974, 982-83, 944 P.2d 805, 810 (1997); Evans v. State, 112 Nev. 1172, 1191, 926 P.2d 265, 277 (1996); Lord v. State, 107 Nev. 28, 40, 806 P.2d 548, 556 (1991).

¹³Appellant also asserted that the district court instructed the jury that reasonable doubt must be "substantial." However, this assertion is unsupported by the record.

followed the language of the statutes.¹⁴ In addition, the terms used to define and penalize sexual assault are gender neutral.¹⁵ Thus, appellant could be convicted for the sexual assault of a male victim. Therefore, the district court did not err in denying this claim.

Sixth, appellant claimed that his trial counsel was ineffective for failing to object to the district court's instructions for the use of a deadly weapon. He claimed that the district court erred by instructing the jury about general intent where specific intent to sexually assault the victim with the use of a deadly weapon is necessary to convict. Appellant failed to establish that his counsel was deficient or that he was prejudiced. The district court correctly instructed the jury that sexual assault is a general intent crime.¹⁶ The court also correctly instructed the jury on the use of a deadly weapon.¹⁷ The crime of sexual assault did not become a specific intent crime merely because the State alleged that appellant used a deadly weapon during the commission of the crime. Therefore, the district court did not err in denying this claim.

¹⁴See 1995 Nev. Stat., ch. 443 § 58 at 1186 (NRS 200.366(1)); NRS 200.364(2); 1995 Nev. Stat., ch. 443 § 85 at 1198-99 (NRS 201.195(1)(2)).

¹⁵See 1995 Nev. Stat., ch. 443 § 58 at 1186 (NRS 200.366(1)); NRS 200.364(2).

¹⁶Winnerford H. v. State, 112 Nev. 520, 526, 915 P.2d 291, 294 (1996).

¹⁷See Allen v. State, 96 Nev. 334, 335, 609 P.2d 321, 322 (1980) (providing that "[i]n order to 'use' a deadly weapon for purposes of NRS 193.165, there need not be conduct which actually produces harm but only conduct which produces a fear of harm or force by means or display of the deadly weapon in aiding the commission of the crime.").

Seventh, appellant claimed that his trial counsel was ineffective for failing to object to the introduction of the photographs of appellant's bedroom with underage boys holding a firearm and an alcoholic beverage. Appellant argued that the pictures were prejudicial and were improperly admitted through E.H., as he was not depicted in the pictures and could not testify to the authenticity of the gun or beverage. Appellant failed to establish that his counsel was deficient or that he was prejudiced by his counsel's failure to object to the introduction of the evidence. E.H. testified that he had been to appellant's home, spent the night in appellant's room with A.P. and C.L., played with appellant's firearm, and drank alcoholic beverages while at appellant's home. E.H. had personal knowledge of the identities of those pictured, appellant's room, appellant's firearm, and the liquor he ingested. E.H. could identify the people, the room, the firearm, and the liquor bottle in a photograph and thus, authenticate the photograph for admission.¹⁸ Further, the photographs were relevant as they depicted the methods, about which E.H. testified, that appellant employed to gain the trust of boys prior to sexually assaulting them.¹⁹ Moreover, appellant did not demonstrate that the conduct pictured in the photographs was so prejudicial that it

¹⁸See NRS 52.025 (providing that a photograph may be admitted through the testimony of a witness with "personal knowledge that a matter is what it is claimed to be.").

¹⁹See NRS 48.025(1) (providing that "[a]ll relevant evidence is admissible"); NRS 48.045(2) (providing that evidence of "other crimes, wrongs or acts" may be "admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake.").

substantially outweighed the photographs' probative value.²⁰ Therefore, the district court did not err in denying this claim.

Eighth, appellant claimed that his trial counsel was ineffective for conceding his guilt during closing arguments. He asserted that his counsel erred in asserting that statutory sexual seduction was the appropriate conviction instead of sexual assault. Appellant stated in his affidavit that he did not consent to his counsel's concession.

Appellant failed to establish that his counsel was deficient or that he was prejudiced. Appellant did not testify at trial. Thus, trial counsel's concession did not undermine any testimony by appellant.²¹ Further, the record supports the concession as part of the defense strategy. Trial counsel's cross-examinations focused on whether the victims consented to the acts performed by appellant; therefore, trial counsel's closing argument was consistent with the defense strategy at trial. At the evidentiary hearing, appellant's post-conviction counsel did not ask appellant's trial counsel whether appellant consented to the closing argument.²² In light of appellant's single averment, which

²⁰See NRS 48.035(1) (providing that relevant evidence may not be admitted if "its probative value is substantially outweighed by the danger of unfair prejudice").

²¹See *Jones v. State*, 110 Nev. 730, 738-39, 877 P.2d 1052, 1057 (1994) (stating that the concession of guilt by counsel rendered defendant's earlier testimony denying the charges incredible).

²²See *id.* at 736-39, 877 P.2d at 1056-57 (stating that counsel was ineffective where counsel conceded defendant's guilt without defendant's consent and where concession of guilty contradicted defendant's earlier testimony).

contradicted the apparent trial strategy, and the lack of development of further evidence at the evidentiary hearing despite the opportunity to do so, we conclude that the district court did not err in denying appellant's claim as he failed to meet his evidentiary burden of showing that his counsel was ineffective.

Ninth, appellant claimed that his trial counsel was ineffective for failing to move for a mistrial when the court clerk cried in front of the jury during the victims' testimony. Appellant failed to establish that his counsel was deficient or that he was prejudiced. The record of appellant's trial contains no support for his claim that the clerk of the court cried throughout the victims' testimony. Further, the testimony taken at the evidentiary hearing did not address the clerk's conduct during the trial. The only support for this claim was appellant's affidavit in which he stated that the court clerk cried in front of the jury during the victims' testimony. In light of the single averment and the lack of development of further evidence at the evidentiary hearing despite the opportunity to do so, we conclude that the district court did not err in denying appellant's claim as he failed to meet his evidentiary burden of showing that his counsel was ineffective.

Tenth, appellant claimed that his trial counsel was ineffective for failing to object to the district court removing appellant's family from the courtroom in front of the jury. Appellant failed to establish that his counsel was deficient or that he was prejudiced. The record of appellant's trial contains no support for his claim that his family was removed from

the courtroom in front of the jury.²³ Further, the testimony taken at the evidentiary hearing did not address this issue. The only support for this claim was appellant's affidavit in which he averred that his family was removed from the courtroom in front of the jury. In light of the single averment and the lack of development of further evidence at the evidentiary hearing despite the opportunity to do so, we hold that the district court did not err in denying appellant's claim as he failed to meet his evidentiary burden of showing that his counsel was ineffective.

Eleventh, appellant claimed that his trial counsel was ineffective for failing to adequately prepare and investigate the case. Specifically, he asserted (1) counsel anticipated that appellant would plead guilty to the crimes and thus did not prepare for trial, (2) counsel should have sought the leave of the court for time to investigate the State's new charge and victim, and (3) counsel did not investigate other boys that were mentioned at trial. Appellant failed to establish that his counsel was defective or that he was prejudiced by counsel's failure to investigate. "An attorney must make reasonable investigations or a reasonable decision

²³The record indicated that the district court considered the possibility that members of appellant's family may have had to leave during jury selection to make room for the prospective jurors. The record also showed that that the district court admonished members of appellant's family outside the presence of the jury in response to reports that they shook their heads during testimony and in the hallway outside the courtroom when the witnesses passed. However, there was no indication that the court ever ordered members of appellant's family to leave or made such an order in the presence of the jury.

that particular investigations are unnecessary."²⁴ A petitioner asserting a claim that his counsel did not conduct a sufficient investigation bears the burden of showing that he would have benefited from a more thorough investigation.²⁵ As noted above, the State did not add a completely new charge and victim, it merely amended an incomplete information to reflect the charges for which appellant had been bound over. As appellant had been bound over on the charge, counsel was able to question the victim about the allegation at the preliminary hearing. Further, appellant failed to identify what facts counsel could have discovered through additional investigation that would have affected the outcome of the trial. Therefore, the district court did not err in denying this claim.

Twelfth, appellant claimed that his counsel was ineffective for failing to call appellant to testify. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. The decision on whether a defendant testifies in his own defense at trial is one for the defendant to make.²⁶ The record reveals that the district court thoroughly advised appellant of his right to testify and the implications of doing so. Appellant stated that he understood his rights and indicated that he would discuss his decision regarding whether he would testify with his counsel. The defense then rested its case. Appellant did not indicate that his counsel prevented him from testifying at his trial in his affidavit or in any

²⁴State v. Powell, 122 Nev. 751, 759, 138 P.3d 453, 458 (2006) (citing Strickland, 466 U.S. at 691).

²⁵Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).

²⁶See Lara v. State, 120 Nev. 177, 182, 87 P.3d 528, 531 (2004) (citing Jones v. Barnes, 463 U.S. 745, 751 (1983)).

testimony at the evidentiary hearing. Thus, appellant did not meet his burden of proving that his trial counsel prevented him from testifying at appellant's trial. To the extent that appellant challenged a recommendation of his counsel not to testify, counsel's advice was strategic in nature and appellant failed to demonstrate that he was prejudiced by counsel's advice.²⁷ Therefore, we conclude that the district court did not err in denying this claim.

Thirteenth, appellant claimed that his counsel was ineffective for failing to subpoena A.P. or C.L. or move, pursuant to Brady v. Maryland,²⁸ for the production of A.P. and C.L. Appellant failed to establish that his counsel was deficient or that he was prejudiced. Appellant did not demonstrate that the State withheld A.P. and C.L.²⁹ A police report mentioned A.P. and both individuals were mentioned during the preliminary hearing. Thus, counsel was aware of the two individuals. Further, defense counsel could have subpoenaed both individuals.³⁰ Moreover, appellant did not allege any facts about which A.P. and C.L. would have testified. Thus, he did not show that the failure to elicit

²⁷See Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989) (holding that tactical decisions by counsel are virtually unchallengeable absent extraordinary circumstances).

²⁸373 U.S. 83 (1963).

²⁹See Mazzan v. Warden, 116 Nev. 48, 67, 993 P.2d 25, 37 (2000) ("[T]here are three components to a Brady violation: the evidence at issue is favorable to the accused; the evidence was withheld by the state, either intentionally or inadvertently; and prejudiced ensued, i.e., the evidence was material").

³⁰NRS 174.315(2).

testimony from either witness prejudiced him. Therefore, the district court did not err in denying this claim.

Fourteenth, appellant claimed that his counsel was ineffective for failing to call witnesses "who would have refuted the State's claims regarding Petitioner being a child predator." He asserted that members of his family would have testified as such. Appellant did not establish that his counsel was deficient or that he was prejudiced. Appellant did not specifically identify the possible or potential witnesses who would have offered the testimony.³¹ Further, he did not allege the specific facts about which the witnesses would have testified that would have refuted the State's allegations.³² Therefore, we conclude that the district court did not err in dismissing this claim.

Fifteenth, appellant claimed that his trial counsel was ineffective for failing to challenge the constitutionality of NRS 193.165. He asserted that the statute resulted in cumulative punishments that violated double jeopardy. This court stated that the deadly weapon enhancement set forth in NRS 193.165 "does not create any separate offense but provides an additional penalty for the primary offense," and thus, did not violate the double jeopardy clause.³³ As the statute was constitutional, appellant was not prejudiced by counsel's failure to raise an

³¹Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984) (holding that "bare" or "naked" claims, which are unsupported by specific facts, are insufficient to grant relief).

³²Id.

³³Woofter v. O'Donnell, 91 Nev. 756, 762, 542 P.2d 1396, 1399-1400 (1975).

objection to it.³⁴ Therefore, the district court did not err in denying this claim.

Sixteenth, appellant claimed that his trial counsel was ineffective for failing to challenge NRS 176.033(1)(c) as violating double jeopardy. Specifically, he asserted that the amount of restitution imposed for Count 1 should have been determined in a separate civil action. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. NRS 176.033(1)(c) requires the district court to set a restitution amount if it finds one appropriate at sentencing. This statute does not require the State to seek restitution in a separate civil action.³⁵ Like the deadly weapon enhancement, the statute does not constitute a separate offense, but merely imposes an additional obligation to provide restitution as part of a defendant's sentence. Therefore, the district court did not err in denying this claim.

Seventeenth, appellant claimed that his trial counsel was ineffective for failing to ensure that appellant's sentences ran concurrent with the sentences in another case that was also handled by the public defender's office. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. The record indicated that appellant's counsel argued for concurrent sentences at appellant's sentencing

³⁴See Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006) (holding that trial counsel does not need to lodge futile objections to avoid a claim of ineffective assistance of counsel).

³⁵See NRS 176.033(1)(c).

hearing.³⁶ Moreover, the district court decides whether sentences are imposed consecutively or concurrently.³⁷ Therefore, the district court did not err in denying this claim.

Appellant also claimed that he received ineffective assistance of counsel on appeal. To state a claim of ineffective assistance of appellate counsel, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that the omitted issue would have a reasonable probability of success on appeal.³⁸ Appellate counsel is not required to raise every non-frivolous issue on appeal.³⁹ This court has held that appellate counsel will be most effective when every conceivable issue is not raised on appeal.⁴⁰

First, appellant claimed that his appellate counsel was ineffective (1) for failing to argue that the district court lacked jurisdiction to convict him because the State had not filed a complaint at the time the of his initial appearance, (2) for failing to argue that the prosecution

³⁶We note that a transcript of the sentencing hearing is not available. See NRS 656.335 (licensed court reporters are only required to retain their notes for eight years). However, we are able to evaluate the merits of this claim with the record before us and the sentencing transcript is not necessary for the resolution of this claim.

³⁷NRS 176.035(1).

³⁸Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996) (citing Strickland, 466 U.S. 668).

³⁹Jones v. Barnes, 463 U.S. 745, 751 (1983).

⁴⁰Ford, 105 Nev. at 853, 784 P.2d at 953.

improperly amended the information on the day of trial, (3) for failing to argue that the jury instructions were erroneous, and (4) for failing to argue that the photographs were improperly admitted. For the reasons discussed above, we conclude that appellant did not establish that his appellate counsel was ineffective for failing to raise these issues. Therefore, the district court did not err in denying these claims.

Second, appellant claimed that his appellate counsel was ineffective for not arguing that the prosecutor's comments and use of photographs during closing argument constituted prosecutorial misconduct. Appellant failed to demonstrate that this claim had a reasonable probability of success on appeal. Even assuming that the challenged comments and use of the photographs were improper, such prosecutorial misconduct may constitute harmless error where there is overwhelming evidence of guilt.⁴¹ In the instant case, the record reveals overwhelming evidence of appellant's guilt. E.H. testified that appellant performed oral sex on him at another boy's home. Both E.H. and I.B. testified that appellant performed oral sex on them in the desert near their homes while he was wearing a firearm. Moreover, E.H. witnessed appellant performing oral sex on I.B., and I.B. witnessed appellant performing oral sex on E.H. N.B. also testified that appellant asked if he

⁴¹See King v. State, 116 Nev. 349, 356, 998 P.2d 1172, 1176 (2000) (providing that prosecutorial misconduct may be harmless where there is overwhelming evidence of guilt); Ross v. State, 106 Nev. 924, 928, 803 P.2d 1104, 1106 (1990) (providing that to be reversible prosecutorial misconduct "must be prejudicial and not merely harmless"); see also NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.").

could perform oral sex on N.B. As there was overwhelming evidence of guilt, any prosecutorial misconduct was harmless in the instant case. Therefore, we conclude that the district court did not err in denying this claim.

Third, appellant claimed that his appellate counsel was ineffective for failing to argue that the district court erred in permitting the introduction of hearsay. Specifically, appellant claimed that his counsel should have argued on appeal that N.B.'s testimony that appellant "asked [N.B.] if [appellant] could suck [N.B.'s] penis" was hearsay. Appellant failed to show that his counsel was deficient or that he was prejudiced. As N.B. testified about what appellant said to N.B., the testimony was not hearsay.⁴² Therefore, the district court did not err in denying this claim.⁴³

Fourth, appellant claimed that his appellate counsel was ineffective for failing to assert that his sentence was not fair and reliable. Appellant failed to demonstrate that this claim had a reasonable probability of success on appeal. Appellant's sentences were within the statutory limits and were also the sentences recommended in appellant's

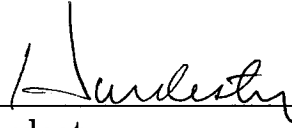
⁴²See NRS 51.035(3)(a) (providing that testimony about statements made by a party to the proceedings, which is offered against that party, is not hearsay).

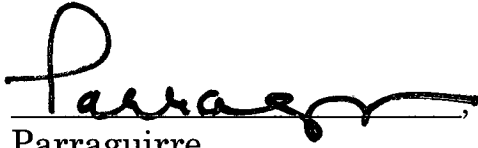
⁴³Appellant raised a general claim that all of the victims' testimony was based on hearsay or otherwise permeated with hearsay. However, he only specifically identified one statement. To the extent his claim addresses testimony other than the specifically identified statement, appellant is not entitled to relief. See Hargrove, 100 Nev. at 502, 686 P.2d 225.


pre-sentence investigation report.⁴⁴ Therefore, the district court did not err in denying this claim.⁴⁵

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.⁴⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.
Hardesty

 J.
Parraguirre

 J.
Douglas

⁴⁴See 1995 Nev. Stat., ch. 443 § 58 at 1186 (NRS 200.366(3)(b)); 1995 Nev. Stat., ch. 455 § 1 at 1431 (NRS 193.165); 1995 Nev. Stat., ch. 443 § 85 at 1198-99 (NRS 201.195(1)(b)(1)); NRS 193.140; see also Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (providing that a prison term within the statutory limits "does not constitute cruel and unusual punishment").

⁴⁵Appellant also included claims that his appellate counsel was ineffective for failing to raise his aforementioned ineffective assistance of trial counsel claims on his direct appeal. The district court did not err in denying these claims as such claims are not generally appropriate for review on direct appeal. See Evans v. State, 117 Nev. 609, 621-22, 28 P.3d 498, 507-08 (2001).

⁴⁶See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Lee A. Gates, District Judge
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