

IN THE SUPREME COURT OF THE STATE OF NEVADA

DONALD E. BLANKENSHIP, JR.,
Appellant,
vs.
WARDEN, LOVELOCK
CORRECTIONAL CENTER, LENARD
VARE,
Respondent.

No. 49804

FILED

NOV 19 2008

TRACIE K. LINDEMAN
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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. Third Judicial District Court, Lyon County; Robert E. Estes, Judge.

On October 14, 2002, the district court convicted appellant, pursuant to a jury verdict, of three counts of sexual assault of a child under the age of fourteen. The district court sentenced appellant to serve three concurrent terms of life in the Nevada State Prison with the possibility of parole after twenty years. This court affirmed the judgment of conviction on appeal.¹ The remittitur issued on June 2, 2004.

On February 24, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750, the district court

¹Blankenship v. State, Docket No. 40490 (Order of Affirmance, May 5, 2004).

appointed counsel to represent appellant. On November 2, 2004, appellant filed a proper person supplement to his petition. On July 3, 2007, the district court denied appellant's petition after conducting an evidentiary hearing during which appellant waived counsel and proceeded in proper person. This appeal followed.

In his petition, appellant contended that (1) several witnesses' testimony contained inconsistencies, inaccuracies, and perjury; (2) the district court erred in admitting statements by the victim to a therapist as an excited utterance; (3) there was insufficient evidence to sustain appellant's convictions; (4) the district court erred in admitting testimony from appellant's cellmate, Nicholas Neal; (5) the State improperly obtained testimony from appellant's cellmate; (6) the district court improperly limited the scope of cross-examination of appellant's cellmate; (7) the State failed to request an instruction for prior bad acts evidence; (8) the district court was biased against appellant; (9) there were errors in the jury selection process; (10) the court did not properly address appellant's motions; (11) the district court improperly limited the scope of appellant's cross-examination of the victim; (12) the district court improperly conducted secretive chambers and bench conferences outside of appellant's presence; (13) the district court did not permit sufficient breaks for appellant to consult with counsel; (14) the district court improperly aided the prosecution in examining its witnesses; (15) the district court erred in failing to grant a continuance; (16) the district court erred in instructing the jury; (17) the district court committed judicial misconduct; (18) the State and district court improperly interrupted appellant's examination of witnesses; and (19) the district court erred in not permitting evidence concerning Sondra Affolter, the stepmother of the victim's deceased

boyfriend, Brandon Proctor. These claims 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 claimed that (1) the district court erred in admitting evidence of appellant's prior bad acts; (2) the district court erred in admitting evidence of flight; (3) the State committed prosecutorial misconduct; and (4) a State witness vouched for the credibility of the victim. This court rejected these claims on direct appeal. The doctrine of the law of the 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 this claim.

Next, appellant claimed that his trial counsel was ineffective. 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 jury's verdict 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

²NRS 34.810(1)(b).

³Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975).

⁴Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984).

⁵Strickland, 466 U.S. at 697.

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 proceeding under a conflict of interest. Specifically, he claimed that his counsel shared an office with an attorney representing appellant’s cellmate. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. An attorney may not represent a client where “[t]he representation of one client will be directly adverse to another client.”⁸ Further, attorneys associated in a firm are precluded from representing a client where the representation of one client will be directly adverse to another client of that firm.⁹ Appellant did not assert that his counsel represented his cellmate or that another attorney in appellant’s firm represented appellant’s cellmate. Further, the rules of professional conduct do not impute conflicts of interest to attorneys in office-sharing arrangements. Moreover, appellant failed to set forth facts related to how the office-sharing prejudiced him despite the opportunity to do so. Therefore, the district court did not err in denying this claim.

Second, appellant claimed that his trial counsel was ineffective for passing appellant’s work product to the State to be used

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).

⁸RPC 1.7(a)(1).

⁹RPC 1.10(a).

against him at trial. Appellant stated that he recognized his thoughts in statements made by the prosecution during trial. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. Appellant did not identify any specific statements from the State that he contended resulted from his counsel giving the State appellant's work product or demonstrate that, but for counsel's alleged passing of the work product to the State, there was a reasonable probability of a different outcome at trial.¹⁰ Therefore, the district court did not err in denying this claim.

Third, appellant claimed that his trial counsel was ineffective for failing to move for pretrial hearings. Specifically, appellant claimed that his counsel should have moved for hearings on the following issues: jurisdiction, sufficiency of the evidence, relevancy of witness testimony, and bail reduction. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. Appellant did not provide any specific details regarding the basis for any of the aforementioned motions or demonstrate that any of these motions would have been successful or changed the outcome of the proceedings.¹¹ Therefore, the district court did not err in denying this claim.

Fourth, appellant claimed that his trial counsel was ineffective for not insisting that pretrial motions that were argued on the days of trial, be argued prior to trial. He claimed the court could then devote more time to the issues. Appellant failed to demonstrate that counsel was

¹⁰Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

¹¹Id.

deficient or that he was prejudiced. Appellant did not identify what information or arguments he was unable to present because the district court addressed his motions in this fashion, nor did he demonstrate that the information or arguments would have been successful or changed the outcome of the proceedings.¹² Therefore, the district court did not err in denying this claim.

Fifth, appellant claimed that his trial counsel was ineffective for attempting to suppress a statement in another case. He claimed that this act confused the court. Appellant failed to demonstrate that he was prejudiced. During a proceeding before the court, appellant's counsel indicated that he wanted to move to suppress recorded statements. This was apparently related to statements made in another one of counsel's cases. Once it was determined that the motion did not apply to the instant case, the court moved on with this case and showed no indication that it was confused as a result of the erroneous motion. Therefore, the district court did not err in denying this claim.

Sixth, appellant claimed that his trial counsel was ineffective for ignoring appellant's request that he be separated from his cellmate. He claimed that his cellmate used appellant's personal effects and papers to fabricate appellant's purported incriminating statements. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. At the evidentiary hearing, appellant's counsel testified that appellant did not ask to be separated from his cellmate until after his cellmate came forward with the statements. The district court determined

¹²Id.

that appellant failed to demonstrate by a preponderance of the evidence that he asked his counsel to be separated from his cellmate prior to the discovery of this evidence, and substantial evidence supports the district court's determination.¹³ Thus, appellant failed to demonstrate that his separation from his cellmate would have led to a reasonable probability of a different outcome at trial. Therefore, the district court did not err in denying this claim.

Seventh, appellant claimed that his trial counsel was ineffective for asking Lyon County Sheriff's Deputy Peter Spinuzzi during a pretrial hearing whether appellant's cellmate could have read facts about the case in appellant's handwritten notes that were stored in the cell they shared. Appellant asserted that this suggested that appellant was responsible for writing incriminating statements. Appellant failed to demonstrate that he was prejudiced. The jury was not present to hear the question and thus could not have interpreted it as a suggestion that appellant had written notes in which he acknowledged that he knew facts about the crime. Therefore, the district court did not err in denying this claim.

Eighth, appellant claimed that his trial counsel was ineffective for failing to present a report to Deputy Spinuzzi during a pretrial hearing on the motion in limine to preclude appellant's cellmate's testimony.

¹³State v. Rincon, 122 Nev. 1170, 1177, 147 P.3d 233, 238 (2006) (emphasizing that "the district court is in the best position to adjudge the credibility of the witnesses and the evidence," and this court should not disturb that determination unless it has a "definite and firm conviction that a mistake has been committed") (quoting State v. McKellips, 118 Nev. 465, 469, 49 P.3d 655, 658-59 (2002)).

During the hearing, Deputy Spinuzzi stated that he believed appellant had confessed to appellant's cellmate because appellant's cellmate provided information that was not contained in any of the reports that were in appellant's cell. Appellant contended that the facts which Deputy Spinuzzi relied upon to verify appellant's cellmate information were actually noted in a report by Deputy Cherie Rye; however, although counsel had possession of this report, he did not present it to Deputy Spinuzzi during his examination. He contended the failure to confront Deputy Spinuzzi with the report permitted the State to argue that the information could not have come from anywhere but appellant. Appellant failed to demonstrate that he was prejudiced. While the record is unclear as to whether appellant's counsel handed the report to Deputy Spinuzzi, appellant failed to demonstrate that the report undermined Spinuzzi's testimony as appellant's cellmate provided the information to Deputy Spinuzzi before Deputy Rye drafted the report. Therefore, the district court did not err in denying this claim.

Ninth, appellant claimed that his trial counsel was ineffective for conceding that appellant's cellmate's testimony's probative value outweighed its prejudicial effect during the hearing on the motion in limine. Appellant failed to demonstrate that he was prejudiced. While appellant's counsel stated that the probative value of the evidence outweighed its prejudicial effect, that statement was clearly a misstatement in light of the remainder of counsel's argument that the evidence was highly prejudicial and not considerably probative. Further, considering that the testimony offered was that appellant admitted to his cellmate that he participated in the charged acts, appellant failed to demonstrate that the probative value of this information was outweighed

by its prejudicial effect absent the purported concession. Therefore, the district court did not err in denying this claim.

Tenth, appellant claimed that his trial counsel was ineffective for failing to discover facts necessary to effectively argue the motion concerning the introduction of flight evidence. Specifically, appellant contended that his counsel failed to investigate whether appellant had an innocent explanation for his absence from the state and presence in Tennessee where he was apprehended. Appellant failed to demonstrate that he was prejudiced. Flight evidence “is conceivably relevant so long as the evidence shows the existence of an actual plan and that this plan is undertaken with a consciousness of guilt.”¹⁴ The fact that appellant presented an alternate reason for leaving the state besides avoiding the prosecution did not render the evidence irrelevant. Therefore, the district court did not err in denying this claim.

Eleventh, appellant claimed that his trial counsel was ineffective for failing to seek a continuance to prepare for trial. While appellant acknowledged that he refused to waive his statutory speedy trial rights, he stated that he did not waive the rights because counsel did not inform him of why he needed more time to investigate. Appellant failed to demonstrate that he was prejudiced. Appellant failed to set forth any avenues of investigation that would have affected the outcome of the trial had his counsel requested a continuance and pursued the aforementioned investigations. Therefore, the district court did not err in denying this claim.

¹⁴Tavares v. State, 117 Nev. 725, 734-35, 30 P.3d 1128, 1134 (2001).

Twelfth, appellant claimed that his trial counsel was ineffective for failing to make arrangements for proper fitting attire and a haircut during voir dire. Further, he permitted appellant to be handcuffed and frisked in front of the jury on the first day of trial. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. At the evidentiary hearing, appellant's counsel testified that he visited appellant in jail prior to trial in order to try on the suit appellant would wear to trial. While counsel acknowledged appellant's suit may have been slightly large, he asserted that it was not overly large as appellant contended. He also stated that appellant did not look disheveled during voir dire and was not frisked and handcuffed in front of the jury. The district court determined that appellant failed to demonstrate by a preponderance of the evidence that appellant was improperly transported and presented in court, and substantial evidence supports the district court's determination.¹⁵ Therefore, the district court did not err in denying this claim.

Thirteenth, appellant claimed that his trial counsel was ineffective for failing to object to jurors who had friends or acquaintances in law enforcement; jurors who had worked for or had retired from State employment; male jurors; and jurors who had expressed prejudicial attitudes. Appellant failed to demonstrate that counsel was deficient or that he was prejudiced. During voir dire, no juror indicated that any relationship would affect his or her ability to serve as a fair and impartial juror. Further, no juror expressed a prejudicial attitude that would have

¹⁵Rincon, 122 Nev. at 1177, 147 P.3d at 238 (citing McKellips, 118 Nev. at 469, 49 P.3d at 658-59).

supported a challenge for cause. Thus, appellant failed to demonstrate that any objection to any juror would have been successful or have lead to a reasonable probability of a different outcome at trial. Therefore, the district court did not err in denying this claim.

Fourteenth, appellant claimed that his trial counsel was ineffective for permitting a jury to be chosen that did not have anything in common with appellant. Specifically, appellant claimed that his counsel failed to ensure that the members of the jury had dealt with followers of “Marilyn Manson” and “Godsmack” or the “bizarre behavior created in children by substances like ‘crank,’ ‘crack’ or ‘ec[s]tasy.” Appellant failed to demonstrate that counsel was deficient or that he was prejudiced. The Sixth and Fourteenth Amendments of the United States Constitution provide that a defendant is “entitled to a venire selected from a fair cross section of the community.”¹⁶ Appellant was not entitled to a jury of people who have shared his specific life experiences. Therefore, the district court did not err in denying this claim.

Fifteenth, appellant claimed that his trial counsel was ineffective for improperly questioning a juror, whom appellant contended was an expert witness. During voir dire, appellant’s counsel asked a potential juror who identified himself as a high school teacher if there were some girls who he could unconditionally believe, and if there were some teenage girls who he could not believe. Appellant claimed that the teacher’s answer equated to a statement that teenage girls never lie. Appellant failed to demonstrate that his counsel was deficient or that he

¹⁶Williams v. State, 121 Nev. 934, 939, 125 P.3d 627, 631 (2005) (citing Evans v. State, 112 Nev. 1172, 1186, 926 P.2d 265, 274 (1996)).

was prejudiced. The prospective juror was not an expert witness for the State. Appellant's counsel questioned the potential juror to discover if he harbored any bias and could fairly evaluate the evidence. Further, the answer provided by the potential juror was that some girls lie and some do not. It did not equate to an averment that teenage girls tell the truth all the time. Therefore, the district court did not err in denying this claim.

Sixteenth, appellant claimed that his trial counsel was ineffective for using the peremptory challenges at random and not consulting appellant about the use of those challenges. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. The record indicates that appellant was present when counsel exercised the peremptory challenges. Further, at the evidentiary hearing, appellant's counsel testified that he consulted with appellant before exercising peremptory challenges. The district court determined that appellant failed to demonstrate by a preponderance of the evidence that counsel failed to consult with appellant on the use of peremptory challenges, and substantial evidence supports the district court's determination.¹⁷ Therefore, the district court did not err in denying this claim.

Seventeenth, appellant claimed that his trial counsel was ineffective for incorrectly explaining to the prospective jurors how peremptory challenges work; improperly asking potential jurors to raise their hands in response to some questions; and being otherwise "unimpressive." Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. Appellant did not explain or develop

¹⁷Rincon, 122 Nev. at 1177, 147 P.3d at 238 (citing McKellips, 118 Nev. at 469, 49 P.3d at 658-59).

facts related to how counsel's conduct during the voir dire affected the composition of the jury or influenced the results of the trial. Therefore, the district court did not err in denying this claim.

Eighteenth, appellant claimed that his trial counsel was ineffective for failing to object to prejudicial pretrial publicity and request a change of venue. At the evidentiary hearing, appellant stated that facts related to his arrest were printed in two stories in the Mason Valley News. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. Appellant did not demonstrate that there was inflammatory pretrial publicity such that a fair and impartial trial could not be had or that any members of the jury demonstrated unfair bias acquired by pretrial publicity.¹⁸ Only three prospective jurors indicated that they had knowledge of the case from the Mason Valley News and they were removed from the venire. Moreover, appellant did not produce the articles despite the opportunity to do so. Therefore, the district court did not err in denying this claim.

Nineteenth, appellant claimed that his trial counsel was ineffective for presenting inaccurate and prejudicial opening statements. Specifically, he claimed that his counsel erred in: (1) telling the jury that appellant pleaded guilty, (2) implying that the victim's boyfriend's death prompted the victim to report the abuse when he actually died several months after the initial report, and (3) telling the jury that appellant's family was dysfunctional. Appellant failed to demonstrate that he was

¹⁸Floyd v. State, 118 Nev. 156, 165, 42 P.3d 249, 255 (2002), abrogated on other grounds by Grey v. State, 124 Nev. ___, 178 P.3d 154 (2008); see also NRS 174.455(1).

prejudiced. In a conference after opening arguments, appellant argued that his counsel erred in stating that appellant pleaded guilty in the opening arguments. The district court found that counsel's misstatement was harmless. Further, the district court also properly instructed the jury that the arguments of counsel were not evidence. Moreover, there was substantial evidence of guilt. The victim testified that appellant sexually assaulted her on three separate occasions. The state's expert witness testified that the victim's emotional state was consistent with a victim of abuse. Moreover, appellant's cellmate testified that appellant admitted to molesting the victim. Thus, appellant did not demonstrate that there was a reasonable probability that the jurors would not have convicted appellant but for counsel's remarks. Therefore, the district court did not err in denying this claim.

Twentieth, appellant claimed that his trial counsel was ineffective for failing to investigate: (1) the fact that appellant had forbidden the victim to see her boyfriend and his stepmother; (2) facts related to the victim's boyfriend's death; (3) facts related to the deceased boyfriend's household; (4) facts related to deals that the State may have made with the deceased boyfriend's family in exchange for their testimony; and (5) facts related to the victim's behavior with the deceased boyfriend's family such as drinking alcohol and skipping school. He further claimed that his counsel continually assured him that he was conducting a thorough investigation. Appellant failed to demonstrate that he was prejudiced as the jury was aware of the facts that appellant wanted his counsel to investigate. Witnesses testified that the victim had behavioral issues that included skipping school, underage drinking, and disappearing for days at a time. Further, there was testimony that appellant was strict

and forbade the victim from seeing two boyfriends and her deceased boyfriend's stepmother, Affolter; Affolter had Hepatitis-C and was rumored to use heroin; the police responded to Affolter's address on several occasions due to teenagers frequenting the premises and other domestic incidents; and the victim's boyfriend died of an overdose involving methadone. Appellant did not provide any evidence that any members of the victim's deceased boyfriend's family were testifying in exchange for immunity despite the opportunity to do so. Therefore, the district court did not err in denying this claim.

Twenty-first, appellant claimed that his trial counsel was ineffective for failing to investigate or introduce evidence through witnesses and documents at trial that appellant had planned to have the victim tested for Hepatitis-C and drug use on the day the victim reported the abuse. Appellant failed to demonstrate that he was prejudiced. While the jury did not hear evidence that appellant had scheduled the victim for medical and drug testing on the day that she reported the abuse, in light of the fact that the victim's accusations were consistent with appellant's admissions to his cellmate, appellant failed to establish that, had the jury heard this fact in addition to the other evidence that attacked the victim's credibility, there was a reasonable probability that the jury would not have convicted appellant. Therefore, the district court did not err in denying this claim.

Twenty-second, appellant claimed that his trial counsel was ineffective for failing to investigate appellant's cellmate's testimony. Specifically, he claimed that appellant's counsel failed to discover: (1) records showing that appellant and his cellmate had been separated, (2) appellant's cellmate's criminal history, (3) records of a deal between

appellant's cellmate and the State, and (4) whether any other persons were housed in the cell. Appellant failed to demonstrate that he was prejudiced. Appellant put forth no evidence that appellant's cellmate had a deal with the State in exchange for his testimony despite the opportunity to do so. Appellant further failed to identify other cellmates or state what information could be obtained from them.¹⁹ Moreover, appellant's cellmate provided details concerning the assaults that were consistent with the victim's account and were not included in any of the reports stored in their cell at the time that appellant's cellmate provided the information to Lyon County Sheriff's Deputy Peter Spinuzzi. In light of the specific information appellant's cellmate provided, which was consistent with the victim's accusations, appellant did not demonstrate that any of the asserted discovery would have undermined appellant's cellmate's testimony. Therefore, the district court did not err in denying this claim.

Twenty-third, appellant claimed that his trial counsel was ineffective for failing to investigate. Specifically, he claimed that his counsel did not spend sufficient time interviewing appellant's ex-wife, appellant's other children, and another prisoner. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. Appellant did not identify what further questions his counsel should have asked of the witnesses or how this would have lead to a reasonable

¹⁹Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

probability of a different outcome at trial.²⁰ Therefore, the district court did not err in denying this claim.

Twenty-fourth, appellant claimed that his trial counsel was ineffective for failing to preserve exculpatory evidence. Specifically, he claimed that his counsel failed to secure a notebook seized from appellant's motor home and two letters written by the victim to appellant that supported appellant's defense. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. At the evidentiary hearing, appellant's counsel testified that appellant never informed him of the existence of the notebook or letters. The district court determined that appellant failed to demonstrate by a preponderance of the evidence that he asked his counsel to preserve this evidence, and substantial evidence supports the district court's determination.²¹ Thus, appellant failed to demonstrate that the preservation of the evidence would have led to a reasonable probability of a different outcome at trial. Therefore, the district court did not err in denying this claim.

Twenty-fifth, appellant claimed that his trial counsel was ineffective for inviting the victim to vouch for her own credibility. In referring to her accusation, the victim stated "I won't say it out loud unless I'm sure." Appellant failed to demonstrate that he was prejudiced. As previously discussed, there was substantial evidence of appellant's guilt based on the testimony of the victim, the State's expert, and appellant's

²⁰Id.

²¹Rincon, 122 Nev. at 1177, 147 P.3d at 238 (citing McKellips, 118 Nev. at 469, 49 P.3d at 658-59).

cellmate. Thus, appellant failed to demonstrate that there was a reasonable probability of a different outcome had his counsel not purportedly invited the comment. Therefore, the district court did not err in denying this claim.

Twenty-sixth, appellant claimed that his trial counsel was ineffective for introducing prior bad act evidence through the victim's cross-examination. During cross-examination, counsel asked the victim if it hurt when she and appellant had intercourse. She responded, "[n]ot at this point. It happened before." Appellant failed to demonstrate that he was prejudiced. Appellant's counsel immediately objected to the victim's statement and the district court instructed the jury to disregard the statement. In affirming appellant's conviction, this court stated that the victim's comments were not part of the record on which the jury could rely upon. Therefore, the district court did not err in denying this claim.

Twenty-seventh, appellant claimed that his trial counsel was ineffective for mistaking the type of motor home that appellant owned when he examined the victim. Appellant failed to demonstrate that he was prejudiced. Appellant did not show that, but for counsel's error, which was immediately corrected by the victim, there was a reasonable probability of a different result in the trial. Therefore, the district court did not err in denying this claim.

Twenty-eighth, appellant claimed that his trial counsel was ineffective for (1) questioning the victim in further detail about the abuse and (2) questioning the victim's mother about the time frame for one of the instances. Specifically, he claimed that his counsel only succeeded in repeating the facts to the jury and establishing that there was enough time for the assault to occur rather than undermining the evidence.

Appellant failed to demonstrate that he was prejudiced. The record shows that appellant's counsel questioned the victim about the abuse in order to expose inconsistencies in her trial testimony and her prior statements. Further, appellant's counsel was able to expose some inconsistencies. While the mother's testimony confirmed that there was enough time to complete the assault, the victim had already testified that it occurred, which implicitly acknowledged that there was enough time for the assault to occur. Thus, appellant failed to demonstrate a reasonable probability of a different outcome. Therefore, the district court did not err in denying this claim.

Twenty-ninth, appellant claimed that his trial counsel was ineffective for failing to impeach the victim's deceased boyfriend's father's testimony concerning how long the victim dated her deceased boyfriend and the stepmother's testimony concerning the age difference between the deceased boyfriend and the victim. Appellant failed to demonstrate that he was prejudiced. Appellant did not demonstrate that had his counsel attempted to impeach these witnesses on these collateral issues that the jury would not have convicted him in light of the testimony of the victim and appellant's cellmate. Therefore, the district court did not err in denying this claim.

Thirtieth, appellant claimed that his trial counsel was ineffective during the cross-examination of the State's expert, Dr. Kathleen Milbeck. Specifically, appellant claimed that counsel had no apparent plan for his cross-examination and was hostile to her despite the fact that Dr. Milbeck was "a demure woman of obvious social sophistication, well educated with impeccable credentials." Appellant failed to demonstrate that his counsel was deficient or that he was

prejudiced. Appellant did not state what questions his counsel should have asked Dr. Milbeck.²² Further, our review of the record reveals that appellant's counsel did not treat Dr. Milbeck inappropriately. Thus, appellant failed to demonstrate that a different method of examination would have led to a reasonable probability of a different outcome at trial. Therefore, the district court did not err in denying this claim.

Thirty-first, appellant claimed that his trial counsel was ineffective for opening the door on the issue of peripheral facts during Dr. Milbeck's testimony. He claimed that once counsel opened the door, the State then bolstered the victim's testimony with further questions concerning those facts. Appellant failed to demonstrate that he was prejudiced. In her direct testimony, Dr. Milbeck testified that the victim met the criteria of being a victim of sexual abuse. She based this conclusion on the fact that the victim gave information about the abuse, provided peripheral details, demonstrated an emotional state consistent with victimization, made consistent statements regarding the abuse, and indicated behavioral disturbance. Counsel asked about peripheral facts to explore the basis for Dr. Milbeck's opinion as set forth in her direct testimony. Appellant's counsel did not open the door on the issue of peripheral facts, and appellant did not show that there was a reasonable probability that he would not have been convicted had his counsel refrained from challenging Dr. Milbeck's testimony. Therefore, the district court did not err in denying this claim.

²²Hargrove, 100 Nev. at 502, 686 P.2d at 225.

Thirty-second, appellant claimed that his trial counsel was ineffective for failing to object to Deputy Spinuzzi vouching for the victim by stating “[b]ecause of the serious nature of the crimes, to be real honest with you, I tried as hard to prove that Lydia was lying as I did on any other aspect, investigation of this case.” Appellant failed to demonstrate that he was prejudiced. As previously discussed, there was substantial evidence of appellant’s guilt based on testimony of the victim, the State’s expert, and appellant’s cellmate. Thus, appellant failed to demonstrate that there was a reasonable probability of a different outcome had his counsel objected to Deputy Spinuzzi’s brief statement. Therefore, the district court did not err in denying this claim.

Thirty-third, appellant claimed that his trial counsel was ineffective for inviting Deputy Spinuzzi to (1) comment on appellant’s prior criminal history; (2) opine that appellant molested his other daughter; and (3) state that the abuse had gone on for an extended period of time. Appellant further claimed that his counsel also failed to request a limiting instruction. Appellant failed to demonstrate that he was prejudiced. The failure to conduct a Petrocelli²³ hearing and give a limiting instruction is grounds for reversal unless either the record is sufficient for this court to determine that the evidence is admissible as bad act evidence or where the result would have been the same had the court

²³Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985), modified by Sonner v. State, 112 Nev. 1328, 1333-34, 930 P.2d 707, 711-12 (1996) and superceded in part by statute as stated in Thomas v. State, 120 Nev. 37, 45, 83 P.3d 818, 823 (2004).

not admitted the evidence.²⁴ In this case, appellant failed to show that there was a reasonable probability of a different result at trial had the district court precluded testimony about appellant's prior criminal record because there was substantial evidence of guilt notwithstanding the prior bad act evidence. Therefore, the district court did not err in denying this claim.

Thirty-fourth, appellant claimed that his trial counsel was ineffective for failing to use reports that appellant provided during trial to undermine Deputy Spinuzzi's testimony. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. Appellant did not identify the reports or the particular testimony those reports would have undermined or demonstrate that the use of the reports would have resulted in a reasonable probability of a different result at trial.²⁵ Therefore, the district court did not err in denying this claim.

Thirty-fifth, appellant claimed that his trial counsel was ineffective for his performance during Deputy Spinuzzi's cross-examination. Specifically, he claimed that his counsel should not have asked Deputy Spinuzzi about photographs; failed to seize upon misstatements by Deputy Spinuzzi; and invited Deputy Spinuzzi to state that the children had been taken from the home when they had not been.

²⁴Qualls v. State, 114 Nev. 900, 903, 961 P.2d 765, 767 (1998); Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997); see also Rhymes v. State, 121 Nev. 17, 24, 107 P.3d 1278, 1282 (2005) (providing that the failure to give a prior bad act limiting instruction is "harmless if the error did not have a substantial and injurious effect or influence the jury's verdict").

²⁵Hargrove, 100 Nev. at 502, 686 P.2d at 225.

Appellant failed to demonstrate that he was prejudiced. Appellant failed to demonstrate that the impeachment of Deputy Spinuzzi's testimony would have affected the outcome of the trial given the substantial evidence of guilt. Therefore, the district court did not err in denying this claim.

Thirty-sixth, appellant claimed that his trial counsel was ineffective for failing to investigate or ask several witnesses about the victim's behavioral problems. Specifically, he stated that his counsel failed (1) to ask the victim about a 2001 domestic violence incident involving her mother; (2) to ask the victim's mother about a June 2000 domestic violence incident, after which, appellant received custody of the children; (3) to ask the victim's mother about the 2001 domestic violence incident; (4) to ask the victim's mother about the victim's behavior over the past few years; and (5) to examine documents that could have given insight into the victim's behavioral problems. Appellant failed to demonstrate that he was prejudiced as the jury was made aware of the aforementioned incidents as well as other problems between the victim and her parents. Therefore, the district court did not err in denying this claim.

Thirty-seventh, appellant claimed that his trial counsel was ineffective for failing to (1) question the victim's deceased boyfriend's stepmother, Affolter, about the fact that her Hepatitis C was the reason that appellant disliked her; (2) question Affolter about the police responding to her home on several occasions; (3) question Affolter about the victim's boyfriend's death; and (4) question Affolter about her conviction. Appellant failed to demonstrate that he was prejudiced as the jury was made aware of the aforementioned facts. Therefore, the district court did not err in denying this claim.

Thirty-eighth, appellant claimed that his trial counsel was ineffective for reinforcing the evidence of flight during his the cross-examination of the victim, the victim's mother, and Affolter. Appellant failed to demonstrate that he was prejudiced. During the trial, the State introduced evidence that appellant left the state with his son several weeks after the victim reported the abuse and the sheriff's office began investigating the case. Once appellant left the state, neither he nor his son contacted the victim or the victim's mother, however, the victim's sister did receive a single birthday card. Moreover, appellant and his son had been out of the state for nearly a year when appellant was apprehended in Tennessee. Appellant did not show that, in light of the evidence admitted at trial, these references affected the outcome of the trial. Therefore, the district court did not err in denying this claim.

Thirty-ninth, appellant claimed that his trial counsel was ineffective for failing to ask Child Protective Services Investigator Sevana Newman about whether the victim was under the influence of drugs or alcohol at the time of her report, and failing to impeach the victim's deceased boyfriend's stepmother, Affolter, with Deputy Rye's report, stating that Affolter said that the victim had been drinking on the day that she reported the abuse. Appellant failed to demonstrate that he was prejudiced as the jury had heard evidence that Affolter stated that the victim had been drinking on the day she reported the abuse. Therefore, the district court did not err in denying this claim.

Fortieth, appellant claimed that his trial counsel was ineffective for failing to ask Investigator Newman about inconsistencies in statements of Affolter and the victim. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. Appellant did not

specifically identify the statements he contended were inconsistent or demonstrate a reasonable probability of a different outcome.²⁶ Therefore, the district court did not err in denying this claim.

Forty-first, appellant claimed that his trial counsel was ineffective for (1) not asking Investigator Newman what the other children said about the claims of abuse; (2) not asking Investigator Newman about whether the other children were removed from the home; and (3) inviting Deputy Spinuzzi to comment that the children had been taken from the home. Appellant failed to demonstrate that he was prejudiced. During the trial, appellant's other children testified that they did not witness appellant molest the victim. Investigator Newman stated that the victim's brother and sister lived with appellant at the time of the report, but there was no indication that either of them were in danger. Further, witnesses acknowledged that the victim's brother lived with appellant when he left Nevada. Thus, appellant failed to demonstrate a reasonable probability of a different outcome. Therefore, the district court did not err in denying this claim.

Forty-second, appellant claimed that his trial counsel was ineffective for failing to scrutinize Investigator Newman's testimony. Specifically, he claimed that his counsel should have further explored Investigator Newman's testimony that the victim told her that she "had been having sexual relationships with her father since the time she was 11 years old until she was 16" because that testimony would undermine the fact that appellant's cellmate and the victim's deceased boyfriend's

²⁶Id.

stepmother, Affolter, described the same as an isolated incident of abuse. Appellant failed to demonstrate that counsel was deficient or that he was prejudiced. During the trial, defense counsel objected to this statement and the district court instructed the jury to disregard it. Appellant failed to demonstrate that, had trial counsel further scrutinized this testimony, there was a reasonably likelihood of a different outcome. Therefore, the district court did not err in denying this claim.

Forty-third, appellant claimed that his trial counsel was ineffective during the cross-examination of Investigator Newman. Specifically, appellant claimed that his counsel (1) changed subjects frequently during cross-examination; (2) had to ask multiple questions to get Investigator Newman to get her to admit that the victim changed her story; (3) failed to ensure that she brought her files with her; (4) failed to ask her questions about her own report; and (5) failed to ask her about her relationship with Affolter, the stepmother of the victim's deceased boyfriend. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. Appellant did not explain how his counsel's method of examination impacted the jury's decision to convict him. Further, as Investigator Newman eventually acknowledged that the victim changed her story, appellant failed to demonstrate that he was prejudiced by his counsel's need to ask three questions of her to obtain the admission. Appellant failed to identify what facts in Investigator Newman's report should have been further questioned and on what facts contained in her files appellant should have examined her.²⁷ Appellant

²⁷Id.

did not explain how Investigator Newman knew Affolter or how that information would have affected the outcome of the trial.²⁸ Therefore, the district court did not err in denying this claim.

Forty-fourth, appellant claimed that his trial counsel was ineffective for failing to inquire about the statement in Investigator Newman's report that she was surprised by Deputy Spinuzzi's attitude toward appellant. Appellant failed to demonstrate that he was prejudiced. Appellant did not explain how that information would have affected the outcome of the trial.²⁹ Therefore, the district court did not err in denying this claim.

Forty-fifth, appellant claimed that his trial counsel was ineffective for failing to cross-examine Deputy Spinuzzi based on other facts in Investigator Newman's report. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. Appellant did not identify the specific facts in the report or indicate what testimony those facts would have undermined.³⁰ Therefore, the district court did not err in denying this claim.

Forty-sixth, appellant claimed that his trial counsel was ineffective for his performance during the cross-examination of David Farias, the victim's first boyfriend. Specifically, he claimed that counsel failed to inquire as to possible bias issues such as the hostile relationship between appellant and Farias at the time of the 1999 allegation and

²⁸Id.

²⁹Id.

³⁰Id.

otherwise failed to examine Farias in a focused fashion. Appellant failed to demonstrate that he was prejudiced. During the trial, the jury heard evidence that appellant did not get along with Farias and did not approve of him dating the victim. Appellant further failed to identify other topics that he contended that counsel failed to discuss or how the method of examination affected the outcome of the trial.³¹ Further, as there was substantial evidence of appellant's guilt based on the testimony of the victim, the State's expert, and appellant's cellmate, appellant failed to demonstrate that there was a reasonable probability of a different outcome had his counsel pursued this testimony. Therefore, the district court did not err in denying this claim.

Forty-seventh, appellant claimed that his trial counsel was ineffective for: (1) asking Farias about his difficult relationship with appellant; (2) asking the victim's mother about a confrontation with appellant that cast appellant in a violent light; and (3) failing to ask the victim's mother about Farias living with appellant, which would have undercut assertions of animosity. Appellant failed to demonstrate that he was prejudiced. As noted above, there was substantial evidence of appellant's guilt based on the testimony of the victim, the State's expert, and appellant's cellmate, appellant failed to demonstrate that there was a reasonable probability of a different outcome had his counsel not elicited this testimony. Therefore, the district court did not err in denying this claim.

³¹Hargrove, 100 Nev. at 502, 686 P.2d at 225.

Forty-eighth, appellant claimed that his trial counsel was ineffective for failing to understand the importance of the 1999 CPS report of abuse and examine Investigator Newman, the victim, and the victim's mother according to that understanding. Specifically, appellant claimed that the report was important because it indicated that the abuse could have been perpetrated by an adult male in the victim's home besides appellant; the victim was concerned with being removed from her home, which would not have occurred unless the abuse occurred in the home in which the victim lived, which was not appellant's home; and the victim denied any abuse from any adults in her life. He further claimed that his counsel erred in failing to subpoena the author of the report. Appellant failed to demonstrate that, had his counsel understood the significance of this report and questioned witnesses accordingly, there was a reasonable probability of a different outcome. As discussed above, there was substantial evidence of guilt based on the testimony of the victim, the State's expert, and appellant's cellmate. Specifically, the victim testified that she had been sexually assaulted by appellant three times. She also admitted that she had denied that she had been abused when confronted by a CPS investigator in 1999. Appellant's cellmate further testified that appellant admitted to abusing the victim and divulged facts related to that abuse that were consistent with the victim's account. In light of this significant evidence that pointed solely to appellant as the abuser, appellant failed to demonstrate that further exploration of the victim's recantation, fear of being removed from her home, and insinuation that another adult in the mother's home could have molested the victim as set forth in the report would have affected the outcome of the trial. Therefore, the district court did not err in denying this claim.

Forty-ninth, appellant claimed that his trial counsel was ineffective for asking the victim's mother if appellant and the victim came to her after the 1999 allegation to talk about what happened. Appellant failed to demonstrate that he was prejudiced. Appellant did not demonstrate that he would not have been convicted had his client refrained from asking the victim's mother this question. Therefore, the district court did not err in denying this claim.

Fiftieth, appellant claimed that his trial counsel was ineffective for his performance during the cross-examination of the victim's sister. Specifically, appellant claimed that his counsel (1) improperly came to defense of the Proctor family during the examination; and (2) led the jury to believe that the witness would lie to protect her father. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. The purported defense of the Proctor family did not aid the prosecution because, as noted above, there was substantial evidence of guilt based on the testimony of the victim, appellant's cellmate, and the State's expert witness. In addition, during her cross-examination, the victim's sister testified that she "would never lie for anybody." Therefore, the district court did not err in denying this claim.

Fifty-first, appellant claimed that his trial counsel was ineffective for visiting the victim's siblings on the night before they testified because the timing of the visit suggested that counsel was trying to improperly influence their testimony. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. As discussed above, there was substantial evidence of guilt based on the testimony of the victim, appellant's cellmate, and the State's expert witness. Thus, appellant did not demonstrate that he would not have been convicted but

for the passing reference during their testimony to meeting the children the night before their testimony. Therefore, the district court did not err in denying this claim.

Fifty-second, appellant claimed that his trial counsel was ineffective for failing to cross-examine the victim's mother on the fact that she sought to modify the custody determination in the divorce decree during trial. Appellant failed to demonstrate that he was prejudiced. Given the testimony of the victim, appellant's cellmate, and the State's expert witness, appellant did not demonstrate that information that undermined the victim's mother's testimony would have affected the outcome of the trial. Therefore, the district court did not err in denying this claim.

Fifty-third, appellant claimed that his trial counsel was ineffective for failing to present a defense despite the volumes of work product that appellant produced for the defense. Further, appellant claimed that his trial counsel continually told him that he was working on a defense. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. Appellant did not identify the specific witnesses his counsel should have presented or identify what defense strategy his counsel should have pursued.³² Thus, appellant failed to demonstrate that, had his counsel inspected the work product that appellant produced and used it at trial, there was a reasonable probability of a different outcome at trial. Therefore, the district court did not err in denying this claim.

³²Id.

Fifty-fourth, appellant claimed that his trial counsel was ineffective for failing to call an expert witness to interview the victim regarding the victim's emotional state and drug use to find factors that might motivate her to fabricate a story of abuse. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. While appellant specifically described the testimony he hoped to elicit, he did not identify the witness that would have provided the testimony.³³ Therefore, the district court did not err in denying this claim.

Fifty-fifth, appellant claimed that his trial counsel was ineffective for failing to call Doyle Putnam, another prisoner, to state that appellant's cellmate had access to appellant's paperwork while appellant was out of the cell. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. The district court personally addressed appellant and he acknowledged that he did not wish to call Putnam as a witness. Moreover, as appellant's cellmate provided details about the crimes that were not in the reports stored in his cell, appellant failed to demonstrate that there was a reasonable probability of a different outcome at trial. Therefore, the district court did not err in denying this claim.

Fifty-sixth, appellant claimed that his trial counsel was ineffective for advising him that he did not have to testify because the State failed to meet its burden of proof. Appellant failed to demonstrate that he was prejudiced. The district court personally canvassed appellant and he acknowledged that he freely and voluntarily waived the right to

³³Id.

testify in his own behalf. Further, he acknowledged that he came to this decision in part because of his own personal analysis of the case. Moreover, appellant did not identify the facts to which he would testify and thus demonstrate that, had he testified, there was a reasonable probability of a different outcome at trial. Therefore, the district court did not err in denying this claim.

Fifty-seventh, appellant claimed that his trial counsel was ineffective for confusing facts during his closing argument. Specifically, he claimed that his counsel (1) implied that the victim was permitted to move into appellant's home "right after" allegations of abuse; (2) bolstered the prosecution's case with a discussion of peripheral details; (3) referred to appellant's yelling and screaming, which he believed called appellant's mental state into question; (4) reminded the jury that Deputy Spinuzzi believed that the victim's sister was molested as well; (5) confused the age difference between the victim and her first boyfriend; (6) argued that appellant did not flee, thus reminding the jury of the flight evidence; and (7) stated that the victim was sleeping on one occasion before the abuse when her testimony was that she was playing with clay. Appellant failed to demonstrate that he was prejudiced by trial counsel's argument. The jury was properly instructed that arguments were not evidence. Thus, appellant failed to demonstrate that had his counsel not made these statements, there was a reasonable probability of a different outcome at trial. Therefore, the district court did not err in denying this claim.

Fifty-eighth, appellant claimed that his trial counsel was ineffective for failing to ensure that appellant was present at the proceedings during which the instructions were settled. Appellant failed to demonstrate that his counsel was deficient. The district court

personally addressed appellant and he acknowledged that he waived his right to personally appear at the conference during which the instructions were settled. Therefore, the district court did not err in denying this claim.

Fifty-ninth, appellant claimed that his trial counsel was ineffective for failing to object to the jury instruction that the State is not required to corroborate the victim's testimony. Specifically, he claimed that the instruction permits a presumption that resulted in conclusive evidence of guilt. Appellant failed to demonstrate that his counsel was deficient. The district court instructed the jury that:

Under Nevada law it is not necessary that the testimony of the victim of the crime of Sexual Assault be corroborated by other evidence. A jury may convict the accused even though the testimony of the victim constitutes the only evidence as to the commission of the offenses.

This instruction was a correct statement of the law.³⁴ Therefore, the district court did not err in denying this claim.

Sixtieth, appellant claimed that his trial counsel was ineffective for failing to consult him regarding the district court giving an instruction concerning appellant's right to testify. Appellant failed to demonstrate that his counsel was deficient. When the district court canvassed appellant about waiving his right to testify, he personally asked

³⁴See Matter of T.R., 119 Nev. 646, 649-50, 80 P.3d 1276, 1278-79 (2003); Hutchins v. State, 110 Nev. 103, 109, 867 P.2d 1136, 1140 (1994) modified on other grounds by Mendoza v. State, 122 Nev. 267, 275, 130 P.3d 176, 181 (2006).

for the instruction. Therefore, the district court did not err in denying this claim.

Sixty-first, appellant claimed that his trial counsel was ineffective for (1) failing to move for a mistrial based on incidents of misconduct and manifest error; (2) failing to object to obvious trial errors and thus precluding appellate review; and (3) failing to move for a new trial. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. Appellant did not identify the specific incidents of misconduct or error that formed the basis of his proposed motion for a mistrial or the proposed grounds for his motion for a new trial.³⁵ Thus, appellant failed to demonstrate that any such motion would have been successful. Appellant further failed to identify the errors his counsel should have preserved for appellate review.³⁶ Therefore, the district court did not err in denying this claim.

Sixty-second, appellant claimed that his trial counsel was ineffective for failing to move for a verdict of acquittal at the close of evidence based on insufficiency of the evidence. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. As noted above, there was sufficient evidence that appellant sexually assaulted a child under the age of fourteen. While the jury also heard evidence which called the victim's credibility into question—such as opinion evidence of her siblings, conflicting eyewitness testimony of her siblings, evidence of family strife and friction with appellant, and evidence

³⁵Hargrove, 100 Nev. at 502, 686 P.2d at 225.

³⁶Id.

of prior recantations—issues related to the victim’s credibility were for the jury to decide.³⁷ Thus, appellant failed to demonstrate that a motion for a verdict of acquittal would have been successful. Therefore, the district court did not err in denying this claim.

Sixty-third, appellant claimed that his trial counsel was ineffective for failing to transfer appellant’s complete case file to appellate counsel. Specifically, he claimed that the record did not contain appellant’s handwritten notes and correspondence. He claimed that the failure to transfer the complete file prevented appellate counsel from raising certain claims on appeal. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. Appellant did not identify what information was contained in the notes that his counsel failed to provide to appellate counsel.³⁸ Further, he did not allege what claims his appellate counsel failed to raise due to the failure to transfer the files.³⁹ Therefore, the district court did not err in denying this claim.

Appellant also claimed that he received ineffective assistance of appellate counsel. 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,⁴⁰ and resulting prejudice such “that the omitted issue would have a

³⁷See Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981) (quoting Hankins v. State, 91 Nev. 477, 538 P.2d 167, 168 (1975)).

³⁸Hargrove, 100 Nev. at 502, 686 P.2d at 225.

³⁹Id.

⁴⁰Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1106 (1996).

reasonable probability of success on appeal.”⁴¹ Appellate counsel is not required to raise every non-frivolous issue on appeal.⁴² This court has held that appellate counsel will be most effective when every conceivable issue is not raised on appeal.⁴³

First, appellant claimed that his appellate counsel was ineffective for filing his notice of appeal a short time prior to when it would have been considered untimely. Appellant failed to demonstrate that his counsel was deficient. Appellate counsel filed appellant’s notice of appeal within the period proscribed by law which permitted appellant to proceed with his appeal. Therefore, the district court did not err in denying this claim.

Second, appellant claimed that his appellate counsel was ineffective for failing to communicate with appellant. Further, he claimed that appellate counsel did not give the case file to appellant until he was ordered to by the district court, and, further, that the case file was not complete. He also claimed that appellate counsel failed to provide him with the trial transcript until nearly one year after the trial. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. Appellant did not identify what issues his counsel failed to raise as a result of the failure to communicate or to provide appellant with a complete case file and transcript.⁴⁴ Thus, appellant did not demonstrate

⁴¹Id. at 998, 923 P.2d at 1114.

⁴²Jones v. Barnes, 463 U.S. 745, 751 (1983).

⁴³Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989).

⁴⁴Hargrove, 100 Nev. at 502, 686 P.2d at 225.

that his counsel failed to raise issues that would have had a reasonable probability of success on appeal. Therefore, the district court did not err in denying this claim.

Third, appellant claimed that his appellate counsel was ineffective for requesting numerous enlargements of time to file documents related to appellant's appeal. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. Appellant did not identify any issues that appellate counsel failed to raise or that were somehow foreclosed by appellant's repeated requests for more time.⁴⁵ Thus, appellant did not demonstrate that his counsel failed to raise issues that would have had a reasonable probability of success on appeal. Therefore, the district court did not err in denying this claim.

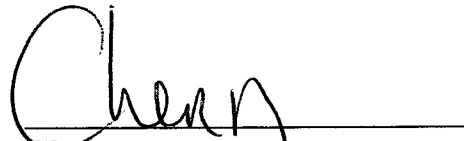
Fourth, appellant claimed that the issues presented by appellate counsel on appeal were unfocused and displayed a lack of knowledge. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. Appellant did not identify any authority or arguments that his counsel failed to raise on appeal.⁴⁶ Thus, appellant did not demonstrate that his counsel failed to argue the issues raised on appeal in such a manner that would have had a reasonable probability of success on appeal. Therefore, the district court did not err in denying this claim.


⁴⁵Id.

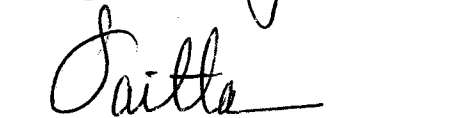
⁴⁶Id.

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.⁴⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴⁸


_____, J.
Cherry


_____, J.
Maupin


_____, J.
Saitta

cc: Hon. Robert E. Estes, District Judge
Donald E. Blankenship Jr.
Attorney General Catherine Cortez Masto/Carson City
Lyon County District Attorney
Lyon County Clerk

⁴⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁴⁸We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.