

IN THE SUPREME COURT OF THE STATE OF NEVADA

SCOTT ANTHONY KANVICK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53275

SCOTT ANTHONY KANVICK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53276

FILED

APR 07 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

These are appeals from district court orders denying appellant Scott Anthony Kanvick's post-conviction petitions for writs of habeas corpus in two separate cases. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

Kanvick claims that the district court erred by denying his claims that he received ineffective assistance of counsel. When reviewing the district court's resolution of an ineffective assistance claim, we give deference to the court's factual findings if supported by substantial evidence and not clearly erroneous but review the court's application of the law to those facts de novo. Lader v. Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

First, Kanvick makes a general allegation that the district court abused its discretion by denying claims raised in his petition and supplemental petitions without an evidentiary hearing. However, the district court found that the claims lacked the specific evidentiary and/or

factual support necessary to warrant an evidentiary hearing, were belied by the record, or lacked the requisite demonstration of prejudice. See Means v. State, 120 Nev. 1001, 1012, 1016, 103 P.3d 25, 33, 35 (2004); Strickland v. Washington, 466 U.S. 668, 687 (1984) (establishing two-part test for ineffective assistance of counsel); Kirksey v. State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996) (applying Strickland test to judgments of conviction based on guilty pleas). These findings are supported by the record, they are not clearly wrong, and they have not been challenged with any specificity. Accordingly, we conclude that Kanvick has not demonstrated that the district court erred by denying his claims without an evidentiary hearing.

Second, Kanvick contends that the district court erred by denying his claim that defense counsel was ineffective for allowing the district court to rely on suspect evidence, failing to impeach the victim's testimony at sentencing,¹ and failing to challenge his delayed appearance before a magistrate. The district court found that Kanvick failed to demonstrate that he was prejudiced. See Strickland, 466 U.S. at 687; Kirksey, 112 Nev. at 987-88, 923 P.2d at 1107; see also Means, 120 Nev. at 1012, 103 P.3d at 33 (petitioner bears the burden of proving ineffective assistance); Elvik v. State, 114 Nev. 883, 895, 965 P.2d 281, 289 (1998) ("Failure to bring a defendant before a magistrate without unnecessary delay does not warrant reversal absent a showing of prejudice to the

¹To the extent that Kanvick also asserts that errors in the presentence investigation reports prejudiced him at sentencing, we conclude that the district court did not err by denying this claim because this claim was not properly raised in a post-conviction petition for a writ of habeas corpus. See NRS 34.810(1).

defendant's constitutional rights.”). Our review of the record reveals that the district court's factual findings are supported by substantial evidence and are not clearly wrong. And Kanvick has not demonstrated that the district court erred as a matter of law.

Third, Kanvick contends that the district court erred by denying his claim that appellate counsel was ineffective for failing to (1) provide him with appellate documents; (2) inform him of the status of the direct appeal and notify him of the outcome of the direct appeal; and (3) challenge on appeal his unlawful detention, the district judge's failure to recuse himself, and the validity of the guilty pleas. To the extent that these contentions were raised in the court below, we note that the district court found that Kanvick received effective assistance of counsel. See Kirksey, 112 Nev. at 998, 923 P.2d at 1113-14. Our review of the record reveals that the district court's factual finding is supported by substantial evidence and is not clearly wrong. And Kanvick has not demonstrated that the district court erred as a matter of law. We did not consider the contentions that Kanvick raised for the first time on appeal. Riddle v. Warden, 91 Nev. 9, 11, 530 P.2d 757, 758 (1975).

Next, Kanvick contends that the district court abused its discretion by refusing to allow him to withdraw his guilty pleas. Kanvick claims that he is actually innocent and that defense counsel was ineffective for advising him to plead guilty and promising him that he would be released on his own recognizance after entering the guilty pleas. We presume that the district court properly assessed the validity of a guilty plea and we will not reverse the district court's determination absent an abuse of discretion. Crawford v. State, 117 Nev. 718, 721, 30 P.3d 1123, 1125 (2001). The district court discounted Kanvick's testimony

that he was innocent, found that defense counsel reasonably advised Kanvick to plead guilty, and, after reviewing the totality of the circumstances, found that Kanvick entered his pleas intelligently, voluntarily, and knowingly. See Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 367-68 (1986). The district court's findings are supported by the record and are not clearly wrong, and we conclude that Kanvick has not demonstrated that the district court abused its discretion by refusing to allow him to withdraw his guilty pleas.

Finally, Kanvick contends that he was denied due process when the district judge failed to act on his request seeking the judge's removal from his post-conviction proceedings; Kanvick challenged the judge's impartiality in both a motion and the petition. "A judge is presumed to be impartial, and the party asserting the challenge carries the burden of establishing sufficient factual grounds warranting disqualification. Disqualification must be based on facts, rather than mere speculation." Rippo v. State, 113 Nev. 1239, 1248, 946 P.2d 1017, 1023 (1997) (internal citations omitted). The record does not indicate that the district judge answered Kanvick's motion for recusal; however, the judge did find that the claim raised in the habeas petition was without merit and that Kanvick failed to establish bias or prejudice under NRS 1.230. We conclude that Kanvick failed to demonstrate actual bias or a reasonable inference of bias, see NRS 1.235(1), and that the judge's failure to follow the procedure mandated in NRS 1.235(5) was harmless, see Libby v. State, 109 Nev. 905, 912, 859 P.2d 1050, 1054 (1993), vacated on other grounds by, 516 U.S. 1037 (1996).

Having considered Kanvick's contentions and concluded that he is not entitled to relief, we

ORDER the judgments of the district court AFFIRMED.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Steven R. Kosach, District Judge
Karla K. Butko
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk