

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM RONALD CLARK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58538

FILED

OCT 08 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Angela*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Valorie J. Vega, Judge.

Appellant William Ronald Clark, contends that the district court erred by denying his claims of ineffective assistance of trial counsel. Clark has the burden of proving by a preponderance of the evidence that counsel's performance was deficient and resulted in prejudice. See Means v. State, 120 Nev. 1001, 1011-12, 103 P.3d 25, 32-33 (2004) (explaining the Strickland test for ineffective assistance of counsel). We give deference to the district court's factual findings regarding ineffective assistance of counsel if they are supported by substantial evidence and not clearly wrong 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). "The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one." Avery v. State, 122 Nev. 278, 285, 129 P.3d 664, 669 (2006).

First, Clark contended that trial counsel was ineffective for failing to investigate several witnesses before trial. The district court found that Clark failed to explain what the investigations would have yielded or how they would have produced a different outcome at trial. We agree and conclude that the district court did not err in denying this claim.

Second, Clark contended that trial counsel was ineffective for failing to file an omnibus discovery motion. The district court found that Clark failed to show that the State withheld evidence from the defense and he did not produce any undiscovered evidence that would have resulted in a different outcome at trial. We agree and conclude that the district court did not err in denying this claim.

Third, Clark contended that prosecutors conspired to present false testimony of two witnesses and failed to disclose favorable treatment towards them. The district court found that there was no testimony at the evidentiary hearing supporting this claim. We agree and conclude that the district court did not err in denying this claim.

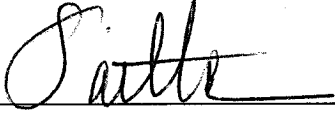
In addition, Clark contended that trial counsel was ineffective for (1) failing to investigate whether his vehicle was struck by a bullet, (2) being unprepared for the testimony of a fingerprint expert, (3) failing to disclose a conflict of interest with the prosecutor because they had lunch five years before trial, and (4) failing to obtain a copy of the 911 call prior to trial. These arguments were not raised in Clark's petition and were not properly before the district court below. See Barnhart v. State, 122 Nev. 301, 303–04, 130 P.3d 650, 651–52 (2006) (explaining that the district court must make an explicit finding of good cause on the record to permit a


petitioner to assert claims not previously pleaded). Nevertheless, the district court allowed Clark to present testimony and make arguments during the evidentiary hearing. Even if these claims were properly before the district court, Clark failed to satisfy his burden because (1) there was no evidence that Clark's vehicle was used in the robbery, (2) there was no testimony that trial counsel was unprepared for the expert's testimony, (3) there was no conflict, Clark v. State, 108 Nev. 324, 326, 831 P.2d 1374, 1376 (1992) ("[A] conflict exists when an attorney is placed in a situation conducive to divided loyalties." (internal quotation marks omitted)), and (4) Clark failed to explain how trial counsel's possession of the 911 call before trial would have produced a different outcome at trial. Therefore, the district court did not err in denying these claims.

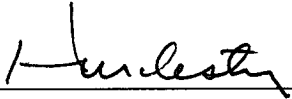
Clark also argues for the first time on appeal that his counsel should have obtained the dispatch records, should have investigated whether one witness had a .45 caliber weapon, should have investigated whether there were skid marks at the scene of the shooting, and failed to adequately cross-examine a detective, and cumulative error warrants reversal. This court will not consider claims for relief that were not raised in the original post-conviction petition for habeas corpus or considered by the district court. See Davis v. State, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991), overruled on other grounds by Means, 120 Nev. 1001, 103 P.3d 25.

Having considered Clark's contentions and concluded that the district court did not err by denying his petition, we¹

ORDER the judgment of the district court AFFIRMED.


_____, J.
Saitta


_____, J.
Pickering


_____, J.
Hardesty

cc: Hon. Valorie J. Vega, District Judge
Saggese & Associates, Ltd.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk
William Ronald Clark

¹We have reviewed all documents that Clark 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 Clark 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. See Davis, 107 Nev. at 606, 817 P.2d at 1173.