

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND HEALEY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 58993

**FILED**

NOV 14 2012

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

ORDER OF AFFIRMANCE

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

On appeal from the denial of his September 17, 2009, petition, appellant argues that the district court erred in denying his petition without first conducting an evidentiary hearing. To warrant an evidentiary hearing, the petition must raise claims supported by specific factual allegations that, if true and not repelled by the record, would entitle petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Appellant has failed to provide this court with a copy of his petition and thus fails to demonstrate that the district court erred. See Greene v. State, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980) (“The burden to make a proper appellate record rests on appellant.”); see also Thomas v. State, 120 Nev. 37, 43 n.4, 83 P.3d 818, 822 n.4 (2004); Jacobs v. State, 91 Nev. 155, 158, 532 P.2d 1034, 1036 (1975).

Appellant further argues that the district court erred in denying his claims of ineffective assistance of trial counsel.<sup>1</sup> To prove ineffective assistance of counsel, a petitioner must demonstrate (a) that counsel's performance was deficient in that it fell below an objective standard of reasonableness and (b) resulting prejudice such that there is a reasonable probability that, but for counsel's errors, the outcome of the proceedings would have been different. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in Strickland). Both components of the inquiry must be shown. Strickland, 466 U.S. at 697.

First, appellant argues that the district court erred in rejecting his claim that counsel was ineffective for failing to investigate the victim's prior, false allegations of sexual abuse. Appellant failed to demonstrate prejudice because he did not indicate what a more thorough investigation would have revealed. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). We therefore conclude that the district court did not err in denying this claim.

Second, appellant argues that the district court erred in rejecting his claim that counsel was ineffective for failing to request a hearing pursuant to Miller v. State, 105 Nev. 497, 502, 779 P.2d 87, 90 (1989). Appellant failed to demonstrate deficiency or prejudice, because, as he concedes, he nevertheless received a Miller hearing. To the extent

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<sup>1</sup>The analysis herein is based on the ineffective-assistance claims raised in appellant's opening brief on appeal. The State does not argue that the claims are different from those raised below.

appellant argues that the result of the hearing would have been different had counsel timely requested it, appellant has not stated what additional information would have been presented or how it would have affected the outcome. We therefore conclude that the district court did not err in denying this claim.

Third, appellant argues that the district court erred in rejecting his claim that counsel was ineffective for failing to request an independent psychological examination of the victim as provided for in Abbott v. State, 122 Nev. 715, 138 P.3d 462 (2006). Appellant failed to demonstrate deficiency or prejudice. In his opening brief, appellant alleged only the third of the three Abbott factors<sup>2</sup> and even then did not allege any specific facts that, if true, would have satisfied that factor. Cf. Hargrove, 100 Nev. at 502, 686 P.2d at 225. We therefore conclude that the district court did not err in denying this claim.

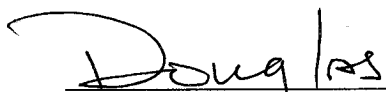
Appellant also argues that the district court erred in rejecting his claim that appellate counsel was ineffective for failing to argue Abbott on direct appeal. For the reasons discussed above, appellant failed to demonstrate deficiency or prejudice. We therefore conclude that the district court did not err in denying this claim.

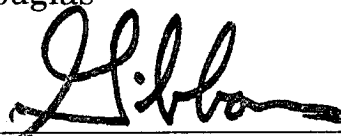
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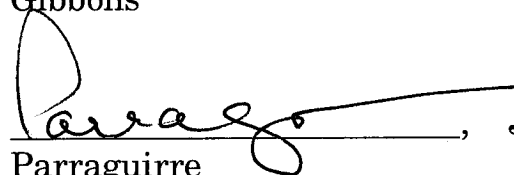
<sup>2</sup>To determine whether there exists a compelling need for an examination, courts must consider three factors: (1) whether the State called or benefited from a psychological expert, (2) whether the evidence of the offense is supported by little or no corroboration beyond the testimony of the victim, and (3) whether there is a reasonable basis for believing that the victim's mental or emotional state may have affected his or her veracity. Abbott, 122 Nev. at 724, 727-31, 138 P.3d at 468, 470-73.

Finally, even had appellant sufficiently pleaded his claims above, he failed to include transcripts from the trial or the Miller hearing in his appendix such that this court could not have reviewed any prejudice determination of the district court. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Valorie J. Vega, District Judge  
Keith C. Brower  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk