IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHNNY M. LAWRENCE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63192

FILED

DEC 17 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a petition for a writ of habeas corpus.[1] Eighth Judicial District Court, Clark County; Michael Villani, Judge.

In his petition, filed on November 20, 2012, appellant raised several claims of ineffective assistance of counsel at appellant's May 15, 2012, probation revocation hearing.[2] To prove ineffective assistance of

[1]This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. *See Luckett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

[2]This court has recognized that an ineffective-assistance-of-counsel claim will lie only where the defendant had a constitutional or statutory right to the appointment of counsel. *See McKague v. Warden*, 112 Nev. 159, 164–65, 912 P.2d 255, 258 (1996). Here, the district court implicitly held that appellant was entitled to the effective assistance of counsel because the district court reviewed his claims without any reference as to whether he was entitled to the effective assistance of counsel in his probation revocation proceeding. *See Gagnon v. Scarpelli*, 411 U.S. 778, 790-91 (1973).

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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 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. Further, a petitioner's claims must be more than bare claims unsupported by specific factual allegations that, if true, would have entitled him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, appellant claimed that counsel was ineffective for not calling appellant's treating psychiatrist to testify at the hearing. Appellant's bare claim failed to demonstrate deficiency or prejudice. Appellant largely speculated as to what his doctor may have testified to, and his claim that the doctor would have testified that he was fully compliant with his mental health treatment was belied by the doctor's March 14, 2012, letter stating that appellant "is not always able to take the meds." We therefore conclude that the district court did not err in denying this claim.

Second, appellant claimed that counsel was ineffective for not consulting with him regarding his right to testify or calling him to testify on his own behalf. Appellant's bare claim failed to demonstrate deficiency or prejudice. Appellant did not specify what his testimony would have been or how it would have clarified the issue with the prescription medications. Further, counsel stated at the hearing that if appellant

wished to testify, counsel would call him but that counsel recommended against testifying. Appellant stated that he would follow counsel's advice. We therefore conclude that the district court did not err in denying this claim.

Third, appellant claimed that counsel was ineffective for not challenging the district court's oral pronouncement of its decision, because the State had not proved the alleged facts by a preponderance of the evidence. Appellant failed to demonstrate deficiency or prejudice. It was not objectively unreasonable for counsel to cease oral argument after the district court rendered its decision, and appellant did not demonstrate a reasonable probability of the district court changing its decision had counsel not done so. Further, appellant misstated the State's burden of proof. The State need only provide "evidence and facts [that] reasonably satisfy the judge that the conduct of the probationer has not been as good as required by the conditions of probation." *Lewis v. State*, 90 Nev. 436, 438, 529 P.2d 796, 797 (1974). We therefore conclude that the district court did not err in denying this claim.

Finally, appellant claimed that counsel was ineffective for not filing a direct appeal where the State had not met its burden of proof, four prior allegations of probation violations had been found unsubstantiated, and counsel knew that appellant was concerned about maintaining compliance with his terms and conditions of probation. Appellant failed to demonstrate deficiency and, thus, that he was prejudiced. Appellant did not state that he requested an appeal, and the circumstances alleged, in their totality, did not indicate that counsel knew or should have known

that appellant desired an appeal.[3] *See Toston v. State*, 127 Nev. ___, ___, 267 P.3d 795, 800-01 (2011). We therefore conclude that the district court did not err in denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.[4]

Pickering, C.J.

Hardesty, J.

Cherry, J.

cc: Hon. Michael Villani, District Judge
Johnny M. Lawrence
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

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[3]The district court had concluded that appellant violated the terms and conditions of his probation because some of appellant's prescription medications were missing and he failed to file a police report of the alleged theft thereof. We note that the record before this court does not support the district court's conclusion that missing medication and/or the lack of a police report constituted violations of the terms and conditions of appellant's probation. However, we note that "tak[ing] all medications as prescribed" was a condition of probation, and as stated above, appellant provided documentation with his post-conviction petition indicating that he was not always taking his mental health prescriptions.

[4]We 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.