

IN THE SUPREME COURT OF THE STATE OF NEVADA

RASHEEN DELONEY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 63464

**FILED**

**FEB 12 2014**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY R. Malone  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

In his January 30, 2013, petition, appellant claimed that his trial counsel was ineffective. To prove ineffective assistance of 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, and the petitioner must demonstrate the underlying facts

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<sup>1</sup>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).

by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).

First, appellant claimed that his counsel was ineffective because he was not prepared for the preliminary hearing, failed to object to hearsay at the preliminary hearing, and failed to argue that there was not probable cause to support the charges presented at the preliminary hearing. Appellant failed to demonstrate that his counsel's performance was deficient or that he was prejudiced. The record reveals that counsel was prepared for the hearing and counsel argued at the hearing that the State failed to demonstrate probable cause, but the justice court disagreed. Appellant failed to demonstrate a reasonable probability of a different outcome had counsel been further prepared or raised objections to hearsay as the State presented sufficient evidence to support a probable cause finding. *See Sheriff, Washoe Cnty. v. Hodes*, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980). Therefore, the district court did not err in denying this claim.

Second, appellant claimed that his counsel was ineffective for failing to argue the second search conducted pursuant to a search warrant was improper as appellant was not present during the search. Appellant failed to demonstrate that his counsel's performance was deficient or that he was prejudiced. This claim did not implicate the validity of the search warrant and appellant did not allege a proper basis for suppression of evidence obtained pursuant to a search warrant. *See NRS 179.045; NRS 179.085*. As appellant failed to demonstrate that the search warrant was invalid, appellant failed to demonstrate that a motion to suppress on the basis that he was not present during the search had a reasonable

probability of altering the outcome of the proceedings. Therefore, the district court did not err in denying this claim.

Third, appellant claimed that his counsel was ineffective for failing to prove that the firearm was a collector's item pursuant to NRS 202.275(3)(c). Appellant failed to demonstrate that his counsel's performance was deficient or that he was prejudiced. There was no support in the record that the .22 caliber rifle met the definition of a collector's item and appellant provided no additional factual support for this claim. Bare claims, such as this one, are insufficient to demonstrate that a petitioner is entitled to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Therefore, the district court did not err in denying this claim.

Fourth, appellant claimed that his counsel was ineffective for failing to seek a mistrial following a juror's statements that she was racist and could not serve as a juror. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. The juror disclosed her racist beliefs outside the presence of the remaining jurors. Counsel asked her if she had discussed her beliefs with any of the other jurors and the juror replied that she did not. The district court then dismissed the juror. Accordingly, the district court properly investigated the juror's bias and ensured that the bias had not affected the remaining jurors. *See Dyer v. Calderon*, 151 F.3d 970, 974-75 (9th Cir. 1998). Therefore, appellant failed to demonstrate that his right to an impartial jury was violated. *See Smith v. Phillips*, 455 U.S. 209, 217 (1982). Appellant failed to demonstrate a reasonable probability of a different outcome had counsel sought a mistrial based upon the racist juror. Therefore, the district court did not err in denying this claim.

Fifth, appellant claimed that his counsel was ineffective for failing to conduct investigation, review the evidence, review the police officers' reports and versions of events for inconsistencies, and then cross-examine the officers regarding inconsistencies. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. During trial, counsel challenged the officers regarding their recollection of events and highlighted any areas where the officers' investigation of this matter could have been more in-depth. Appellant failed to demonstrate a reasonable probability of a different outcome at trial had counsel performed further investigation of this matter. See *Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Therefore, the district court did not err in denying these claims.

Sixth, appellant claimed that his counsel was ineffective for failing to call appellant's brother as a witness, as appellant asserted the firearm and the marijuana belonged to his brother. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Appellant merely speculated that his brother would have provided favorable testimony, which is insufficient to demonstrate that he was entitled to relief. See *Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225. Appellant failed to demonstrate a reasonable probability of a different outcome at trial had counsel presented appellant's brother's testimony. Therefore, the district court did not err in denying this claim.

Seventh, appellant claimed that his counsel failed to object when officers testified that a coffee grinder was used to grind marijuana. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. The officers testified that, based on their training and experience, grinders such as the one discovered in the

apartment are often used to grind marijuana. In addition, the officers discovered small pieces of marijuana in the grinder. Given the testimony and evidence, appellant failed to demonstrate that any objection raised by counsel regarding this testimony would have been successful. *See Ennis v. State*, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006) (“Trial counsel need not lodge futile objections to avoid ineffective assistance of counsel claims”). Appellant failed to demonstrate a reasonable probability of a different outcome at trial had counsel objected to this testimony. Therefore, the district court did not err in denying this claim.

Eighth, appellant claimed that his counsel was ineffective for failing to object when multiple officers testified that the apartment was in a high crime area. Appellant failed to demonstrate that his trial counsel’s performance was deficient or that he was prejudiced. Counsel objected to the first reference to a high crime area and the district court overruled the objection. Appellant failed to demonstrate that objectively reasonable counsel would have raised additional objections to this type of testimony. Appellant failed to demonstrate a reasonable probability of a different outcome had counsel raised additional objections, as this type of testimony provided explanation for the officers’ conduct during a search for unrelated persons with firearms and how they came to discover the illegal items in the apartment. Therefore, the district court did not err in denying this claim.

Ninth, appellant claimed that his counsel was ineffective for failing to move to set aside the verdict as there was insufficient evidence that appellant possessed the firearm and marijuana. Appellant failed to demonstrate either deficiency or prejudice for this claim as this court has already concluded there was sufficient evidence presented at trial to

support the convictions. *Deloney v. State*, Docket No. 58399 (Order of Affirmance, January 12, 2012). Therefore, the district court did not err in denying this claim.

Next, appellant claimed that his appellate counsel was ineffective. To prove 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, and resulting prejudice such that the omitted issue would have a reasonable probability of success on appeal. *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). Both components of the inquiry must be shown. *Strickland*, 466 U.S. at 697. Appellate counsel is not required to raise every non-frivolous issue on appeal. *Jones v. Barnes*, 463 U.S. 745, 751 (1983). Rather, appellate counsel will be most effective when every conceivable issue is not raised on appeal. *Ford v. State*, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989).

First, appellant claimed that his appellate counsel was ineffective because counsel should have withdrawn from representing appellant on appeal as counsel knew appellant was not satisfied with him. Appellant failed to demonstrate deficiency or prejudice for this claim. Appellant failed to demonstrate that the attorney-client relationship had collapsed. *See Young v. State*, 120 Nev. 963, 968-69, 102 P.3d 572, 576 (2004). Appellant failed to demonstrate a reasonable likelihood of success on appeal had counsel sought to withdraw. Therefore, the district court did not err in denying this claim.

Second, appellant claimed that his appellate counsel was ineffective for raising few claims on direct appeal and for failing to consult with appellant. Appellant failed to demonstrate deficiency or prejudice for

this claim. Appellant did not demonstrate there were meritorious claims that counsel failed to raise. Appellant failed to demonstrate a reasonable likelihood of success on appeal had counsel consulted with appellant. Therefore, the district court did not err in denying this claim.


Next, appellant claimed that the cumulative effect of ineffective assistance of counsel warrants vacating his judgment of conviction. Appellant fails to demonstrate that any errors, even if considered cumulatively, amount to ineffective assistance of counsel in light of the substantial evidence of his guilt. Therefore, the district court did not err in denying this claim.

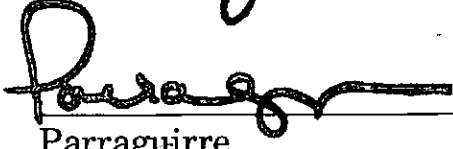
Next, appellant claimed that the justice court improperly found that probable cause was presented at the preliminary hearing, the district court erred by forcing him to keep his attorney, the district court erred by failing to declare a mistrial due to a racist juror, the district court improperly admitted prejudicial testimony regarding the high crime area, the district court erred in refusing to allow him to present evidence regarding the apartment lease, and the opening statements and closing arguments were not included in the transcripts. These claims could have been raised on direct appeal and appellant failed to demonstrate cause for the failure to do so and actual prejudice. *See* NRS 34.810(1)(b). Therefore, the district court did not err in denying these claims.

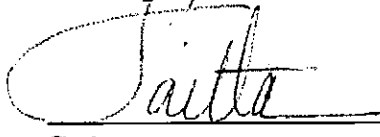
Next, appellant claimed there was insufficient evidence of his guilt presented at trial. This court has already considered this claim and concluded there was sufficient evidence of appellant's guilt presented at trial, both for his intent to distribute an illegal substance and for possession of the illegal firearm. *Deloney v. State*, Docket No. 58399 (Order of Affirmance, January 12, 2012). The doctrine of the law of the

case prevents further litigation of this claim and "cannot be avoided by a more detailed and precisely focused argument." *Hall v. State*, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975). Therefore, the district court did not err in denying this claim.

Having concluded appellant is not entitled to relief, we  
ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Pickering

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

  
\_\_\_\_\_, J.  
Saitta

cc: Hon. Michelle Leavitt, District Judge  
Rasheen Deloney  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk