IN THE SUPREME COURT OF THE STATE OF NEVADA

ALEXANDER BERNARD BAYOT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 64070

FILED

MAR 1 2 2014

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order denying a post-conviction petition for a writ of habeas corpus.[1] Eighth Judicial District Court, Clark County; Jerome T. Tao, Judge.

In his petition filed on April 18, 2013, appellant claimed that he received ineffective assistance of trial counsel. 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

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[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).

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

First, appellant claimed that his trial counsel was ineffective for failing to present evidence found in the vehicle by the defense's private investigator, such as 28 coins, a Rolex watch, a pack of gum, a big marker pen, and a compact disc. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Appellant failed to demonstrate that his counsel's performance was objectively unreasonable as he failed to demonstrate the relevance of the items. Additionally, appellant failed to demonstrate that admission of the additional items found by the private investigator would have had a reasonable probability of changing the outcome of the proceedings. Therefore, the district court did not err in denying this claim.

Second, appellant claimed that his trial counsel was ineffective for failing to examine all the evidence seized by the investigating officer, specifically the computer bag, and for failing to move for a mistrial when it was discovered that the computer bag contained more items than were listed on the officers' reports, thereby demonstrating the officers did not conduct an honest inventory. Appellant failed to demonstrate deficiency or prejudice. Counsel filed a motion to suppress the evidence found in the car, arguing that the inventory search morphed into an improper search for evidence, but the district court denied the motion. When the additional items in the computer bag were discovered, counsel again argued that the officers improperly searched the vehicle, but the district court disagreed. We affirmed the district court's decision. *Bayot v. State*, Docket No. 59410 (Order of Affirmance, November 15, 2012). Appellant failed to demonstrate that counsel's discovery of the items in the computer bag and counsel's moving for a mistrial would have had a reasonable probability of changing the outcome

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

Third, appellant claimed that his trial counsel was ineffective for failing to investigate the missing items that were taken into evidence, such as a vehicle title, bill of sale, bottle of prescription medication, a glass smoking pipe, and a black backpack. Appellant failed to demonstrate that his counsel's performance was deficient or that he was prejudiced. Appellant failed to demonstrate that his counsel's performance was objectively unreasonable as he failed to demonstrate the relevance of the items. The officers found counterfeit bills in the center console and in the trunk of the vehicle, and appellant admitted the bills were his. Additionally, appellant failed to demonstrate that investigation of the missing items would have had a reasonable probability of changing the outcome of the proceedings. Therefore, the district court did not err in denying this claim.

Fourth, appellant claimed that his trial counsel was ineffective for failing to cross-examine Detective Ballejos regarding his conflicting testimony as to who inventoried what part of the vehicle and what the detective personally saw. Appellant failed to demonstrate deficiency or prejudice. The detective, as well as the other officers present at the scene, testified that the inventory became a joint effort, with officers searching the car and the trunk while one wrote down what was found. During their inventory, the officers discovered counterfeit bills in the car and in the trunk, and appellant admitted that the bills were his. Appellant failed to demonstrate that cross-examination regarding any alleged inconsistencies would have had a reasonable probability of changing the outcome of the proceedings. Therefore, the district court did not err in denying this claim.

Fifth, appellant claimed that his trial counsel was ineffective for failing to present into evidence letters he received in response to the

complaint he filed with the LVMPD Citizen Review Board after the jury rendered its verdict. Appellant raised the issue of the Citizen Review Board letter on direct appeal. *Bayot v. State*, Docket No. 59410 (Order of Affirmance, November 15, 2012). Appellant failed to demonstrate deficiency or prejudice, as we concluded the underlying claim lacked merit. Therefore, the district court did not err in denying this claim.

Sixth, appellant claimed that his trial counsel was ineffective for failing to investigate the Citizen Review Board letter and police misconduct. Appellant failed to demonstrate that counsel's performance was deficient or that he was prejudiced. Counsel argued in his pretrial motion to suppress that the police conducted an illegal search of the vehicle and that their sloppiness in conducting the inventory only reinforced his argument that the inventory search was merely a ruse to search for evidence in the car without a search warrant. The district court denied the motion to suppress, and we affirmed on appeal. *Bayot v. State*, Docket No. 59410 (Order of Affirmance, November 15, 2012). Appellant failed to demonstrate that counsel's performance was objectively unreasonable when counsel did not investigate the Citizen Review Board letter, received after the jury rendered its verdict. Further, appellant failed to demonstrate that investigation would have had a reasonable probability of changing the outcome of the proceedings. Therefore, the district court did not err in denying this claim.

Seventh, appellant claimed that his trial counsel was ineffective for failing to examine the judgments of conviction used for habitual criminal adjudication. Appellant failed to demonstrate that he was prejudiced as he failed to demonstrate that further examination by counsel would have had a reasonable probability of changing the outcome of the proceedings. Therefore, the district court did not err in denying this claim.

Eighth, appellant claimed that his trial counsel was ineffective for failing to object when the prosecutor gave false testimony regarding the judgments of conviction offered for habitual criminal adjudication. Appellant failed to demonstrate deficiency or prejudice. The prosecutor offered two prior convictions, and the district court accepted the judgments. Appellant failed to demonstrate that trial counsel's performance was objectively unreasonable for not challenging the prosecutor's statements. Furthermore, appellant failed to demonstrate that an objection would have had a reasonable probability of changing the outcome of the proceedings. Therefore, the district court did not err in denying this claim.

Ninth, appellant claimed that his trial counsel was ineffective for failing to object when the store clerk identified appellant at trial but could not identify appellant at the preliminary hearing. Appellant failed to demonstrate deficiency or prejudice. Appellant failed to articulate what objections counsel should have made to the identification. *See Hargrove v. State,* 100 Nev. 498 502, 686 P.2d 222, 225 (1984) (holding that a petitioner is not entitled to relief on claims unsupported by any specific factual allegations). Furthermore, appellant failed to demonstrate that an objection to the identification would have had a reasonable probability of changing the outcome of the proceedings. After the store clerk refused to accept the bill from the codefendant, appellant and the codefendant remained at the store until the officers arrived. Appellant admitted to the officers that he gave the counterfeit bill to the codefendant to purchase gas from the store clerk. Therefore, the district court did not err in denying this claim.

Tenth, appellant claimed that his trial counsel was ineffective for failing to object to prosecutorial misconduct when the prosecutor stated she instructed the officers how to testify. Appellant failed to demonstrate

that counsel's performance was deficient or that he was prejudiced. Appellant was arrested for misdemeanor warrants, and the subsequent inventory search of the vehicle revealed counterfeit bills. At a pretrial hearing, the prosecutor expressed concern that the circumstances of appellant's arrest, his misdemeanor warrants, would be revealed to the jury, and the prosecutor suggested that the officers omit the outstanding warrants in their testimony. Ultimately, the officers testified at trial about the full circumstances surrounding appellant's arrest. Appellant failed to demonstrate that counsel's performance was objectively unreasonable when he did not object to the prosecutor's statements at a pretrial hearing. Furthermore, appellant failed to demonstrate that an objection would have had a reasonable probability of changing the outcome of the proceedings. Therefore, the district court did not err in denying this claim.

Eleventh, appellant claimed that his trial counsel was ineffective for failing to object to prosecutorial misconduct when the prosecutor testified for the officers. Appellant failed to demonstrate deficiency or prejudice. After asking the detective about the number of counterfeit bills discovered, the prosecutor asked further questions to clarify the number and location of the bills discovered. Appellant failed to demonstrate that counsel's performance was objectively unreasonable or that any objection to the prosecutor's questions would have had a reasonable probability of changing the outcome of the proceedings. Therefore, the district court did not err in denying this claim.

Next, appellant claimed that the district court abused its discretion by denying his motion for a new trial or evidentiary hearing. Appellant raised this issue on direct appeal. *Bayot v. State*, Docket No. 59410 (November 15, 2012). Thus, further litigation of this claim is barred by the doctrine of the law of the case. *See Hall v. State*, 91 Nev. 314, 316,

535 P.2d 797, 799 (1975).[2] Therefore, the district court did not err in denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.[3]

_____, J.
Hardesty

_____, J.   _____, J.
Douglas   Cherry

cc: Hon. Jerome T. Tao, District Judge
       Alexander Bernard Bayot
       Attorney General/Carson City
       Clark County District Attorney
       Eighth District Court Clerk

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[2]To the extent appellant claimed that the district court should have appointed post-conviction counsel, we conclude that appellant has not demonstrated that the district court abused its discretion. NRS 34.750(1).

[3]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.