

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARTICE RANSEY A/K/A MARTISE
RANSEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 65849

FILED

FEB 04 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
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; Michael Villani, Judge.

Evidentiary hearing

Appellant claims that the district court erred by denying his request for an evidentiary hearing on his claims that counsel was ineffective for failing to (1) adequately represent him after he rejected the State's plea offer, (2) preserve attorney-client privilege by visiting him through the jail's "confidential facilities," (3) conduct an adequate investigation for preparation for trial, (4) withdraw his representation as requested, (5) file pretrial motions and writs, (6) require the State to show good cause for continuing the preliminary hearing, (7) "address the plea negotiation process," (8) "preserve the record," (9) "address the destruction of [the] presumption of innocence," (10) "request additional jury instructions," (11) "prepare for sentencing," (12) "address viable appeal

issues,” and (13) challenge the prosecutor’s misconduct in overcharging the case and presenting only children as witnesses before the grand jury.

A petitioner is entitled to an evidentiary hearing *only* if he “asserts specific factual allegations that are not belied or repelled by the record and that, if true, would entitle him to relief.” *Nika v. State*, 124 Nev. 1272, 1301, 198 P.3d 839, 858 (2008). “We review the district court’s determination that a petitioner is not entitled to an evidentiary hearing for abuse of discretion.” *Stanley v. Schriro*, 598 F.3d 612, 617 (9th Cir. 2010).

The district court considered appellant’s pleadings and the arguments of counsel and found that an evidentiary hearing was not warranted because appellant’s “claims consisted of nothing more than bare allegations of deficiency, prejudice, or both,” and, “[e]ven if all of [appellant’s] claims of deficiency were true, [appellant] failed to allege with any specificity that there was reasonable probability that he would have obtained a different result at trial but for the alleged errors.” The record supports the district court’s finding and we conclude that appellant has not demonstrated that the district court abused its discretion in this regard.

Ineffective assistance of counsel


Appellant claims that the district court erred by denying his claims that trial counsel was ineffective for failing to file a motion to dismiss the indictment based on overcharging and appellate counsel was ineffective for failing to challenge the prosecutor’s misconduct on appeal.


To prevail on a claim of ineffective assistance of counsel, a petitioner must demonstrate that counsels' performance was deficient and resulted in prejudice. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Trial counsel's performance is prejudicial if "a reasonable probability [exists] that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. Appellate counsel's performance is prejudicial if an "omitted issue would have a reasonable probability of success on appeal." *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). Petitioner must prove the facts underlying his ineffective-assistance claims by a preponderance of the evidence. *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). We review the district court's resolution of ineffective-assistance claims de novo, giving deference to the court's factual findings if they are supported by substantial evidence and not clearly wrong. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

The district court found that the grand jury returned a true bill for the charges, there was no evidence that the State acted in bad faith in seeking the indictment, and appellant failed to demonstrate any legal or factual basis upon which to conclude that a motion to dismiss the indictment would have succeeded. The court also found that appellant failed to identify any claim of prosecutorial misconduct that rose to a level warranting dismissal of the case or show any valid basis upon which this misconduct could have been pursued on direct appeal.

Our review of the record reveals that the district court's factual findings are supported by substantial evidence and are not clearly wrong, and appellant has not demonstrated that the district court erred as a matter of law. Accordingly, we conclude that appellant has failed to demonstrate that trial and appellate counsel were ineffective in this regard.

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


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Michael Villani, District Judge
Matthew D. Carling
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk