


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IVORY KEITH SANDERS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66861

FILED

MAY 20 2015

TRACEE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Appellant Ivory Keith Sanders claims the district court erred by rejecting his claims of ineffective assistance of counsel without an evidentiary hearing.

“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). A district court may reject a claim without conducting an evidentiary hearing when the claim (1) is belied by the record; (2) is not supported by specific facts, which, if true, would entitle petitioner to relief; or (3) is procedurally barred and the petitioner has failed to overcome the procedural bar. *Rubio v. State*, 124 Nev. 1032, 1046 & n.53, 194 P.3d 1224, 1233-34 & n.53 (2008). To state a meritorious claim of ineffective assistance of counsel, a petitioner must allege specific facts that show counsel’s performance was deficient and resulted in prejudice. *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

First, Sanders claimed counsel was ineffective for failing to fully investigate the circumstances surrounding the victim's injuries. Sanders argued that an independent interview of the victim's mother would have revealed she did not observe Sanders strike the victim at any time and she observed the victim's swollen eye and spanked the victim before Sanders came home. The district court considered the record, the pleadings, and the arguments the parties made during a hearing on the State's motion to dismiss the petition.¹ The court found Sanders' claim was insufficiently pleaded because he failed to demonstrate an independent interview of the mother would have yielded information different from the information she provided to the police. We note the police report Sanders attached to his habeas petition reveals the same information he claims a more thorough investigation would have revealed. And we conclude Sanders has failed to demonstrate the court abused its discretion by dismissing this claim without an evidentiary hearing.²

Second, Sanders claimed counsel was ineffective for failing to fully inform him as to whether he would receive probation. Sanders further argued the court promised he would receive probation if his risk

¹Sanders failed to provide the transcript of this hearing for our review. *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.").

²To the extent that Sanders suggested he received a harsher sentence due to the prosecutor's mischaracterization of the victim's eye injury, we conclude this claim was waived. *See Franklin v. State*, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) ("[C]laims that are appropriate for a direct appeal must be pursued on direct appeal or they will be considered waived."), *overruled on other grounds by Thomas v. State*, 115 Nev. 148, 979 P.2d 222 (1999).


assessment showed he was a low risk to reoffend and counsel was ineffective for failing to argue for probation during sentencing. The court found Sanders knew the issue of probation was within the sole discretion of the sentencing court, Sanders admitted he agreed to the plea negotiations because counsel would be free to argue for probation, and Sanders' claims that the court promised him probation and counsel failed to argue for probation were belied by the record. The record supports these findings and we conclude Sanders has failed to demonstrate the court abused its discretion by dismissing this claim without an evidentiary hearing.


Third, Sanders claimed appellate counsel was ineffective for failing to send all of his preliminary hearing transcripts to the Nevada Supreme Court, failing to raise his "arguable issues" on direct appeal, and failing to raise a constitutional issue on direct appeal. The court found Sanders' "complaint regarding appellate counsel appears to be simply that she did not advance the same unmeritorious arguments contained in the petition." We conclude Sanders failed to identify any meritorious appellate claims that could have been pursued on direct appeal, and, therefore, he has not demonstrated the court abused its discretion by dismissing this claim without an evidentiary hearing.

To the extent Sanders also claimed counsel was ineffective for coercing him into entering a guilty plea, we conclude the record repels this claim and he was not entitled to an evidentiary hearing. In particular, we note the record demonstrates that Sanders specifically acknowledged he signed the guilty plea memorandum "voluntarily with the advice of counsel, under no duress, coercion, or promises of leniency," and he informed the plea canvass court that no one had made any threats or

promises to get him to enter his plea. Having determined Sanders is not entitled to relief, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Connie J. Steinheimer, District Judge
Edward T. Reed
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk