

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANGEL TORRES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67806

FILED

SEP 16 2015

TRACIE F. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from orders of the district court denying post-conviction petitions for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; J. Charles Thompson, Senior Judge.

Torres' October 4, 2013 petition

In his petition filed on October 4, 2013, appellant Angel Torres claimed his 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*,

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

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

First, Torres claimed his counsel was ineffective for failing to obtain and review one of the victim's hospital records prior to entry of Torres' guilty plea. Torres failed to demonstrate his counsel's performance was deficient or resulting prejudice. The record reveals the State provided Torres' counsel with the hospital records, but before counsel had the opportunity to fully review them, Torres insisted on entering into plea negotiations. Counsel testified at a presentencing hearing that Torres was aware of the receipt of the hospital records, but was adamant that he wanted to plead guilty as soon as possible. Under these circumstances, Torres failed to demonstrate counsel's performance fell below an objective standard of reasonableness or a reasonable probability of a different outcome had counsel performed different actions with respect to the hospital records. Therefore, the district court did not err in denying this claim.

Second, Torres claimed his counsel was ineffective for failing to tell Torres he could subpoena witnesses for the evidentiary hearing concerning his motion seeking withdrawal of his guilty plea. Torres asserted he wished to present testimony regarding his belief the State improperly pressured his children to make accusations against him. Torres failed to demonstrate his counsel's performance was deficient or resulting prejudice. At the evidentiary hearing, Torres' prior defense

attorneys testified regarding Torres' allegations against the State. They testified they were aware of Torres' concerns prior to entry of Torres' plea and had explained to Torres the State had not committed misconduct by discussing the abuse allegations with Torres' children. Torres failed to demonstrate objectively reasonable counsel would have attempted to present additional testimony regarding this issue at the withdrawal-of-plea hearing. Torres also failed to demonstrate a reasonable probability of a different outcome had counsel sought to present additional testimony of this nature. Therefore, the district court did not err in denying this claim.

Third, Torres claimed his counsel was ineffective because she only met with him briefly before the hearing concerning the withdrawal of his guilty plea and she was not prepared for that hearing. Torres failed to demonstrate his counsel's performance was deficient or resulting prejudice. A review of the evidentiary hearing transcript reveals counsel appropriately questioned witnesses and Torres did not demonstrate objectively reasonable counsel would have required further discussions or preparation for the hearing. Torres failed to demonstrate a reasonable probability of a different outcome had counsel prepared further because he did not identify any further information counsel should have been aware of prior to the hearing. Therefore, the district court did not err in denying this claim.

Fourth, Torres appeared to claim his counsel did not inform him he faced a mandatory prison sentence prior to entry of his guilty plea. Torres failed to demonstrate either deficiency or prejudice for this claim because Torres did not face a mandatory prison sentence. Probation was a possible sentence for Torres' convictions for second-degree kidnapping and

child abuse and neglect with substantial bodily harm. See NRS 176A.100(1)(c); NRS 176A.110(3); NRS 200.330; NRS 200.508(a)(2). Therefore, the district court did not err in denying this claim.

Fifth, Torres claimed the State committed witness tampering, engaged in vindictive prosecution, and refused to disclose a victim's hospital records. Torres also claimed the presentence investigation report contained incorrect information and he should have undergone a psychological evaluation. These claims could have been raised on direct appeal and Torres did not 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 relief for these claims.

Torres' December 8, 2014, petition

Torres' December 8, 2014, petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus and his claims could have been raised in his previous petition. See NRS 34.810(1)(b)(2). Torres' petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.810(1)(b); NRS 34.810(3). Torres did not attempt to demonstrate good cause to overcome the procedural bars. See *State v. Haberstroh*, 119 Nev. 173, 181, 69 P.3d 676, 681 (2003) (explaining the petitioner has the burden of pleading and proving facts to overcome the procedural bars). Therefore,

the district court did not err in denying the petition as procedurally barred.²

Having concluded Torres is not entitled to relief, we
ORDER the judgments of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Silver

cc: Chief Judge, Eighth Judicial District Court
Hon. J. Charles Thompson, Senior Judge
Angel Torres
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²We have reviewed all documents Torres has submitted in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Torres has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we decline to consider them in the first instance.

³The Honorable Jerome T. Tao, Judge, did not participate in the decision in this matter.