

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHRISTOPHER BRANDON WILLIAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68813

FILED

MAR 16 2016

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 a postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

In his petition filed on August 20, 2014, appellant Christopher Williams claimed he received ineffective assistance of trial and appellate counsel. To establish ineffective assistance of trial counsel, a petitioner must demonstrate 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, but for counsel's errors, the outcome of the proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Similarly, to establish ineffective assistance of appellate counsel, a petitioner must demonstrate 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 had a

¹This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

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. We give deference to the court's factual findings if supported by substantial evidence and not clearly erroneous but review the court's application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

First, Williams claimed trial counsel was ineffective for failing to provide him with his case file. The district court found it had previously ordered counsel to provide the file to Williams and concluded this claim was moot and did not warrant relief. We conclude Williams failed to demonstrate that counsel's possession of the file had a prejudicial effect on his trial and/or appeal. Therefore, the district court did not err in denying this claim.

Second, Williams claimed trial counsel was ineffective for failing to advise him of the State's plea offer. The district court found this claim was belied by the record because the State made a record of its plea negotiations on the first day of trial during which Williams acknowledged that defense counsel had communicated the State's offer to him. The district court's finding is supported by the record and we conclude the district court did not err in denying this claim. *See Hargrove v. State*, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984) (a petitioner is not entitled to post-conviction relief if his factual allegations are belied by the record).

Third, Williams claimed trial counsel was ineffective for failing to conduct an adequate investigation of the State's key witness. The district court found this claim was belied by the record, counsel had hired an investigator, and counsel had investigated the case to the best of

his abilities. The district court's findings are supported by the record and we conclude the district court did not err in denying this claim. *See id.*

Fourth, Williams claimed trial counsel was ineffective for failing to request a jury instruction on specific intent for the crime of pandering. The district court found Williams failed to demonstrate defense counsel was ineffective in this regard because Jury Instruction No. 4 stated, "To be convicted of Pandering of a Child, a defendant must act with the specific intent of inducing, persuading, encouraging, inveigling, enticing, or compelling his target to engage in prostitution," and counsel's performance could not be deficient for failing to do what had already been done. The district court's findings are supported by the record and we conclude the district court did not err in denying this claim.

Fifth, Williams claimed trial counsel was ineffective for failing to cross-examine the State's key witness on her probation status as a juvenile delinquent and her motivation for testifying against him. The district court found Williams failed to demonstrate defense counsel was ineffective because counsel challenged the reliability of the key witness's testimony by exposing inconsistencies in her story and the jury was aware of the witness's arrest and juvenile detention. The district court's findings are supported by the record and we conclude it did not err in denying this claim. *See Dows v. Wood*, 211 F.3d 480, 487 (9th Cir. 2000) ("[C]ounsel's tactical decisions at trial, such as refraining from cross-examining a particular witness or from asking a particular line of questions, are given great deference and must . . . meet only objectively reasonable standards.").

Sixth, Williams claimed appellate counsel was ineffective for filing a frivolous appeal. Williams asserted counsel's performance was

deficient because he failed to cite to legal authority, failed to provide an adequate appellate record, improperly relied upon an unpublished decision, and filed a fast track statement that did not comply with NRAP 32(a). The district court found Williams' claim was belied by the record because the Nevada Supreme Court reached the merits of his direct appeal. The district court's finding is supported by the record and we conclude the district court did not err in denying this claim.

Seventh, Williams claimed appellate counsel was ineffective for failing to challenge the State's use of jailhouse phone conversations because the recordings violated his Sixth Amendment right to confront his accusers. The district court found Williams failed to demonstrate defense counsel was ineffective because this issue had been addressed on the record and it was clear that counsel believed such a challenge would be futile. The district court's finding is supported by the record and we conclude the district court did not err in denying this claim. *See Ford v. State*, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989) ("Tactical decisions are virtually unchallengeable absent extraordinary circumstances.").


Eighth, Williams claimed appellate counsel was ineffective for failing to challenge his habitual criminal adjudication on appeal. The district court found the State filed a timely notice of intent to seek habitual criminal treatment and submitted the requisite certified prior judgments of conviction. The district court's finding is supported by the record and we conclude Williams failed to demonstrate appellate counsel's performance was deficient in this regard. *See id.*


Williams also claimed he was deprived of his due process right to a fair trial as the result of district court error. Williams asserted the district court abused its discretion by denying his request to substitute

counsel, failing to properly instruct the jury on pandering, and adjudicating him a habitual criminal. Williams did not raise these claims on direct appeal, nor has he demonstrated good cause for his failure to do so; accordingly, they are waived. See NRS 34.810(1)(b); *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 in subsequent proceedings.”), *overruled in part on other grounds by Thomas v. State*, 115 Nev. 148, 150, 979 P.2d 222, 223-24 (1999).

Based on the foregoing, we conclude the district court did not err by denying Williams’ habeas petition without appointing counsel or conducting an evidentiary hearing. See NRS 34.750(1); NRS 34.770(2). Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

²We have reviewed all documents Williams has submitted in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Williams 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.

cc: Hon. Stefany Miley, District Judge
Christopher Brandon Williams
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk