

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHNNY LEE JONES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69043

FILED

APR 20 2016

TRACEY K. LINDEMAN
CLERK OF SUPREME COURT
BY *M. [Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

In his June 18, 2015, petition, appellant Johnny Jones claims he received ineffective assistance of appellate counsel with respect to his "Lozada" appeal. *See Lozada v. State*, 110 Nev. 349, 359, 871 P.2d 944, 950 (1994). To prove ineffective assistance of appellate 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 the omitted issue would have a 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 v. Washington*, 466 U.S. 668, 697 (1984). Appellate counsel is not required to raise every non-frivolous issue on appeal. *Jones v. Barnes*, 463 U.S. 745,

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).

16-900482


751 (1983). Rather, appellate counsel will be most effective when every conceivable issue is not raised on appeal. *Ford v. State*, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989). 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).

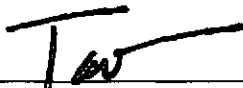
First, Jones claimed appellate counsel was ineffective for failing to argue the district court erred at sentencing when it did not read his presentence investigation report. Jones failed to demonstrate counsel was deficient because this claim lacked merit. The district court at sentencing acknowledged reading the presentence investigation report and knew what the recommendation was. Therefore, the district court did not err in denying this claim.


Second, Jones argued appellate counsel was ineffective for failing to move to have the case reversed and remanded because the transcripts of trial were destroyed before they could be transcribed. We conclude Jones failed to demonstrate this claim had a reasonable probability of success on appeal. The remedy for unavailable transcripts is to allow the appellant to prepare a statement of the evidence or proceedings from the best available means. See NRAP 9(c). The State may file objections or amendments to the statement in writing and the district court then will settle and approve the statement. *Id.* This statement then becomes part of the record. *Id.* Jones fails to demonstrate the record could not have been adequately reconstructed. See *Bellows v. State*, 110 Nev. 289, 291, 871 P.2d 340 (1994). We note the extensive court minutes provided the Nevada Supreme Court with the information needed to decide the claims raised by counsel on appeal. Jones has not alleged

any claims were not raised based on the lack of transcripts. Therefore, Jones fails to demonstrate a reversal and remand would have been granted, and the district court did not err in denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Valerie Adair, District Judge
Johnny Lee Jones
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk