

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTONIO LEE MIXON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 70898

**FILED**

AUG 16 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Vaena  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Antonio Lee Mixon appeals from an order of the district court denying the postconviction petitions he filed on December 3, 2013, December 12, 2013, December 18, 2013, and January 27, 2014, and the supplemental petition filed on July 14, 2015.<sup>1</sup> Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Mixon claims the district court erred by denying his ineffective-assistance-of-counsel claims. To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate his 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, petitioner would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985);

---

<sup>1</sup>This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

*Kirksey v. State*, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 697 (1984). 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, Mixon claimed counsel was ineffective for failing to provide him with discovery. Specifically, Mixon claimed counsel failed to provide him with a copy of surveillance video which he claims shows the victim did not say anything to the officers when they arrived. Mixon claimed had he seen this video, he would not have pleaded guilty and would have instead proceeded to trial.

Mixon failed to demonstrate, had counsel shown him the video, he would not have pleaded guilty. Contrary to Mixon's claim that the video shows the officer not stopping and checking on the victim, the video shows the officer stop and lean over as though to hear something being said by the victim. Therefore, the district court did not err in denying this claim.

Second, Mixon claimed counsel was ineffective for failing to file a motion to suppress the victim's dying declaration. Mixon claims the surveillance video does not show the victim saying anything to the officers. The district court viewed the video and reviewed the preliminary hearing testimony of the police officers, and found the victim made a dying declaration. Specifically, the victim stated he could not breathe and when asked who did this to him he answered, "Antonio." The victim died shortly

after making these statements. Substantial evidence supports the decision of the district court, *see* NRS 51.335; *Donovan v. State*, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (counsel is not deficient for failing to file futile motions), and we conclude the district court did not err by denying this claim.

Third, Mixon claimed counsel was ineffective for failing to file a motion to suppress his statements made to a detective. Mixon claimed the detective demanded his identification and when Mixon asserted his right to remain silent, the detective told him he did not have the right to remain silent. Mixon then made his statement to the police that "I am the guy you are looking for."

The district court found a motion to suppress would have lacked merit because both of the times Mixon spoke to the officer were initiated by Mixon, he was not in custody at the time, and the officer was unaware, until Mixon told him otherwise, that Mixon was involved in this matter. Substantial evidence supports the decision of the district court, *see State v. Taylor*, 114 Nev. 1071, 1081-82 & n.1, 968 P.2d 315, 323 & n.1 (1998), and we conclude the district court did not err by denying this claim.

Next, Mixon claimed the State withheld evidence from him in violation of *Brady*,<sup>2</sup> which it appears he claims affected the validity of his plea. Specifically, he claimed the State withheld the surveillance video and evidence related to his statement to the officer.

---

<sup>2</sup>*Brady v. Maryland*, 373 U.S. 83 (1983).

To prove a *Brady* violation, a petitioner must show the evidence is favorable to the accused, the State withheld the evidence, and prejudice ensued. *State v. Huebler*, 128 Nev. 197, 198, 275 P.3d 91, 95 (2012). To demonstrate prejudice with regard to a guilty plea, a petitioner must show a reasonable probability or, if he made a specific request for the evidence, a reasonable possibility he would not have pleaded guilty and would have insisted on going to trial. *Id.* at 203, 275 P.3d at 99. Here, Mixon failed to demonstrate the evidence was withheld, the evidence was material, or prejudice. Therefore, the district court did not err by denying this claim.

Next, Mixon claimed the police tampered with the crime scene by chiseling ballistics and planting ballistics, the judge in this case engaged in “*Bracey v. Warden*<sup>3</sup> behavior,” the evidence was insufficient to convict him, and a polygraph test should be administered to show he is telling the truth. These claims were not raised below, and we decline to consider them for the first time on appeal. *Davis v. State*, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991), *overruled on other grounds by Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).

Finally, Mixon claimed postconviction counsel was ineffective for failing to subpoena witnesses who viewed the surveillance video and

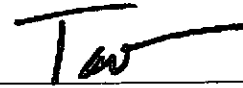
---


<sup>3</sup>Mixon did not provide a citation for this case nor did he provide sufficient information for this court to find this case.

for omitting grounds on appeal that had merit.<sup>4</sup> These claims are not properly raised in this appeal, and we decline to consider them. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Michael Villani, District Judge  
Antonio Lee Mixon  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

---

<sup>4</sup>Mixon was represented by counsel during the district court proceedings and initially on appeal. Mixon filed a motion to dismiss counsel which was granted on January 5, 2017. Mixon specifically stated he was replacing counsel's opening brief with his own opening brief