

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STANLEY EARNEST RIMER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71857

FILED

NOV 15 2017

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

ORDER OF AFFIRMANCE

Stanley Earnest Rimer appeals from an order of the district court denying the postconviction petition for a writ of habeas corpus he filed on March 23, 2016.¹ Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Rimer claims the district court erred by denying his claims he received ineffective assistance of counsel without holding an evidentiary hearing. To prove ineffective assistance of 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, 687-88 (1984); *Warden v. Lyons*, 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

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

must demonstrate the underlying facts by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). We give deference to the district 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). To warrant an evidentiary hearing, a petitioner must raise claims supported by specific allegations not belied by the record, and if true, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Rimer argues trial counsel was ineffective for failing to argue being charged with second-degree murder and child abuse or neglect causing substantial bodily harm for the same conduct toward the victim violated double jeopardy. Rimer fails to demonstrate counsel was deficient or resulting prejudice. "The Double Jeopardy Clause protects against three abuses: (1) a second prosecution for the same offense after acquittal, (2) a second prosecution for the same offense after conviction, and (3) multiple punishments for the same offense." *Jackson v. State*, 128 Nev. 598, 604, 291 P.3d 1274, 1278 (2012). Rimer was not prosecuted a second time for these charges after acquittal or conviction and he was not punished multiple times for the same offense. Further, Rimer failed to demonstrate second-degree murder and child abuse or neglect causing substantial bodily harm violated double jeopardy because they each require proof of an element the other does not: second-degree murder requires proof of a homicide, see NRS 200.030, and child abuse and neglect requires proof of an intentional act that either causes or allows a child to suffer harm or be placed in a situation where he or she may suffer harm,

see NRS 200.508(1), (2). See *Blockburger v. United States*, 284 U.S. 299, 304 (1932) (establishing an elements test for determining whether separate offenses exist for double jeopardy purposes). Therefore, the district court did not err by denying this claim without holding an evidentiary hearing.

Second, Rimer argues trial counsel was ineffective for failing to file a motion to sever the counts and for failing to file a motion to sever his trial from his codefendant's trial. Rimer failed to demonstrate counsel was deficient or resulting prejudice because this claim is belied by the record. Trial counsel filed motions to sever the counts and a motion to sever the trials. Therefore, the district court did not err by denying this claim without holding an evidentiary hearing.

Third, Rimer argued trial counsel was ineffective for failing to draft and provide the court with defense theory jury instructions. Rimer failed to demonstrate counsel was deficient or resulting prejudice. Counsel drafted and provided the district court with defense theory jury instructions. Further, Rimer failed to demonstrate the instructions he proposed in his petition were correct statements of the law and the district court would have given the instructions had counsel proposed them. Therefore, the district court did not err by denying this claim without holding an evidentiary hearing.

Fourth, Rimer claimed he was actually innocent. To the extent this claim was properly raised in his petition, Rimer failed to demonstrate he was actually innocent because he failed to show that "it is more likely than not that no reasonable juror would have convicted him in light of . . . new evidence." *Calderon v. Thompson*, 523 U.S. 538, 559

(1998) (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)); see also *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001); *Mazzan v. Warden*, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). Further, Rimer was required to demonstrate factual innocence, not mere legal insufficiency. See *Calderon*, 523 U.S. at 559; *Pellegrini*, 117 Nev. at 887, 34 P.3d at 537. Therefore, the district court did not err in denying this claim without holding an evidentiary hearing.

Fifth, Rimer claimed trial counsel was ineffective for failing to challenge for cause or use a peremptory challenge on a juror who worked for Child Protective Services (CPS). While it does appear a CPS worker was on the jury, it is not clear from the record whether the CPS worker was a deliberating member of the jury or an alternate juror. Nevertheless, Rimer failed to demonstrate trial counsel was deficient or resulting prejudice. The juror was questioned and indicated she could be impartial and stated she did not have any personal knowledge of the case. Further, the Nevada Supreme Court found there was sufficient evidence to convict Rimer of all of the charges and he failed to demonstrate a reasonable probability of a different outcome at trial had counsel attempted to remove the juror. See *Rimer v. State*, 131 Nev. ___, ___, 351 P.3d 697 710-711 (2015). Therefore, the district court did not err by denying this claim without holding an evidentiary hearing.

Sixth, Rimer claimed trial counsel was ineffective for failing to argue the State failed to demonstrate probable cause to support the charges. Rimer failed to demonstrate trial counsel was deficient or resulting prejudice because this claim is belied by the record. Trial counsel filed a pretrial petition for a writ of habeas corpus challenging the

sufficiency of the evidence presented by the State to demonstrate probable cause. Further trial counsel filed several motions to dismiss the indictment challenging the statute of limitations and the sufficiency of the evidence the State presented. Further, Rimer failed to demonstrate a reasonable probability of a different outcome had counsel made any further arguments or motions regarding probable cause. Therefore, the district court did not err by denying this claim without holding an evidentiary hearing.

Seventh, Rimer claimed trial counsel was ineffective for failing to argue the State criminalized conduct that exceeded the scope of NRS 200.508. Rimer failed to demonstrate trial counsel was deficient or resulting prejudice because this claim is belied by the record. Trial counsel made several arguments in his pretrial petition for a writ of habeas corpus and his motions to dismiss that the State failed to allege conduct that constituted a crime. Further, Rimer failed to demonstrate a reasonable probability of a different outcome had counsel made any further arguments or motions regarding this claim. Therefore, the district court did not err by denying this claim without holding an evidentiary hearing.

Eighth, Rimer claimed trial counsel was ineffective for failing to initiate a *Petrocelli* hearing or object to procedural errors. *Petrocelli v. State*, 101 Nev. 46, 692 P.2d 503 (1985). Rimer claims a *Petrocelli* hearing would have given counsel a chance to ascertain the evidence the State would present at trial in order to properly prepare a defense. Rimer failed to demonstrate trial counsel was deficient or resulting prejudice. The purpose of a *Petrocelli* hearing is not for the defense to ascertain the

evidence the State would present at trial. *Id.* at 51-52, 692 P.2d at 507-08. Further, Rimer failed to demonstrate trial counsel failed to object to procedural errors. Therefore, the district court did not err by denying this claim without holding an evidentiary hearing.

Ninth, Rimer claimed trial counsel was ineffective for failing to object to prosecutorial misconduct where the State called his home a house of horrors, said the system failed the victim, the State exhorted the jury to prevent this from ever happening again, and Rimer was a negative father who never parented his children. Rimer claimed these statements improperly inflamed the jury and counsel's failure to object affected the outcome of his appeal.

Rimer failed to demonstrate counsel was deficient or resulting prejudice. These statements by the State were made during closing argument where it is proper to make inferences based on the evidence presented at trial. To the extent counsel should have objected to the State's argument that the system failed the victim and it exhorted the jury to prevent this from happening again, Rimer failed to demonstrate a reasonable probability of a different outcome at trial had counsel objected given the evidence presented at trial. *See Gaxiola v. State*, 121 Nev. 638, 655, 119 P.3d 1225, 1237 (2005) (comments made about the defendant's right to silence will not be reversed where the comments were harmless beyond a reasonable doubt). Therefore, the district court did not err by denying this claim as procedurally barred.

Tenth, Rimer claimed counsel was ineffective for failing to investigate an interview CPS did with his children prior to the victim dying and payments made to one of his sons. However, Rimer did not

provide any evidence, other than his own assertions, that this interview with his children existed or that his son was receiving money from the State. In his petition, he stated he was going to attach the interview as an exhibit but failed to do so. Therefore, he failed to support this claim with specific facts that, if true, would entitle him to relief. *Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225. Accordingly, the district court did not err by denying this claim without holding an evidentiary hearing.

Eleventh, Rimer claimed trial counsel was ineffective for failing to object to the State's proposed jury instructions. Rimer claimed these instructions were deficient and unconstitutional. The district court found Rimer failed to demonstrate the instructions given to the jury were unconstitutional or deficient. The district court also concluded the jury instructions given to the jury were correct statements of the law. Substantial evidence supports the decision of the district court, and we conclude the district court did not err by denying this claim without holding an evidentiary hearing.

Twelfth, Rimer claimed trial counsel was ineffective for failing to object to the instruction informing the jury it did not have to be unanimous as to their theory of child abuse in order to convict. Rimer failed to demonstrate trial counsel was deficient because counsel is not deficient for failing to make futile objections. See *Donovan v. State*, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978). Unanimity in the theory supporting an element of a crime is not necessary as long as all jurors find the element was proved beyond a reasonable doubt. See *Richardson v. United States*, 526 U.S. 813, 817 (1999); see also *Anderson v. State*, 121 Nev. 511, 515, 118 P.3d 184, 186 (2005) (holding the jury does not have to

be unanimous on a particular theory of culpability to sustain a conviction for a single offense). Therefore, the district court did not err by denying this claim without holding an evidentiary hearing.

Thirteenth, Rimer claimed trial counsel was ineffective for failing to employ a defense psychiatrist to interview the victims. He also claimed counsel was ineffective for failing to investigate the fact the State probably did psychiatric evaluations of the victims. Rimer failed to demonstrate counsel was deficient or resulting prejudice. Rimer failed to demonstrate counsel could have had the child-victims interviewed by a defense psychiatrist. The decision to allow a psychiatric examination of a child-victim is within the discretion of the district court. *See Abbott v. State*, 122 Nev. 715, 723, 138 P.3d 462, 467 (2006). The district court considers three factors when determining whether there is a compelling need for an exam: 1) whether the State has called or obtained some benefit from a psychological expert, 2) whether evidence of the crime is supported by any corroboration, and 3) whether a reasonable belief exists to believe that the mental or emotional state of the victim may have affected the victim's veracity. *See Koerschner v. State*, 116 Nev. 1111, 1116-17, 13 P.3d 451, 455 (2000), *reaffirmed by Abbott*, 122 Nev. at 727, 138 P.3d at 470.

Rimer failed to demonstrate the State called or obtained any benefit from a psychological expert, the crimes were supported by corroboration, and Rimer failed to demonstrate the mental or emotional state of the victims affected their veracity. Therefore, the district court did not err by denying this claim without holding an evidentiary hearing.

Fourteenth, Rimer claimed trial counsel was ineffective for failing to ensure two of the victims testified at trial. Rimer also claimed

counsel should have objected to the State's decision not to call these witnesses as prosecutorial misconduct. Rimer failed to demonstrate counsel was deficient or resulting prejudice. Trial counsel decided not to have the children held over for the weekend because he did not want the children to be influenced by their older brother. Further, while counsel was not allowed to comment on the evidentiary value of the evidence the witnesses might have provided, counsel was able to argue the State had the ability to call the witnesses and its decision not to call them as witnesses is something the jury should consider when evaluating whether there was sufficient evidence to sustain a guilty verdict. Further, Rimer failed to demonstrate a reasonable probability of a different outcome at trial had counsel ensured the victims testified at trial. As to Rimer's claim counsel failed to object to the State's decision not to call these witnesses, this claim is belied by the record as counsel did object. Therefore, the district court did not err in denying this claim without holding an evidentiary hearing.

Fifteenth, Rimer claimed trial counsel was ineffective for failing to object to the use of photos that were either altered or beyond the scope of necessity. Specifically, Rimer claimed trial counsel was ineffective for failing to object to a family photo where Rimer's face was scratched out and failing to object to a photo of the victim's naked body. Rimer failed to demonstrate counsel was deficient or resulting prejudice. Rimer failed to demonstrate the State introduced a family photo with Rimer's face scratched out. Counsel did make an argument during closing argument regarding the State painting a picture of Rimer being an absent father, but it does not appear the State used a family picture with Rimer's

face scratched out in its closing argument. As to the photo of the victim's naked body, the photo was necessary for the forensic pathologist to discuss rigor and livor mortis. Therefore, Rimer failed to demonstrate counsel should have objected to either photo, *see Donovan*, 94 Nev. at 675, 584 P.2d at 711, or a reasonable probability of a different outcome at trial had counsel objected. Accordingly, the district court did not err by denying this claim without holding an evidentiary hearing.

Sixteenth, Rimer claimed trial counsel was ineffective for failing to present a defense as to the state of the home by using family photos and video clips. Specifically, Rimer claimed counsel should have presented a PowerPoint of 25 to 30 photos per child-victim and video clips. Rimer argued these photos and clips would have shown the state of the Rimer home throughout the years.

Rimer failed to demonstrate counsel was deficient or resulting prejudice. While counsel did not use 25 to 30 photos and video clips per child, counsel used several photos throughout trial to show the state of the Rimer home throughout the years. Rimer failed to demonstrate a reasonable probability of a different outcome at trial had counsel used more photos and video clips. Therefore, the district court did not err by denying this claim without holding an evidentiary hearing.

Seventeenth, Rimer claimed trial counsel was ineffective for failing to subpoena his children's school records, absences, or times the children were required to show a store receipt for lice treatment. Rimer failed to demonstrate counsel was deficient or resulting prejudice. Counsel was able to get most of this information from the witnesses presented at trial. Further, Rimer failed to demonstrate a reasonable

probability of a different outcome at trial had counsel subpoenaed the records. Therefore, the district court did not err by denying this claim without holding an evidentiary hearing.

Eighteenth, Rimer claimed trial counsel was ineffective for failing to defend against all of the charges by ensuring the jury understood what evidence was required in conjunction with each operative element. Rimer failed to demonstrate counsel was deficient or resulting prejudice. Counsel argued all of the material elements and how the State did not meet its burden. Therefore, the district court did not err by denying this claim without holding an evidentiary hearing.

Nineteenth, Rimer claimed trial counsel was ineffective for failing to object to numerous instances of prosecutorial misconduct. Rimer claimed the State committed prosecutorial misconduct when it violated his right to confront two of the child-victims, violated district court admonishments not to use the word beat or beatings, violated *Brady v. Maryland*, 373 U.S. 83 (1963) when the State withheld earlier interviews with the child-victims, erred by participating in the investigation by showing up during the search of the Rimer home, and improperly influenced the coroner's evaluation.

Rimer failed to demonstrate counsel was deficient or resulting prejudice. Counsel objected to the State's decision not to call the two child-victims and to the State's repeated use of the word beat or beating. Rimer failed to demonstrate the State violated *Brady* because his claims regarding earlier interviews with the child-victims is speculative and he failed to demonstrate the interviews occurred or the State withheld the interviews. Rimer failed to demonstrate how the prosecutor's

participation by showing up at the search of the home was prosecutorial misconduct or that there was a reasonable probability of a different outcome at trial had counsel objected to the prosecutor's participation. Finally, Rimer failed to demonstrate how the State improperly influenced the coroner's evaluation. Therefore, the district court did not err by denying these claims without holding an evidentiary hearing.

Twentieth, Rimer claimed trial counsel was ineffective for failing to object to prosecutorial misconduct where the State improperly commented on his right to silence when it suggested Rimer had to speak to authorities. After discussing the bottle-feeding and CPS involvement, the prosecutor argued in closing that defense counsel

Stood up there and said it's overcharging because CPS could have done this for years. Why wasn't it done before by CPS. The answer is simple. When you kill your kid, you don't have the right to stop the homicide cops from interviewing you. You don't have the right to ask Qualyn and Enoch and Spencer and Brandon what is going on in the home. At that point, their brother is dead, they don't have the pressure of not saying things to their teachers, to CPS, to other church members. At that point, they tell the whole horrifying story.

Even assuming this statement was improper and counsel should have objected, Rimer failed to demonstrate a reasonable probability of a different outcome at trial had counsel objected given the evidence presented at trial and the fact the record demonstrated he cooperated with the police investigation. Therefore, the district court did not err by denying this claim without holding an evidentiary hearing.

Twenty-first, Rimer claimed trial counsel was ineffective for failing to object to the media coverage and the State's conduct in front of

the media to demonize him. Rimer failed to demonstrate counsel was deficient or resulting prejudice. Rimer failed to demonstrate an objection to the media coverage or to the State's actions in regard to the media would have been successful. *See Donovan*, 94 Nev. at 675, 584 P.2d at 711. He also failed to demonstrate a reasonable probability of a different outcome at trial had counsel objected. Therefore, the district court did not err by denying this claim without holding an evidentiary hearing.

Twenty-second, Rimer claimed trial counsel was ineffective for failing to argue structural error because the statute of limitations was violated, double jeopardy was violated, and count two was constructed in such a way as to eliminate the intent element. Rimer failed to demonstrate counsel was deficient or resulting prejudice. Rimer failed to demonstrate an objection based on structural error would have been successful. He also failed to demonstrate a reasonable probability of a different outcome at trial had counsel objected based on structural error. Therefore, the district court did not err by denying this claim without holding an evidentiary hearing.

Twenty-third, Rimer claimed trial counsel was ineffective for failing to argue the trial court judge was biased against him. Specifically, Rimer claimed the trial court judge made statements regarding him being a bad father and the trial court judge was involved in anti-child abuse groups. Rimer failed to demonstrate counsel was deficient or resulting prejudice because Rimer failed to demonstrate the trial court judge closed his mind to the presentation of all of the evidence. *See Cameron v. State*, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998); *In re Petition to Recall Dunleavy*, 104 Nev. 784, 789-90, 769 P.2d 1271, 1275 (1988) ("rulings and

actions of a judge during the course of official judicial proceedings do not establish" bias sufficient to disqualify a district court judge). Therefore, the district court did not err in denying these claims without holding an evidentiary hearing.

Finally, Rimer claimed trial counsel was ineffective for failing to object to the district court's failure to admit his codefendant's statement. This claim is belied by the record. Counsel did request the statement be admitted and the district court denied that request. The district court's denial was affirmed on appeal. *See Rimer*, 131 Nev. at ___, 351 P.3d at 712. Therefore, the district court did not err by denying this claim without holding an evidentiary hearing.

Next, Rimer claimed the district court erred by denying his claims of ineffective assistance of appellate counsel without first holding an evidentiary hearing. 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). Appellate counsel is not required to raise every non-frivolous issue on appeal. *Jones v. Barnes*, 463 U.S. 745, 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).

First, Rimer claimed appellate counsel was ineffective for failing to argue his claim regarding double jeopardy should have been based on the original charges, second-degree murder and child abuse or

neglect, rather than on the charges he was convicted of, involuntary manslaughter and child abuse or neglect. Rimer failed to demonstrate counsel was deficient or resulting prejudice. As stated above, a double jeopardy claim based on second-degree murder lacked merit. Double jeopardy is only concerned with second prosecutions or multiple punishments for the same conduct. Rimer was not convicted of second-degree murder. Further, convictions for second-degree murder and child abuse or neglect causing substantial bodily harm would not have violated double jeopardy. Therefore, the district court did not err by denying this claim without holding an evidentiary hearing.

Second, Rimer claimed appellate counsel failed to federalize his claims on appeal. Rimer failed to demonstrate appellate counsel was deficient or resulting prejudice because he failed to demonstrate he would have gained a more favorable standard of review or a more favorable result on direct appeal had appellate counsel federalized the arguments. *See Browning v. State*, 120 Nev. 347, 365, 91 P.3d 39, 52 (2004). Therefore, the district court did not err by denying this claim without holding an evidentiary hearing.

Third, Rimer claimed appellate counsel was ineffective for failing to argue the State failed to demonstrate probable cause for the charges at the grand jury proceedings. Rimer failed to demonstrate counsel was deficient or resulting prejudice. Rimer failed to show the State did not demonstrate probable cause at the grand jury proceedings. Further, even assuming there were errors at the grand jury proceedings, a “jury convict[ion] . . . under a higher burden of proof cure[s] any irregularities that may have occurred during the grand jury proceedings.”

Dettloff v. State, 120 Nev. 588, 596, 97 P.3d 586, 591 (2004). Therefore, the district court did not err by denying this claim without holding an evidentiary hearing.

Fourth, Rimer claimed appellate counsel was ineffective for failing to argue the State criminalized conduct that exceeded the scope of NRS 200.508 and for failing to argue NRS 200.508 was overbroad and vague. This claim is belied by the record. Appellate counsel argued NRS 200.508 was unconstitutional because it was vague because “no reasonable person would understand the prohibition on child abuse and neglect to include leaving a child in the care of his or her mother or criminalizing foul odors, cluttered houses, dirty aquariums, low food supplies, sending children to bed without supper, calling children profane names, spanking children, or failing to expediently eradicate a lice problem.” *Rimer*, 131 Nev. at ___, 351 P.3d at 711. Rimer failed to demonstrate a reasonable probability of success on appeal had counsel made further arguments regarding the constitutionality of NRS 200.508. Therefore, the district court did not err by denying this claim without holding an evidentiary hearing.

Fifth, Rimer claimed appellate counsel was ineffective for failing to challenge the jury instructions on appeal. Rimer failed to demonstrate appellate counsel was deficient or resulting prejudice. Appellate counsel did challenge several jury instructions on appeal. *See id.* at ___, 351 P.3d at 715-16. Further, Rimer failed to demonstrate any other challenge to the jury instructions would have had a reasonable probability of success on appeal. Therefore, the district court did not err by denying this claim without holding an evidentiary hearing.

Seventh, Rimer claimed appellate counsel was ineffective for failing to argue structural error because the statute of limitations was violated, double jeopardy was violated, and the construction of count two eliminated the intent element. Rimer failed to demonstrate counsel was deficient or resulting prejudice because he failed to demonstrate this claim had a reasonable probability of success on appeal. The Nevada Supreme Court concluded the statute of limitations and double jeopardy was not violated. Further, Rimer failed to demonstrate count 2 eliminated the intent element. Therefore, the district court did not err by denying this claim without holding an evidentiary hearing.

Eighth, Rimer claimed appellate counsel was ineffective for failing to argue the trial court judge was biased. Rimer failed to demonstrate counsel was deficient or resulting prejudice. As stated above, Rimer failed to demonstrate the trial court judge was biased against him. Therefore, the district court did not err by denying this claim without holding an evidentiary hearing.

To the extent Rimer argued in his opening brief that appellate counsel was ineffective for failing to address numerous claims in a petition for rehearing from the opinion affirming his convictions, this claim was not raised in his petition below, and we decline to address it for the first time on appeal. *McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).


To the extent Rimer raised the claims above independent of ineffective assistance of counsel, these claims could have been raised in his direct appeal and Rimer failed to demonstrate cause and actual prejudice to overcome the procedural bar. See NRS 34.810(1)(b). Therefore, the


district court did not err by denying these claims without holding an evidentiary hearing.


Finally, Rimer claimed the cumulative errors of counsel entitled him to relief. Rimer failed to demonstrate any alleged errors by counsel, singly or cumulatively, would have had a reasonable probability of altering the outcome at trial. Therefore, the district court did not err by denying this claim without holding an evidentiary hearing.

Having concluded Rimer is not entitled to relief, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

²We conclude the district court did not err by denying Rimer's request for standby counsel.

On August 3, 2017, and October 26, 2017, Rimer filed motions for the appointment of counsel. We deny these motions.

We have reviewed all documents Rimer has filed in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Rimer 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. Douglas W. Herndon, District Judge
Stanley Earnest Rimer
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk