

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT ALLEN GOODLOW,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71675

FILED

APR 11 2018

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

ORDER OF AFFIRMANCE

Robert Allen Goodlow appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

Goodlow argues the district court erred by denying his claims of ineffective assistance of counsel raised in his June 19, 2015, petition and supplement. 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*). To demonstrate prejudice regarding the decision to enter a guilty plea, a petitioner must demonstrate 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); *Kirksey v. State*, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996).

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). 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).

First, Goodlow argued his counsel was ineffective for failing to investigate the victims' backgrounds and criminal history, retest the DNA evidence, discover Goodlow was incarcerated at the time a victim asserted he committed sexual assault, review the plea agreement with him or give appropriate advice regarding trial and plea options, investigate Goodlow's mental health or competency, and for coercing his guilty plea.

The record demonstrates Goodlow raised these claims in his presentence motion to withdraw guilty plea, the trial-level court conducted an evidentiary hearing regarding these issues, concluded they lacked merit, and denied the motion. This court affirmed the denial of Goodlow's presentence motion to withdraw guilty plea on direct appeal. *Goodlow v. State*, Docket No. 64499 (Order of Affirmance, January 21, 2015). Because this court has already considered these claims and concluded Goodlow was not entitled to relief, the doctrine of the law of the case prevents further litigation of these issues and "cannot be avoided by a more detailed and

precisely focused argument.” *Hall v. State*, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975). Therefore, we conclude the district court did not err by denying these claims.¹

Second, Goodlow argued his counsel was ineffective for failing to investigate the victims’ mental health. Goodlow asserted a victim suffered from bipolar disorder, which may have caused her to fabricate the allegations. Goodlow failed to demonstrate his counsel’s performance was deficient or resulting prejudice. Goodlow based this claim upon a report stemming from one victim’s sexual assault examination and the record demonstrates counsel possessed this information prior to entry of Goodlow’s guilty plea. Goodlow did not specify what additional information regarding the victims’ mental health counsel could have uncovered with a more thorough investigation. Accordingly, Goodlow failed to demonstrate his counsel’s performance fell below an objective standard of reasonableness. As Goodlow did not demonstrate counsel could have uncovered favorable evidence, he also did not demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial had counsel further investigated the victims’ mental health. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Therefore, we conclude the district court did not err by denying this claim.

¹Goodlow also argues the trial-level court erred by denying his presentence motion to withdraw guilty plea. Because this court has already affirmed the denial of this motion, *Goodlow v. State*, Docket No. 64499 (Order of Affirmance, January 21, 2015), the law of the case also prevents further litigation of this issue. *See Hall*, 91 Nev. at 316, 535 P.2d at 799.

Third, Goodlow argued his counsel was ineffective for failing to have him undergo a psychosexual evaluation. Goodlow failed to demonstrate his counsel's performance was deficient or resulting prejudice. Goodlow merely speculated a psychosexual evaluation could have provided favorable information, which is insufficient to demonstrate this claim had merit. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Therefore, we conclude the district court did not err by denying this claim.²

Fourth, Goodlow argued his counsel was ineffective at the sentencing hearing for failing to object to improper victim impact testimony. At the sentencing hearing, a victim requested the district court to consider Goodlow's prior criminal history and noted there may be additional victims who have not come forward. Goodlow asserted this statement was not within the scope of proper victim impact testimony. Goodlow failed to demonstrate his counsel's performance resulted in prejudice. Given the nature of the accusations against Goodlow and the brief nature of the challenged statement, Goodlow failed to demonstrate a reasonable probability of a different outcome had counsel objected during the victim

²Goodlow also argues the district court erred by denying his request to appoint a psychiatrist to perform a psychosexual evaluation during the postconviction proceedings. The district court concluded a psychiatrist was not reasonably necessary to determine this claim lacked merit given the record in this matter. Goodlow fails to demonstrate the district court abused its discretion in doing so. *See NRS 34.750(2); Widdis v. Second Judicial Dist. Court*, 114 Nev. 1224, 1229, 968 P.2d 1165, 1168 (1998).

impact testimony. *See Dieudonne v. State*, 127 Nev. 1, 9 n.3, 245 P.3d 1202, 1207 n.3 (2011) (recognizing that erroneous admission of a victim impact statement is reviewed for harmless error); *see also Randell v. State*, 109 Nev. 5, 8, 846 P.2d 278, 280 (1993) (recognizing “[t]he district court is capable of listening to the victim’s feelings without being subjected to an overwhelming influence by the victim in making its sentencing decision”). Therefore, we conclude the district court did not err by denying this claim.

Fifth, Goodlow argued his counsel was ineffective for failing to assert the district attorney lacked the authority to prosecute him due to failure to post the bond required by NRS 252.030. Goodlow failed to demonstrate his counsel’s performance was deficient or resulting prejudice. Goodlow did not provide a factual basis for this claim. Bare claims such as this are insufficient to demonstrate a petitioner is entitled to relief. *See Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225. Further, Goodlow did not demonstrate any failure by the district attorney to meet the requirements of NRS 252.030 would preclude a district attorney’s office from prosecuting a criminal case, and therefore, Goodlow did not demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial had counsel raised this issue. Therefore, we conclude the district court did not err by denying this claim.

Next, Goodlow argued his appellate counsel was ineffective. 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*, 466 U.S. at 697. 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).


Goodlow argued his appellate counsel was ineffective for failing to properly raise the previously discussed underlying claims on direct appeal. Goodlow failed to demonstrate his counsel's performance was deficient or resulting prejudice. Goodlow failed to demonstrate any of his underlying claims had merit. Because Goodlow did not demonstrate any of his underlying claims had merit, he failed to demonstrate his appellate counsel acted in an objectively unreasonable manner during the direct appeal proceedings or a reasonable probability of success on appeal had counsel taken different actions during the direct appeal proceedings. Therefore, we conclude the district court did not err by denying this claim.

Next, Goodlow argues the district court erred by failing to conduct an evidentiary hearing during the postconviction proceedings. To warrant an evidentiary hearing, a petitioner must raise claims that are supported by specific allegations not belied by the record, and if true, would entitle him to relief. *Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225. The district court concluded Goodlow's claims did not meet that standard and

the record before this court reveals the district court's conclusions in this regard were proper.

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


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

³The district court denied the petition in part based upon its conclusion it was procedurally barred pursuant to NRS 34.810(2). However, NRS 34.810(2) only applies when a petitioner files a "second or successive petition." Goodlow previously sought to withdraw his guilty plea via a presentence motion to withdraw guilty plea and its supporting motions, but those were not postconviction petitions. The instant petition is Goodlow's first postconviction petition for a writ of habeas corpus, and therefore, the district court erred in applying NRS 34.810(2) in this matter. Nevertheless, the district court properly denied relief, and we therefore affirm. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).

cc: Hon. Douglas Smith, District Judge
Matthew D. Carling
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk