

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JALEN DABNEY-JONES, A/K/A JALEN
DABNEYJONES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71620

FILED

NOV 16 2017

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

ORDER OF AFFIRMANCE

Jalen Dabney-Jones appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; J. Charles Thompson, Senior Judge.

In his June 2, 2016, petition, Dabney-Jones claimed his counsel was ineffective. 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,

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).

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).

First, Dabney-Jones claimed his counsel was ineffective for failing to investigate and interview a potential witness. Dabney-Jones failed to demonstrate his counsel's performance was deficient or resulting prejudice. Dabney-Jones merely speculated a potential witness would have provided favorable evidence and provided no support for his speculation. A bare claim, such as this one, is insufficient to demonstrate a petitioner is entitled to relief. See *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984); see also *Browning v. State*, 120 Nev. 347, 357, 91 P.3d 39, 47 (2004) (“[S]peculation does not demonstrate any prejudice.”). In addition, Dabney-Jones wrote in his petition the potential witness stood in front of the victim as Dabney-Jones pointed a gun in their direction and the witness urged Dabney-Jones not to shoot the victim. Such potential information would not have been favorable to Dabney-Jones' defense. Accordingly, Dabney-Jones failed to demonstrate his counsel acted in an objectively unreasonable manner or a reasonable probability he would not have pleaded guilty and would have insisted on proceeding to trial. Therefore, we conclude the district court did not err in denying this claim.


Second, Dabney-Jones claimed his counsel was ineffective for failing to move to dismiss the robbery and assault with a deadly weapon charges. Dabney-Jones appeared to assert there was insufficient evidence to support those charges and a potential defense witness would have backed his version of events. Dabney-Jones failed to demonstrate his counsel's performance was deficient or resulting prejudice. Dabney-Jones did not demonstrate the evidence against him was insufficient to support a probable cause finding. See *Sheriff, Washoe Cty. v. Middleton*, 112 Nev. 956,

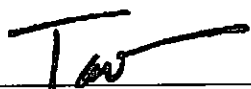
961, 921 P.2d 282, 285-86 (1996). Accordingly, Dabney-Jones failed to demonstrate objectively reasonable counsel would have sought dismissal of these charges for lack of evidence or because a potential defense witness supported Dabney-Jones' version of events. *See Lamb v. Holsten*, 85 Nev. 566, 568, 459 P.2d 771, 772 (1969) (explaining that at a preliminary hearing "the state is not required to negate all inferences but only present enough evidence" to show probable cause that an offense has been committed and the defendant committed the offense). Therefore, we conclude the district court did not err in denying this claim.


Third, Dabney-Jones claimed his counsel was ineffective for failing to reserve his ability to appeal the denial of his motion to dismiss the kidnapping charge. Dabney-Jones failed to demonstrate his counsel's performance was deficient or resulting prejudice. Reservation of the right to a review of the denial of a pretrial motion on a direct appeal following entry of a guilty plea requires consent of the district court and the district attorney. NRS 174.035(3). Dabney-Jones did not allege counsel could have persuaded the district court or the district attorney to consent to a review of the denial of the motion to dismiss on a direct appeal. A bare claim, such as this one, is insufficient to demonstrate a petitioner is entitled to relief. *See Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225. In addition, the trial-level court denied the pretrial motion to dismiss by concluding Dabney-Jones failed to demonstrate the kidnapping charge was incidental to his battery or robbery charges. Given the facts in the record before this court, Dabney-Jones did not demonstrate a reasonable likelihood a challenge to the district court's denial of his motion to dismiss had a reasonable likelihood of success in a direct appeal. *See Mendoza v. State*, 122 Nev. 267, 275, 130 P.3d 176, 181 (2006); *Curtis D. v. State*, 98 Nev. 272, 274, 646 P.2d 547, 548 (1982). Therefore, we conclude the district court did not err in denying this claim.

Fourth, Dabney-Jones claimed his counsel was ineffective for failing to object to inclusion of his juvenile record in the presentence investigation report (PSI). Dabney-Jones failed to demonstrate his counsel's performance was deficient or resulting prejudice. The record demonstrates Dabney-Jones was under 21 when he was sentenced in this matter and his juvenile record had not been sealed. Given those circumstances, the PSI properly contained information regarding Dabney-Jones' juvenile record. See NRS 62H.030(3)(b); NRS 176.145(1)(a). Accordingly, Dabney-Jones failed to demonstrate objectively reasonable counsel would have objected to inclusion of his juvenile record in the PSI or a reasonable probability of a different outcome at sentencing had counsel done so. Therefore, we conclude the district court did not err in denying this claim.

Having concluded Dabney-Jones is not entitled to relief, we ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Chief Judge, Eighth Judicial District Court
Hon. J. Charles Thompson, Senior Judge
Jalen Dabney-Jones
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk