

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALDO MARONES, A/K/A ALDO
JOVANNY MORONES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72328

FILED

NOV 16 2017

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

ORDER OF AFFIRMANCE

Aldo Marones 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; Michelle Leavitt, Judge.

Marones argues the district court erred in denying his claims of ineffective assistance of appellate counsel raised in his August 25, 2016, petition. 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

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

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, 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, Marones claimed his counsel was ineffective for failing to file a notice of appeal and pursue a direct appeal. Marones cannot demonstrate he is entitled to relief because he filed a pro se notice of appeal and his counsel represented him during the appellate proceedings. In addition, this court considered Marones' direct appeal and affirmed the judgment of conviction. *Marones v. State*, Docket No. 67312 (Order of Affirmance, September 15, 2015). Therefore, we conclude the district court did not err in denying this claim.


Second, Marones claimed his counsel was ineffective for failing to file appellate briefs or other documents in support of his direct appeal. Marones cannot demonstrate either deficiency or prejudice for this claim because his counsel filed a fast track statement and an appendix in support of Marones' direct appeal. Therefore, we conclude the district court did not err in denying this claim.

Third, Marones appeared to assert his counsel was ineffective for failing to raise errors Marones believed occurred during the trial as claims on direct appeal. Marones also appeared to claim his counsel was ineffective for failing to consult with him regarding the direct appeal. Marones failed to demonstrate his counsel's performance was deficient or resulting prejudice. Marones did not identify any claims counsel should have raised on direct appeal and did not explain how consultation with his counsel would have benefitted him. Bare claims, such as these, are insufficient to demonstrate a petitioner is entitled to relief. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Therefore, we conclude the district court did not err in denying this claim.

Finally, Marones appears to argue the district court erred by denying the petition without appointing postconviction counsel. The appointment of postconviction counsel was discretionary in this matter. *See* NRS 34.750(1). After a review of the record, we conclude the district court did not abuse its discretion in this regard as this matter was not sufficiently complex so as to warrant the appointment of postconviction counsel. *See Renteria-Novoa v. State*, 133 Nev. ___, ___, 391 P.3d 760, 760-61 (2017).

Having concluded Marones was not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

²Marones filed two postconviction petitions for a writ of habeas corpus while his direct appeal was pending, but the district court denied relief without prejudice because it concluded it lacked jurisdiction to consider those petitions during that time. However, a postconviction petition for a writ of habeas corpus is an independent proceeding that seeks collateral review of the conviction, and thus, it may be litigated contemporaneously with a direct appeal and Marones' direct appeal did not divest the district court of jurisdiction to consider the collateral petitions. See NRS 34.724(2)(a) (providing a habeas corpus petition is not a substitute for and does not affect the remedy of direct review); NRS 34.730(3) (providing the clerk of the district court shall file a habeas corpus petition as a new action separate and distinct from any original proceeding in which a conviction has been had); *Daniels v. State*, 100 Nev. 579, 580, 688 P.2d 315, 316 (1984) (recognizing a postconviction proceeding is separate from the direct appeal), *overruled on other grounds by Varwig v. State*, 104 Nev. 40, 752 P.2d 760 (1988); *Groesbeck v. Warden*, 100 Nev. 259, 260, 679 P.2d 1268, 1269 (1984) (recognizing a postconviction habeas corpus petition is a petition seeking collateral review). Because the district court erroneously concluded it lacked jurisdiction to consider the prior petitions, Marones had good cause to file the instant petition. See NRS 34.810(3); *Hathaway v. State*, 119 Nev. 248, 71 P.3d 503 (2003).

cc: Hon. Michelle Leavitt, District Judge
Aldo Marones
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk