

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LUIS CASTRO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74013-COA

FILED

NOV 06 2018

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

ORDER OF AFFIRMANCE

Luis Castro appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on December 14, 2016, and supplemental petition filed on April 11, 2017. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

Castro contends the district court erred by denying his claims of ineffective assistance of counsel without first conducting an evidentiary hearing. To demonstrate ineffective assistance of counsel, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that there was a reasonable probability of a different outcome absent counsel's errors. *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. To warrant an evidentiary hearing, a petitioner must raise claims supported by specific factual allegations that, if true and not repelled by the record, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

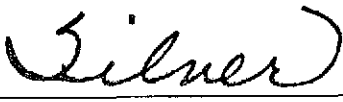
Castro first argues counsel failed to properly present evidence at Castro's probation-revocation hearing that he had been diagnosed as mentally incompetent by a federal agency. Castro failed to demonstrate deficiency or prejudice. In support of his claim, Castro attached a June 23, 2015, document from the agency discussing evidence dating from a few days before Castro's final probation revocation hearings and addressing only Castro's competency to handle the disbursement of funds. Castro failed to demonstrate counsel knew or should have known of the agency's ongoing investigation or determinations. Further, the document did not address Castro's overall competency, and Castro fails to demonstrate how the information would have affected the district court's finding that he was not performing as good as expected on probation. We therefore conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.


Castro next argues counsel failed to oppose at Castro's probation-revocation hearing a condition of his probation that, in effect, prohibited his having contact with his minor grandchildren. The condition Castro objects to is statutorily mandated, *see* NRS 176A.410(1)(l), such that any attempt to oppose it would have been futile. And Castro's reference to a nonbinding decision of the United States Court of Appeals for the Tenth Circuit notwithstanding, *see United States v. Lonjose*, 663 F.3d 1292, 1303 (10th Cir. 2011), counsel cannot be ineffective for failing to make futile objections. *Ennis v. State*, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006).


We therefore conclude this district court did not err by denying this claim without first conducting an evidentiary hearing.¹

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Stefany Miley, District Judge
Law Office of Christopher R. Oram
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹Castro also argues counsel was ineffective at his sentencing hearing for failing to object to the condition. This claim is procedurally barred. Castro filed his petition more than three years after entry of the judgment of conviction on August 29, 2013. He did not appeal his conviction, and this claim could have been raised before the filing of the amended judgment of conviction. This claim is thus untimely absent a demonstration of good cause—cause for the delay and undue prejudice. See NRS 34.726(1); *Sullivan v. State*, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004). Castro did not allege good cause. The district court improperly denied this claim on the merits. We nevertheless affirm the denial of this claim for the reasons stated herein. See *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (holding a correct result will not be reversed simply because it is based on the wrong reason).