

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RONNIE MONEY COLEMAN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 73171-COA

**FILED**

NOV 06 2018

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

*ORDER OF AFFIRMANCE*

Ronnie Money Coleman appeals from an order of the district court dismissing in part and denying in part a postconviction petition for a writ of habeas corpus filed on August 11, 2011, and a supplemental petition filed on May 13, 2013. Second Judicial District Court, Washoe County; Jerome M. Polaha, Judge.

Coleman argues the district court erred by dismissing or denying his ineffective-assistance-of-counsel claims. 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 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 support his claims with specific facts that, if true, would entitle him to relief. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Coleman argues the district court erred by dismissing his claim that counsel was ineffective for failing to obtain "the written statements of [the victim] and other witnesses in order to impeach them at trial, failed to investigate forensic and other evidence pertaining to the debit card, Appellant's clothing, money found at the scene, location of the weapon, and evidence indicating whether Appellant was standing when he was shot." Coleman argues the district court erred by dismissing this claim without first holding an evidentiary hearing.

The claim raised in Coleman's petition below argued evidence should be suppressed because the Reno Police Department and Sparks Police Department did not follow the correct officer involved shooting protocol. It also alleged issues with the forensic evidence presented at trial. These claims were either raised, or could have been raised, on direct appeal and were not properly raised in a postconviction petition for a writ of habeas corpus challenging a judgment of conviction based on a jury verdict. *See* NRS 34.810(1)(b)(2).

To the extent Coleman argued ineffective assistance in this claim, it appears related only to failing to obtain the written statements of the victim and other witnesses. Coleman argues counsel could have impeached these witnesses by arguing they did not claim the victim was robbed until that idea was introduced to them by a detective. Coleman failed to demonstrate counsel was deficient or resulting prejudice. At trial,

counsel used the victim's and other witnesses' statements for impeachment. And counsel asked about the victim's and other witnesses' failure to describe the incident as a robbery at first. Therefore, we conclude Coleman fails to demonstrate the district court erred by denying this claim without holding an evidentiary hearing.

To the extent Coleman argues on appeal that the district court erred by denying his claim that counsel was ineffective for failing to investigate forensics and other evidence, this claim was not raised below, and we decline to consider it for the first time on appeal. See *McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

Second, Coleman argues the district court erred by dismissing his claim counsel was ineffective for failing to object to jury instruction 41 which concerned the prior statements of witnesses and the weight to be given those statements. Coleman claims no prior statements of witnesses were entered into evidence. Coleman claims this lowered the burden of the State because each witness was assumed to be credible and consistent.

To the extent Coleman's claim raised below could be construed as an ineffective assistance of trial counsel claim, Coleman failed to demonstrate counsel was ineffective. Even assuming it was error to give jury instruction 41 and counsel should have objected, Coleman cannot demonstrate he was prejudiced. Jury instruction 41 states, "Portions of prior statements of witnesses have been admitted into evidence. They are to be considered in the same way as the testimony of witnesses presented at court." This instruction in no way lowered the State's burden of proof as claimed by Coleman. Therefore, the district court did not err by dismissing this claim without holding an evidentiary hearing.

Third, Coleman argues the district court erred by dismissing his claim counsel was ineffective for failing to argue Officer Weaver's chasing and shooting of Coleman was racially motivated without first conducting an evidentiary hearing. The district court found that while this claim was supported by specific facts, the factual allegations, if true, would not entitle Coleman to relief because Officer Weaver had reasonable suspicion to stop Coleman that night. Substantial evidence supports the decision of the district court, and we conclude Coleman fails to demonstrate the district court erred by dismissing this claim without holding an evidentiary hearing.

Fourth, Coleman argues the district court erred by denying his claim counsel was ineffective for telling him to waive his speedy trial rights when the State obtained an attempted murder indictment shortly before trial. Coleman claims counsel told him she would not be able to go forward with trial on the new charge. He claims waiving his speedy trial rights prejudiced him because witnesses were no longer able to recall events or circumstances which occurred twenty months prior.

We conclude Coleman failed to demonstrate counsel was deficient. Counsel was not deficient for explaining to Coleman she was not ready to defend a new charge of attempted murder at trial that was scheduled to commence in a short period of time, or for counseling him to waive his speedy trial rights. Therefore, the district court did not err by denying this claim.

Fifth, Coleman claims the district court erred by denying his claim counsel was ineffective for failing to file a motion to dismiss the indictment based on insufficient evidence. Coleman claims had counsel filed the motion, it would have been successful and Coleman would have

been able to immediately proceed to trial. Coleman failed to demonstrate counsel was deficient or resulting prejudice.

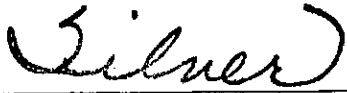
Coleman failed to demonstrate challenging the sufficiency of the evidence presented to the grand jury would have been successful. To bind Coleman over on the attempted murder charge, the State only had to prove the attempted murder charge by slight or marginal evidence, *see Sheriff v. Hodes*, 96 Nev. 184, 186, 606, P.2d 178, 180 (1980), and Coleman failed to demonstrate the State did not meet this standard. Further, had counsel argued insufficient evidence was presented to the grand jury, the claim would have had to be filed in a pretrial petition for a writ of habeas corpus which requires a defendant to waive his speedy trial rights or to consent to the district court to continue the trial indefinitely or to a date designated by the court. *See* NRS 34.700(1)(b). Therefore, he fails to demonstrate a reasonable probability he would have proceeded to trial immediately had counsel filed the petition based on sufficiency of the evidence. Accordingly, the district court did not err by denying this claim.


Next, Coleman argues the district court erred by dismissing grounds three, four, six, thirteen, and sixteen of his petition because the district court should have construed these claims as ineffective-assistance-of-appellate-counsel claims. The burden of pleading claims as ineffective assistance of appellate counsel rests with petitioner, and the district court did not err by not construing Coleman's claims as ineffective assistance of appellate counsel claims. *See Evans v. State*, 117 Nev. 609, 647, 28 P.3d 498, 523 (2001), *overruled on other grounds by Lisle v. State*, 131 Nev. 356, 366 n.5, 351 P.3d 725, 732 n.5 (2015).

Finally, Coleman lists grounds one, two, five, seven, eight, ten, and eleven from his petition filed below, but specifically states he is only

presenting these claims for purposes of exhaustion and is not offering any argument on appeal with regard to these claims. Because Coleman fails to support these claims with relevant authority or cogent argument, we decline to consider them. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).

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

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Jerome M. Polaha, District Judge  
Oldenburg Law Office  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk