

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAYSEAN JENKINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74504-COA

FILED

DEC 04 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Daysean Jenkins 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; Tierra Danielle Jones, Judge.

In his July 28, 2017, petition, Jenkins claimed his counsel was ineffective. To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate his 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, 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 v. Washington*, 466 U.S. 668, 697 (1984).

First, Jenkins claimed his counsel was ineffective for failing to force the State to release discovery materials. Jenkins appeared to assert he did not have access to information that his codefendant's fingerprint was

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).

discovered on a firearm. Jenkins failed to demonstrate his counsel's performance was deficient or resulting prejudice. The record demonstrates Jenkins' counsel discussed forensic evidence during the court hearings and the parties acknowledged Jenkins did not personally possess a firearm during the commission of the crime. Based on the record before this court, we conclude Jenkins did not demonstrate his counsel performed below an objective standard of reasonableness regarding review of the evidence in this matter. In addition, the record demonstrated Jenkins' DNA was discovered at the crime scene and Jenkins confessed to participating in the crime. Given the substantial evidence of his guilt, Jenkins failed to demonstrate a reasonable probability he would have refused to plead guilty and insisted on proceeding to trial had counsel obtained additional evidence from the State. Therefore, we conclude the district court did not err by denying this claim.

Second, Jenkins claimed his counsel was ineffective for failing to argue at the sentencing hearing that Jenkins did not possess a firearm. Jenkins failed to demonstrate his counsel's performance was deficient or resulting prejudice. Counsel informed the sentencing court that Jenkins did not personally possess a firearm, but acknowledged that Jenkins was a participant in a robbery where his codefendants possessed firearms. Given the record in this matter, Jenkins failed to demonstrate counsel's performance fell below an objectively reasonable standard. Jenkins failed to demonstrate a reasonable probability of a different outcome at the sentencing hearing had counsel further discussed the use of a firearm during the robbery. Therefore, we conclude the district court did not err by denying this claim.

Third, Jenkins claimed his counsel was ineffective for failing to explain his potential sentence, review the facts of the case, or ensure he understood the plea agreement. Jenkins failed to demonstrate his counsel's

performance was deficient or resulting prejudice. The written plea agreement, which Jenkins acknowledged having read and understood, advised Jenkins of the penalties he faced by entering a guilty plea. In the written plea agreement, Jenkins also acknowledged that he had discussed the charges and possible defenses with his counsel and wished to enter a guilty plea. Given the record before this court, Jenkins failed to demonstrate his counsel's performance fell below an objectively reasonable standard or a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial had counsel performed different actions concerning the explanation of the plea agreement. Therefore, we conclude the district court did not err by denying this claim.

Fourth, Jenkins claimed his counsel was ineffective for failing to interview a witness. Jenkins appeared to assert counsel could have learned from the witness that Jenkins did not personally possess a firearm during the robbery. Jenkins failed to demonstrate his counsel's performance was deficient or resulting prejudice. The record demonstrates that Jenkins was alleged to have participated with his codefendants in an armed robbery, and Jenkins' codefendants possessed the firearms while Jenkins helped collect valuables. As the facts as alleged showed Jenkins did not personally possess a firearm during the crime, Jenkins did not demonstrate his counsel had to conduct a witness interview to learn such information. Accordingly, we conclude Jenkins failed to demonstrate his counsel's performance fell below an objectively reasonable standard. Given the strong evidence of Jenkins' guilt, Jenkins failed to demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial had counsel interviewed a witness. Therefore, we conclude the district court did not err by denying this claim.


Fifth, Jenkins claimed his counsel was ineffective for failing to suppress a witness' statement on the grounds that she used medication to

treat depression. Jenkins failed to demonstrate his counsel's performance was deficient or resulting prejudice. Jenkins did not identify any reasons that a statement made by a witness who used medication for depression should have been suppressed. 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). Given the DNA evidence and Jenkins' confession, Jenkins failed to demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial had counsel moved to suppress the witness' statement. Therefore, we conclude the district court did not err by denying this claim.

Next, Jenkins claimed the district court erred by denying the petition without conducting an evidentiary hearing. To warrant an evidentiary hearing, a petitioner must raise claims supported by specific allegations not belied by the record, and if true, would entitle him to relief. *See id.* The district court concluded Jenkins' claims failed to meet that standard and the record before this court reveals the district court's conclusions in this regard were proper. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Tierra Danielle Jones, District Judge
Daysean Jenkins
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk