

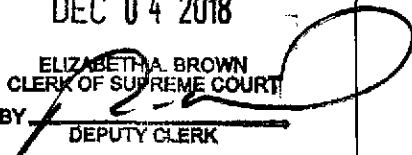
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN JOE NUNLEY, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74844-COA

FILED

DEC 04 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

John Joe Nunley, Jr., 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; Susan Johnson, Judge.

Nunley argues the district court erred by denying the claims of ineffective assistance of counsel raised in his October 10, 2017, postconviction petition for a writ of habeas corpus. 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

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

by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).

First, Nunley argued his trial counsel was ineffective for failing to call defense witnesses to testify during the trial. Nunley failed to demonstrate his counsel's performance was deficient or resulting prejudice. Nunley speculates there were witnesses that could have helped his defense, but he did not provide specific factual assertions regarding potentially favorable testimony. Such a claim was not sufficient to demonstrate Nunley was entitled to relief. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Nunley failed to demonstrate a reasonable probability of a different outcome at trial had counsel presented defense witness testimony. Therefore, we conclude the district court did not err by denying this claim.

Second, Nunley argued his trial counsel was ineffective for failing to timely file a motion to dismiss the charges based upon the State's failure to collect surveillance video recordings. Nunley asserted counsel should have moved to dismiss the charges prior to trial, rather than during the trial. Nunley failed to demonstrate his counsel's performance was deficient or resulting prejudice. During trial, Nunley's counsel moved to dismiss the charges based upon the State's failure to collect surveillance video recordings that may have depicted the incident. The trial court considered the motion on the merits, but denied it because Nunley did not demonstrate the recordings would have been material to his defense. Given the testimony concerning the incident and the trial court's findings, Nunley did not demonstrate his counsel's performance fell below an objectively reasonable standard. *Daniels v. State*, 114 Nev. 261, 267, 956 P.2d 111, 115 (1998) (stating test for a failure-to-gather-evidence claim). Nunley failed to demonstrate a reasonable probability of a different outcome had counsel

raised the motion to dismiss at an earlier time. Therefore, we conclude the district court did not err by denying this claim.

Third, Nunley argued his trial counsel was ineffective for failing to file a motion for new trial. Nunley failed to demonstrate his counsel's performance was deficient or resulting prejudice. Nunley did not support this issue with specific assertions, which was not sufficient to demonstrate he was entitled to relief. *See Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225. Nunley did not identify any bases that a reasonably diligent counsel would have raised when pursuing such a motion or a reasonable probability of a different outcome had counsel pursued a motion for a new trial. Therefore, we conclude the district court did not err by denying this claim.

Next, Nunley argued his appellate counsel was ineffective. 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 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). 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). Both components of the inquiry must be shown, *Strickland*, 466 U.S. at 697.

Nunley argued his appellate counsel was ineffective for failing to raise claims concerning Nunley's assertion that he is a sovereign citizen and he did not consent to be subject to the jurisdiction of Nevada state courts. Nunley failed to demonstrate either deficiency or prejudice for this claim because Nunley's underlying claims did not demonstrate Nevada

courts lacked jurisdiction concerning this matter, *see* Nev. Const. art. 6, § 6; NRS 171.010, and Nunley did not demonstrate a reasonable likelihood of success on appeal had counsel pursued these types of issues. Therefore, we conclude the district court did not err by denying this claim.

Next, Nunley raised multiple arguments concerning the trial-level proceedings. Nunley contended the trial court erred by appointing an attorney from the public defender's office to represent him, erred by denying his request for withdrawal of the public defender's office, erred by denying his claims concerning his alleged status as a sovereign citizen, erred by denying his *pro se* request for a new trial, violated the oath of office by making rulings based upon the Nevada Revised Statutes and the state constitution rather than the U.S. Constitution, improperly entered a not-guilty plea and request for a speedy trial on his behalf, was biased against him, and improperly utilized his fraudulent, corporate entity name. Nunley also asserted the State improperly failed to oppose *pro se* motions he filed during the trial-level proceedings. These claims could have been raised on direct appeal and Nunley did not demonstrate cause for the failure to do so and actual prejudice. *See* NRS 34.810(1)(b). To the extent Nunley asserted the procedural bar did not apply to these claims because the trial court lacked jurisdiction over him, as stated previously, Nunley's claims did not implicate the jurisdiction of the courts. *See* Nev. Const. art. 6, § 6; NRS 171.010. Therefore, we conclude the district court did not err by denying relief.²

²To the extent Nunley asserted the district court judge concluded the postconviction proceedings were biased against him, his claim lacked merit. Nunley's assertions of bias were based upon the district court's adverse

Next, Nunley asserts 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 Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225. The district court concluded Nunley's claims failed to meet that standard and the record before this court reveals the district court's conclusions in this regard were proper.


Next, Nunley argues the district court erred by denying the petition before Nunley replied to the State's opposition. Nunley also appears to assert the district court should have permitted him to amend or supplement his petition to add additional claims. A petitioner may raise claims in his initial petition and, if the district court appoints post-conviction counsel, in a supplement. NRS 34.724(1); NRS 34.750(3). All other pleadings may only be filed if ordered by the district court, NRS 34.750(5), and the district court has "broad authority" regarding the permission to file supplemental postconviction pleadings, *State v. Powell*, 122 Nev. 751, 758, 138 P.3d 453, 458 (2006). Nunley filed a motion requesting additional time to reply to the State's opposition and to amend his petition, but the district court did not grant Nunley's motion. Based on the record before this court, we conclude Nunley failed to demonstrate the district court abused its discretion in this regard.

rulings concerning Nunley's sovereign-citizen claims, but "rulings and actions of a judge during the course of official judicial proceedings do not establish" bias sufficient to disqualify a district court judge. *In re Petition to Recall Dunleavy*, 104 Nev. 784, 789, 769 P.2d 1271, 1275 (1988).

Finally, Nunley argues the district court erred by adopting the State's opposition to his petition in its order denying the petition. Nunley does not identify any legal reason why the district court should not have adopted the arguments contained in the State's opposition. Moreover, Nunley does not demonstrate the adoption of the State's opposition arguments adversely affected the outcome of the proceedings or his ability to seek full appellate review. Therefore, Nunley is not entitled to relief based on this argument.³ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Susan Johnson, District Judge
John Joe Nunley, Jr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³Nunley also argues he filed the petition under the name "John Nunley, Petitioner/Sui Juris," and the district court erred by failing to utilize that name during the postconviction proceedings. We conclude Nunley is not entitled to relief based upon this issue.