


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TRAMELL SHONTA LEWIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74574-COA

FILED

DEC 19 2018

ELIZABETH L. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Tramell Shonta Lewis appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on March 3, 2017.¹ Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

Subject matter jurisdiction

Lewis claimed the district court lacked subject matter jurisdiction to adjudicate his case because the bill creating the Nevada Revised Statutes was not properly enacted into law. He argued the procedural requirements for enacting a bill into law were not followed, justices of the Nevada Supreme Court improperly participated in the legislative process, and the law does not contain an enacting clause. However, even assuming this claim was properly raised in the instant petition, it does not implicate the district court's subject matter jurisdiction

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).

and therefore lacks merit.² See Nev. Const. art. 6, § 6; *United States v. Cotton*, 535 U.S. 625, 630 (2002) (“[T]he term jurisdiction means . . . the court’s statutory or constitutional *power* to adjudicate the case.” (internal quotation marks omitted)). Accordingly, we conclude the district court did not err by rejecting this claim.

Brady claim

Lewis claimed the State violated *Brady v. Maryland*, 373 U.S. 83 (1963), by withholding 42 photographs, the statements and photographs Jasinda Brown gave to the police, and Tiffany Byrd’s diary and the terms of her guilty plea agreement. However, the district court found Lewis’ claim was nothing more than a bare allegation because he failed to demonstrate the evidence was favorable to him, it was intentionally or inadvertently withheld by the State, and prejudice ensued. The record supports the district court’s finding, and we conclude the district court did not err by rejecting this claim. See *Mazzan v. Warden*, 116 Nev. 48, 67, 993 P.2d 25, 37 (2000) (identifying the components of a *Brady* violation); *Hargrove v. State*, 100 Nev. 498, 503, 686 P.3d 222, 225 (1984) (a petitioner is not entitled to postconviction relief if his claims are bare or belied by the record).

Ineffective assistance of counsel

Lewis claimed trial and appellate counsel were ineffective. To establish ineffective assistance of trial counsel, a petitioner must demonstrate counsel’s performance was deficient because it fell below an objective standard of reasonableness, and resulting prejudice in that there

²We note the Statutes of Nevada contain the law with the enacting clauses required by the constitution. The law creating the Nevada Revised Statutes contains an enacting clause and is found in the 1957 Statutes of Nevada, in chapter 2, on page 1.

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 (1984). Similarly, to establish ineffective assistance of appellate counsel, a petitioner must demonstrate counsel's performance was deficient because it fell below an objective standard of reasonableness, and resulting prejudice in that the omitted issue had a reasonable probability of success on appeal. *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). The petitioner must demonstrate both components of the ineffective-assistance inquiry—deficiency and prejudice. *Strickland*, 466 U.S. at 697. We give deference to the district court's factual findings if supported by substantial evidence and not clearly wrong 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).

Lewis claimed trial counsel was ineffective for the following reasons: failing to call and confront witnesses, failing to file pretrial motions, failing to object to inadmissible evidence, failing to inspect the State's evidence against Lewis, failing to seek a continuance, failing to have a second-chair attorney, failing to investigate the case, failing to explain Lewis' rights to Lewis, failing to present a defense, and failing to turn over Lewis' case file. The district court found these claims were nothing more than bare allegations and were insufficient to warrant postconviction relief. The record supports the district court's findings, and we conclude the district court did not err by rejecting these claims. *See Hargrove*, 100 Nev. at 502, 686 P.3d at 225; *see generally Means v. State*, 120 Nev. 1001, 1013, 103 P.3d 25, 33 (2004) (petitioner bears the burden of proving ineffective assistance).

Lewis also claimed trial counsel was ineffective because counsel failed to communicate with Lewis and caused a breakdown in communication. The district court found Lewis failed to demonstrate counsel's performance was deficient because Lewis was not entitled to a particular relationship with counsel and there was no requirement for a specific amount of communication as long as counsel was reasonable in his representation. We conclude Lewis' claim consisted of a bare allegation that was insufficient to warrant postconviction relief and the district court did not err by rejecting this claim. *See Hargrove*, 100 Nev. at 502, 686 P.3d at 225.

Lewis further claimed appellate counsel was ineffective for failing to raise any constitutional grounds for relief on direct appeal and argued appellate counsel should have filed an *Anders* brief.³ The district court found Lewis failed to show that a constitutional issue or an *Anders* brief would have had a reasonable probability of success on appeal. The record supports the district court's finding, and we conclude the district court did not err by rejecting these claims.⁴

Improperly raised claims

Lewis claimed he was deprived of his right to a speedy trial, his right to confront and examine witnesses, and his right to discovery; the jury was improperly instructed; the prosecutor committed misconduct; the forensic laboratory mishandled the DNA evidence; and insufficient evidence

³*See Anders v. California*, 386 U.S. 738 (1967).


⁴To the extent Lewis claimed counsel was ineffective for being unprepared at sentencing, we conclude Lewis failed to demonstrate he was prejudiced by counsel's performance and the district court did not err by rejecting his claim.


supported his convictions. However, Lewis waived these claims by not raising them on direct appeal. See NRS 34.810(1)(b)(2); *Franklin v. State*, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (“[C]laims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be considered waived in subsequent proceedings.”), *overruled on other grounds by Thomas v. State*, 115 Nev. 148, 150, 979 P.2d 222, 223-24 (1999). We note the district court erred by basing its ruling on NRS 34.810(1)(a), which applies only to convictions based on guilty pleas. However, we conclude the district court reached the right result by rejecting these claims. 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).

Cumulative error

Lewis claimed cumulative error deprived him of a fair trial. However, because Lewis failed to demonstrate any error, there was nothing to cumulate.

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


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. William D. Kephart, District Judge
Tramell Shonta Lewis
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk