

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICARDO RANGEL QUINTANILLA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75298-COA

FILED

JAN 17 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Richardo Rangel Quintanilla 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; William D. Kephart, Judge.

Quintanilla argues the district court erred by denying the claims of ineffective assistance of trial counsel raised in his December 5, 2017, petition. 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.

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

First, Quintanilla argued his trial counsel was ineffective for failing to seek funds in order to hire an expert to review the medical evidence and the sexual assault examination of the victim. Quintanilla failed to demonstrate his counsel's performance was deficient or resulting prejudice. Quintanilla did not support this claim with specific facts and did not state what favorable evidence could have been uncovered had a defense expert reviewed the medical evidence in this matter. Accordingly, Quintanilla failed to demonstrate his counsel's performance was deficient. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Quintanilla also failed to demonstrate a reasonable probability of a different outcome at trial had counsel sought to hire a defense medical expert. Therefore, we conclude the district court did not err by denying this claim.

Second, Quintanilla contended the nurse was not qualified to testify as an expert concerning sexual assault examinations and counsel should have objected to the admission of her testimony. In addition, Quintanilla asserted counsel should have argued the admission of the victim's statements to the nurse violated his right to confrontation. Quintanilla failed to demonstrate his counsel's performance was deficient or resulting prejudice. The record reveals the nurse discussed her background, training, and qualifications concerning conducting sexual assault examinations. The nurse further testified she utilized her background, training, and qualifications when conducting the examination of the victim in this matter. A review of the nurse's testimony demonstrates it was admitted in compliance with NRS 50.275, and Quintanilla failed to show objectively reasonable counsel would have asserted this was impermissible expert testimony. *See Higgs v. State*, 126 Nev. 1, 18-19, 222

P.3d 648, 658-59 (2010). As the nurse's testimony was properly admitted at trial, Quintanilla failed to demonstrate a reasonable probability of a different outcome had counsel raised objections to this expert testimony. In addition, Quintanilla failed to demonstrate the nurse's testimony concerning the victim's statements during the sexual assault examination violated his right to confrontation because the victim testified at trial and he had the opportunity to cross-examine her concerning her statements to the nurse. *Cf. Medina v. State*, 122 Nev. 346, 353, 143 P.3d 471, 476 (2006) (stating "the Confrontation Clause bars the use of a testimonial statement made by a witness who is *unavailable* for trial unless the defendant had an opportunity to previously cross-examine the witness regarding the witness's statement" (emphasis added)). Accordingly, Quintanilla did not demonstrate his counsel's performance was unreasonable in this regard or a reasonable probability of a different outcome had counsel objected to the nurse's testimony on these bases. Therefore, we conclude the district court did not err by denying this claim.

Third, Quintanilla argued his trial counsel was ineffective for failing to seek suppression of his statements made to police officers. Quintanilla failed to demonstrate his counsel's performance was deficient or resulting prejudice. Counsel moved the district court to exclude the statements from the trial due to a violation of Quintanilla's *Miranda*² rights, but the district court denied the motion. Given counsel's actions in this regard, Quintanilla failed to demonstrate his counsel's performance fell below an objectively reasonable standard. On direct appeal, the Nevada

²*Miranda v. Arizona*, 384 U.S. 436 (1966).

Supreme Court concluded the district court did not err by admitting Quintanilla's statements into evidence. *Quintanilla v. State*, Docket No. 67669 (Order of Affirmance, September 22, 2016). Accordingly, Quintanilla failed to demonstrate a reasonable probability of a different outcome at trial had counsel raised further objections to admission of his statements. Therefore, we conclude the district court did not err by denying this claim.

Fourth, Quintanilla argued his trial counsel was ineffective for failing to raise a timely objection to admission of prior-bad-act evidence concerning his presence in the victim's bedroom. Quintanilla failed to demonstrate his counsel's performance was deficient or resulting prejudice. Counsel objected to admission of the challenged evidence and Quintanilla did not demonstrate his counsel's performance in this regard fell below an objectively reasonable standard. On direct appeal, the Nevada Supreme Court concluded evidence of Quintanilla's presence in the victim's bedroom did not implicate a prior bad act and the trial court did not abuse its discretion by admitting this evidence at trial. *Id.* Given the Nevada Supreme Court's conclusions on direct appeal, Quintanilla failed to demonstrate a reasonable probability of a different outcome at trial had counsel raised additional objections to admission of this evidence. Therefore, we conclude the district court did not err by denying this claim.

Fifth, Quintanilla argued his trial counsel was ineffective for failing to file a petition for a writ of mandamus challenging the trial court's decision to deny him the opportunity to review the police officers' personnel files. Quintanilla failed to demonstrate his trial counsel's performance was deficient or resulting prejudice. Quintanilla raised the underlying claim on direct appeal and the Nevada Supreme Court concluded the district court

did not err by denying Quintanilla's request for the files as they were irrelevant. *Id.* Because the Nevada Supreme Court affirmed the district court's decision to deny Quintanilla access to the personnel files, Quintanilla failed to demonstrate his counsel's failure to pursue a petition for a writ of mandamus concerning the underlying issue was unreasonable or a reasonable probability of a different outcome had counsel pursued such a petition. Therefore, we conclude the district court did not err by denying this claim.

Sixth, Quintanilla argued his trial counsel was ineffective for failing to challenge the trial court's decision to reject his proposed jury instruction concerning an inadequate police investigation. Quintanilla failed to demonstrate his counsel's performance was deficient or resulting prejudice. Trial counsel proposed the instruction, but the district court declined to utilize the instruction. Given the record in this regard, Quintanilla failed to demonstrate counsel's performance fell below an objectively reasonable standard. In addition, on direct appeal the Nevada Supreme Court concluded the district court did not err by declining to utilize Quintanilla's proposed instruction. *Id.* Because the Nevada Supreme Court affirmed the district court's decision, Quintanilla failed to demonstrate a reasonable probability of a different outcome had trial counsel raised additional arguments concerning the proposed instruction. Therefore, we conclude the district court did not err by denying this claim.³

³Quintanilla also argued his appellate counsel was ineffective for failing to argue on direct appeal that the district court erred by declining to give his proposed instruction. However, the record reveals appellate

Seventh, Quintanilla argued his trial counsel was ineffective for failing to object when the trial court answered the jury's note outside of the presence of Quintanilla's defense attorneys. Quintanilla failed to demonstrate either deficiency or prejudice regarding this issue because the claim was belied by the record. *See Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225. The record demonstrated the trial court consulted with counsel for both the State and Quintanilla prior to answering the jury's note. Therefore, we conclude the district court did not err by denying this claim.

Eighth, Quintanilla argued his trial counsel was ineffective for failing to be present at the sentencing hearing. Quintanilla asserted he did not receive the appropriate amount of presentence credits due to counsel's failure to attend the sentencing hearing. Quintanilla failed to demonstrate either deficiency or prejudice regarding this issue because the claim is belied by the record. *See id.* The record demonstrates Quintanilla's counsel attended the sentencing hearing and made sentencing arguments on Quintanilla's behalf during the hearing. Therefore, we conclude the district court did not err by denying this claim.


Ninth, Quintanilla argued he was entitled to relief due to the cumulative effect of the errors committed by counsel. Quintanilla failed to demonstrate there were multiple deficiencies which could have been cumulated, *see McConnell v State*, 125 Nev. 243, 259 n.17, 212 P.3d 307, 318


counsel raised the underlying claim on direct appeal and, therefore, Quintanilla cannot demonstrate his counsel's performance fell below an objectively reasonable standard in this regard. *See Kirksey v. State*, 112 Nev. 980, 997-98, 923 P.2d 1102, 1114 (1996).

n. 17 (2009), and, therefore, he failed to demonstrate he was entitled to relief.

Finally, Quintanilla argues the district court erred by declining to conduct an evidentiary hearing. To warrant an evidentiary hearing, a petitioner must raise claims that are 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 Quintanilla's claims did not meet that standard and the record before this court reveals the district court's conclusions in this regard were proper.

Having concluded Quintanilla is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.⁴


_____, J.
Tao


_____, J.
Gibbons

⁴Quintanilla also argues the trial court erred by failing to properly administer the oath to the jury venire. However, Quintanilla did not raise this claim before the district court 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 (1996).

The Honorable Michael L. Douglas did not participate in the decision in this matter.

cc: Hon. William D. Kephart, District Judge
Ricardo Rangel Quintanilla
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk