IN THE SUPREME COURT OF THE STATE OF NEVADA

LESLIE J. WARNER,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36884

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a post-conviction petition for a writ of habeas corpus.

After a jury trial in January 1993, appellant Leslie J. Warner was convicted of one count of sexual assault, one count of lewdness with a minor, and two counts of statutory sexual assault. There was no direct appeal. In January 1994, Warner filed a post-conviction petition for writ of habeas corpus. Six years later, in February 2000, Warner obtained new post-conviction counsel. Warner's counsel moved unsuccessfully to amend the habeas petition. After an evidentiary hearing in September 2000, the district court denied the petition. Warner alleges that his trial counsel was ineffective and that the district court abused its discretion in not allowing him to amend his petition.

A petitioner for post-conviction relief must support any claims with specific factual allegations that if true would entitle him to relief.[1]

[1]Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

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The petitioner has the burden of establishing the factual allegations in support of his petition.[2]

Claims of ineffective assistance of counsel are properly presented in a timely, first post-conviction petition for a writ of habeas corpus because such claims are generally not appropriate for review on direct appeal.[3] A claim of ineffective assistance of counsel presents a mixed question of law and fact, subject to independent review.[4] To establish ineffective assistance of counsel, a claimant must show both that counsel's performance was deficient and that the deficient performance prejudiced the defense.[5] To show prejudice, the claimant must show a reasonable probability that but for counsel's errors the result of the trial would have been different.[6]

First, Warner asserts that his trial counsel was ineffective in failing to obtain a psychological examination of the victim. The victim was 17 years old by the time of the trial.

There are two questions here: would Warner have been entitled to a psychological examination of the victim, and has he shown that such an examination might have made any difference? The first question is governed by Koerschner v. State.[7] Under Koerschner, the defendant must prove a compelling need for psychological examination of

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[2]Bejarano v. Warden, 112 Nev. 1466, 1471, 929 P.2d 922, 925 (1996).

[3]See, e.g., Feazell v. State, 111 Nev. 1446, 1449, 906 P.2d 727, 729 (1995).

[4]Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996).

[5]Id. (citing Strickland v. Washington, 466 U.S. 668, 687 (1984)).

[6]Id. at 988, 923 P.2d at 1107.

[7]116 Nev. ___, 13 P.3d 451 (2000).

the alleged child-victim of a sexual assault.[8] Relevant considerations include whether the State employed an expert in psychology or psychiatry, whether the evidence provides little or no corroboration for the victim's testimony, and whether there is a reasonable basis to believe that the victim's mental or emotional state may have affected her veracity.[9] Warner has not shown that he could have proven at trial a compelling need for examination of the victim. There was apparently not a great deal of corroborating evidence; however, the State did not employ a mental health expert, and Warner points to no reasonable basis to believe that the victim's mental or emotional state may have affected her veracity. Moreover, in regard to the second question, Warner cites no evidence as to what a psychological examination of the victim might have revealed. We conclude that he has failed to demonstrate how a psychological examination of the victim might have helped his defense. Warner shows neither deficient performance by his counsel nor prejudice.

Warner next asserts that his trial counsel was ineffective in failing to investigate his case adequately and contact several pertinent witnesses. According to Warner, the State's information listed 52 witnesses, but trial counsel did not interview most of them. Warner discusses only two specifically. He contends that an interview of the ex-husband of the victim's mother would have revealed "that these same allegations arose against him, while married" to the mother. However, Warner's reference to the record provides no support for this contention, nor does he explain how such evidence would establish a reasonable probability of a different result. He also complains that trial counsel never contacted an exchange student from Japan who was a "percipient witness" to facts alleged by the State, but Warner does not show what this witness's

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[8]Id. at ___, 13 P.3d at 455.

[9]Id. at ___, 13 P.3d at 455.

testimony would have been or how it would have helped his defense. We conclude that Warner has not demonstrated that his trial counsel failed to uncover or present any material evidence.

Finally, Warner claims that the district court abused its discretion in not allowing him to amend his habeas petition. He argues that amendment should have been permitted because the original petition "sat fallow" for over six years, numerous areas of investigation were unexplored, and the original petition lacked specificity. This argument itself is unspecific and remains conclusory, and Warner cites no legal authority to support it. "This court has consistently held that it will not consider assignments of error that are not supported by relevant legal authority."[10] Accordingly,

ORDER the judgment of the district court AFFIRMED.

_____, J.
Shearing

_____, J.
Rose

_____, J.
Becker

cc: Hon. Steven P. Elliott, District Judge
Attorney General
Washoe County District Attorney
Belanger & Plimpton
Washoe County Clerk

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[10]Jones v. State, 111 Nev. 848, 855, 899 P.2d 544, 547-48 (1995).