

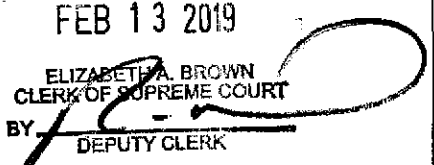
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHRISTIAN DOMINIQUE WILLIAMS,  
A/K/A KRISTIAN DOMINIQUE  
WILLIAMS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 75250-COA

**FILED**

FEB 13 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART AND  
REMANDING*

Christian Dominique Williams appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on November 8, 2017.<sup>1</sup> Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Williams first contends the district court erred by denying his ineffective-assistance-of-trial-counsel claims without first conducting an evidentiary hearing. To demonstrate ineffective assistance, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that there was a reasonable probability of a different outcome absent counsel's errors. *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.

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

To warrant an evidentiary hearing, a petitioner must raise claims supported by specific factual allegations that, if true and not repelled by the record, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). We give deference to the district court's factual findings that are 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).

First, Williams claimed counsel should have investigated and presented the testimony of Demarcus Clemens because he was a percipient witness to the shooting and would have testified Williams shot the victim in self-defense. The district court found that Demarcus Clemens is actually "Marquis Clemens," counsel must have investigated "Marquis Clemens" because he was included on defense witness lists filed before each of Williams' trials (albeit under a different name for the first trial), and counsel thus must have made a tactical decision not to call the witness to testify. The district court's findings are not supported by the record. Williams' first witness list included "Marcus Collins" as a potential witness; trial counsel later admitted this was error and the name should have been "Marquis Clemons." See *Williams v. State*, Docket No. 59779 (Order of Reversal and Remand, May 15, 2013). Nothing in the record before this court indicates that Demarcus Clemens is either "Marquis Clemons" or "Marquis Clemens."<sup>2</sup>

The district court also found that overwhelming evidence supported Williams' conviction such that he could not demonstrate prejudice. In support, the district court cited to excerpts of C. Thomas's trial testimony where he was being refreshed as to his prior statements and

---

<sup>2</sup>Further, mere inclusion of a person's name on a witness list does not necessarily demonstrate counsel has investigated that person.

testimony. Notably, C. Thomas recanted his prior statements and testimony implicating Williams as an aggressor, and accordingly, his testimony did not constitute overwhelming evidence. Because Williams' claims were not belied by the record and, if true, may have resulted in relief, we cannot conclude the district court did not err by denying this claim without first conducting an evidentiary hearing. We therefore remand this matter to the district court to conduct an evidentiary hearing as to this claim. Further, given the complexity of this issue and the possibility that counsel may be necessary to proceed with discovery, we cannot conclude the district court did not abuse its discretion by declining to appoint counsel to assist Williams with this claim.<sup>3</sup> See NRS 34.750. Accordingly, on remand, the district court shall appoint counsel to assist Williams with this claim.

Second, Williams claimed counsel should have presented the testimony of an expert to explain why the evidence showed Williams shot only in self-defense after the victim attempted to draw his weapon. Williams failed to demonstrate deficiency or prejudice. Counsel presented the testimony of a forensic scientist with extensive experience in crime scene reconstruction. He testified that where, as here, the parties to the shooting were in such close quarters, there is no way to tell who drew their weapon first or who fired first. Williams failed to identify any specific information that would lead another expert to a different conclusion. We therefore conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Third, Williams claimed counsel was ineffective for failing to retain and call to testify an expert on local gang actions to explain that many interactions between rival gang members did not result in violence.

---

<sup>3</sup>The district court's finding that Williams had not requested an attorney before the court orally denied the petition is belied by the record.

Williams failed to demonstrate deficiency or prejudice. Several trial witnesses, including the State's gang expert, testified to peaceful interactions between the various gangs. We therefore conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Fourth, Williams claimed counsel falsely assumed he did not have enough time to prepare for trial and told the district court he was unprepared. Further, Williams claimed counsel was unprepared to file motions and argue effectively, "distinguish between prosecution witnesses and attack on cross-examination," challenge or defend against the State's theory of the case, adequately investigate and cross-examine witnesses, and cross-examine the State's ballistics expert as to who fired the first shot. Williams failed to demonstrate or prejudice. In his motion to continue trial, counsel argued only that he would have a hard time to prepare and be ready, and after the motion was denied, counsel did not renew his requests to continue. Further, Williams did not specify what the results of further preparation would have been or how it would have affected the outcome of his trial. We therefore conclude the district court did not err by denying these claims without first conducting an evidentiary hearing.

Fifth, Williams claimed counsel would not allow Williams to testify and counsel failed to establish a defense of self-defense. Williams' claims are belied by the record. The district court found that Williams himself declined the opportunity to testify, counsel put forth a self-defense theory throughout trial, and the jury was instructed accordingly. These findings are supported by the record. We therefore conclude the district court did not err by denying these claims without first conducting an evidentiary hearing.

Williams next contends the district court erred by denying his claim of ineffective assistance of appellate counsel. To demonstrate

ineffective assistance of appellate counsel, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in 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). Both components of the inquiry must be shown. *Strickland*, 466 U.S. at 697.

First, Williams claimed counsel should have federalized his claims on appeal. Williams failed to demonstrate prejudice. He failed to demonstrate the results of his direct appeal would have been different if counsel had federalized the claims. We therefore conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.


Second, Williams claimed counsel should have sought review in the United States Supreme Court after the Nevada Supreme Court affirmed his conviction. Williams failed to demonstrate deficiency or prejudice. Because the grant of a petition for certiorari to the United States Supreme Court is purely discretionary, Williams was not entitled to counsel and was thus not entitled to the effective assistance of counsel. *See Wainwright v. Torna*, 455 U.S. 586, 587-88 (1982); *Brown v. McDaniel*, 130 Nev. 565, 569, 331 P.3d 867, 870 (2014). We therefore conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.


Finally, Williams raises several claims regarding the creation and filing of the order denying his petition. First, his claims that the district court summarily dismissed the petition without an answer by the State and that it gave no guidance to the State regarding the order are belied by the record. The State responded to Williams' petition, and the district court issued a detailed minute order on February 1, 2018, explaining its reasons for denying Williams' petition. Second, the State was required to submit a written order to the district court. *See* EDCR 1.90(a)(4) ("[T]he prevailing

party shall submit a written order to the judge. . . ."). Third, even assuming the district court erred by not allowing Williams to review and respond to the proposed draft, any error was harmless because Williams fails to demonstrate the error adversely affected the outcome of the proceedings or his ability to seek full appellate review. *See* NRS 178.598. We conclude Williams was not entitled to any relief on these claims.

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.<sup>4</sup>

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Michael Villani, District Judge  
Christian Dominique Williams  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

---

<sup>4</sup>The Honorable Michael L. Douglas did not participate in the decision in this matter.