

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DUSTIN WILLIAM ELLIS,  
Appellant,  
vs.  
PERRY RUSSELL, WARDEN, WSCC,  
Respondent.

No. 75704-COA

**FILED**

MAR 14 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Dustin William Ellis appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on February 27, 2018.<sup>1</sup> First Judicial District Court, Carson City; James Todd Russell, Judge.

Ellis claimed the Nevada Department of Corrections erroneously failed to apply statutory credits to his parole eligibility for sentences imposed as a result of his convictions in district court case numbers CR13-1819 and CR14-0145. The district court concluded Ellis' claim regarding CR13-1819 was moot because he had already had a parole hearing in that case and his claim regarding CR14-0145 was not yet ripe because Ellis had not yet begun serving that sentence. The district court's findings are supported by substantial evidence in the record. We therefore conclude the district court did not err by denying Ellis' petition. *See Cote H. v. Eighth Judicial Dist. Court*, 124 Nev. 36, 38 n.1, 175 P.3d 906, 907 n.1 (2008) (holding a case is not ripe for review when the harm alleged is remote

---

<sup>1</sup>This 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).

or hypothetical); *Niergarth v. Warden*, 105 Nev. 26, 29, 768 P.2d 882, 884 (1989) (noting that no statutory authority or case law permits a retroactive grant of parole); *cf. Johnson v. Dir., Nev. Dep't. of Prisons*, 105 Nev. 314, 316, 774 P.2d 1047, 1049 (1989) (holding that questions about computation of an expiration date of a sentence are rendered moot when the sentence is expired). Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>



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



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



\_\_\_\_\_, J.  
Bulla

cc: Hon. James Todd Russell, District Judge  
Dustin William Ellis  
Attorney General/Carson City  
Carson City Clerk

---

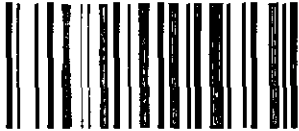
<sup>2</sup>We conclude the district court did not abuse its discretion by declining to appoint postconviction counsel. See NRS 34.750(1); *Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 760-61 (2017).

Docket Number - 75777-COA



75777-COA

Document Year - 2019



2019

Document Number - 11385



11385

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MATTHEW WASHINGTON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 75777-COA

**FILED**

MAR 14 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Matthew Washington appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on December 19, 2017, and supplemental pleading filed on February 25, 2018.<sup>1</sup> Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

Washington claimed trial counsel was ineffective for failing to object to some of the evidence of his contacts with law enforcement that were introduced by the State at his penalty hearing. Washington failed to allege that, but for counsel's allegedly deficient performance, there was a reasonable probability of a different outcome at the sentencing hearing. *See Strickland v. Washington*, 466 U.S. 668, 687-88, 697 (1984) (holding that, to demonstrate a claim of ineffective assistance, a petitioner must show *both* that 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); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting


---


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


the test in *Strickland*). Because he failed to allege prejudice, Washington failed to raise claims supported by specific factual allegations that, if true and not repelled by the record, would entitle him to relief. We therefore conclude the district court did not err by denying this claim. See *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

Washington claims for the first time on appeal that trial counsel was ineffective before and during trial. He also claims trial counsel should have objected to the State's introduction of tattoo evidence at his sentencing hearing. As these claims were not raised below, we decline to consider them on appeal in the first instance. See *McNelson v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Susan Johnson, District Judge  
Matthew Washington  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk