

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SEAN EDWARD COOTS,
Appellant,
vs.
THE STATE OF NEVADA; AND ISIDRO
BACA, WARDEN,
Respondents.

No. 72561-COA

FILED

APR 16 2019

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

ORDER OF AFFIRMANCE

Sean Edward Coots appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on September 4, 2013, and a supplemental petition filed on April 27, 2015. Third Judicial District Court, Lyon County; John Schlegelmilch, Judge.

Correctness of district court order

Coots claims the district court order denying his petition does not comply with NRS 34.830(1) and NRAP 4(b)(5)(B) because it does not contain specific findings of fact and conclusions of law and it was entered more than 20 days after the parties filed their closing-argument briefs. We conclude the district court order contains sufficient findings of fact and conclusions of law for our review and Coots has failed to demonstrate that the order was entered untimely. *See* NRS 34.830(1); NRAP 4(b)(5)(B) (“The district court judge shall enter a written judgment or order resolving any postconviction matter *within 20 days after the district court judge’s oral pronouncement of a final decision* in such a matter.” (emphasis added)). Moreover, even if the order was not timely entered, Coots has failed to show the error was prejudicial. *See* NRS 177.255. Therefore, we reject this claim.

Resolution of original claims

Coots claims the district court erred by sua sponte ruling on the claims he raised in his original habeas petition because the State failed to answer or respond to those claims. Coots also claims the State's failure to respond to any of the claims he raised in his original petition constitutes a confession of error. We conclude the claims raised in Coots' original petition were properly before the district court because the original petition was filed in the district court and Coots has not demonstrated that the State was required to respond to the claims in the original petition. See NRS 34.750(3). Therefore, we reject these claims.

Ineffective assistance of counsel

Coots claims the district court erred by rejecting his ineffective-assistance-of-counsel claims. 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 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). The petitioner must demonstrate both components of the ineffective-assistance inquiry—deficiency and prejudice. *Id.* 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).

Coots asserts the evidence adduced during the district court's evidentiary hearing proves that trial counsel was ineffective, and he presents the following claims for our review.¹

First, Coots claims trial counsel was ineffective for failing to adequately challenge the sufficiency of the search warrant. The district court found that trial counsel clearly and properly challenged the sufficiency of the search warrant with a pretrial suppression motion and argument during the hearing on that motion. The district court's factual finding is supported by the record and is not clearly wrong. We conclude Coots failed to demonstrate he was prejudiced by counsel's performance, and the district court did not err by rejecting this claim.

Second, Coots claims trial counsel was ineffective for failing to call any witnesses during the trial. Coots specifically argued in the court below that counsel was ineffective for failing to call his neighbor, Moises Guzman, and his mother, Moira Coots, as witnesses. The district court found that trial counsel talked with both of these potential witnesses, determined that their testimony would be detrimental to the defense, and made a tactical decision not to call them as witnesses. The district court's factual findings are supported by the record and are not clearly wrong. We conclude Coots failed to demonstrate counsel's performance was deficient, and the district court did not err by rejecting this claim. *See Rhyne v. State*,

¹To the extent Coots claims counsel was ineffective for failing to interview witnesses, present a defense, allow him to testify, convey a plea offer, and appellate counsel was ineffective for failing to raise specific claims on appeal, we decline to consider these claims because they were not plainly raised as grounds for relief in the court below. *See Davis v. State*, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991), *overruled on other grounds by Means v. State*, 120 Nev. 1001, 103 P.3d 25 (2003).

118 Nev. 1, 8, 38 P.3d 163, 167 (2002) (“[T]he trial lawyer alone is entrusted with decisions regarding legal tactics such as deciding what witnesses to call.”); *Lara v. State*, 120 Nev. 177, 180, 87 P.3d 528, 530 (2004) (“[T]rial counsel’s strategic or tactical decisions [are] virtually unchallengeable absent extraordinary circumstances.” (internal quotation marks omitted)).

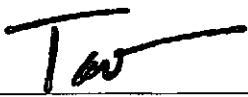
Third, Coots claims trial counsel was ineffective for failing to have the firearms fingerprinted and their serial numbers run. The district court found that trial counsel’s theory of defense was the State could not prove Coots possessed the firearms beyond a reasonable doubt. Counsel believed the State had the burden to examine the firearms and if the State failed to examine the firearms then the issue of possession was open to speculation and could result in an acquittal. Counsel did not pursue having the firearms fingerprinted or their serial numbers run because he was unsure of the results. And counsel’s decision not to further examine the firearms was a strategic decision. The district court’s factual findings are supported by the record and are not clearly wrong. We conclude Coots failed to demonstrate counsel’s performance was deficient, and the district court did not err by rejecting this claim. *See Lara*, 120 Nev. at 180, 87 P.3d at 530.

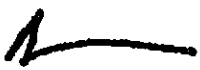
Fourth, Coots claims trial counsel was ineffective for failing to request a continuance of the sentencing hearing after receiving judgments of conviction he had never seen before. The district court found that counsel and Coots had discussed Coots’ criminal history extensively. Counsel did not request a continuance because he did not want to give the State more time to get the right documents and opted instead to move forward with the sentencing, challenge the constitutionality of the prior judgments on constitutional grounds, and hope that the district court would reject them

on those grounds. There was no evidence that the prior judgments were unconstitutional, and Coots failed to show how he was prejudiced by their admission or how a continuance would have resulted in a different outcome. The district court's factual findings are supported by the record and are not clearly wrong. We conclude Coots failed to demonstrate counsel was ineffective, and the district court did not err by rejecting this claim.

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


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. John Schlegelmilch, District Judge
Belanger & Plimpton
Attorney General/Carson City
Lyon County District Attorney
Third District Court Clerk