

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT WAYNE CRAMPTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68918

FILED

MAY 17 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

Appellant Robert Crampton argues the district court erred in denying his July 22, 2015, supplemental petition without holding an evidentiary hearing. 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 that, 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, and the petitioner must demonstrate the underlying facts by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). We give deference to the district court's factual findings if supported by substantial evidence and not clearly erroneous but review the court's application of the law to those facts de novo. *Lader v.*

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Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005). To warrant an evidentiary hearing, a petitioner must raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Crampton claims counsel was ineffective for failing to provide Dr. Paglini with his medical records so Dr. Paglini could make a fully informed and more forceful recommendation for probation in his report. Crampton fails to demonstrate he was prejudiced by counsel's failure to provide these records. Crampton fails to demonstrate a reasonable probability of a different outcome had the records been provided because Dr. Paglini's report contained information regarding Crampton's medical issues and his Ambien use prior to the incident. Further, the district court considered the information in Dr. Paglini's report but concluded the fact Crampton shot at police officers was a serious issue and probation was not an option. Therefore, the district court did not err in denying this claim without holding an evidentiary hearing.

Second, Crampton claims counsel was ineffective for failing to investigate his medical history in order to present mitigation evidence at sentencing. Crampton fails to demonstrate counsel's performance was deficient or resulting prejudice. Counsel clearly knew about Crampton's medical history and presented it to the district court through Dr. Paglini and counsel's argument in support of probation. Crampton fails to demonstrate additional investigation would have resulted in a reasonable probability of a different outcome at sentencing. Therefore, the district

court did not err in denying this claim without holding an evidentiary hearing.

Third, Crampton claims counsel was ineffective for failing to investigate alternative sentencing options. Crampton claims counsel should have researched whether he should have been allowed to participate in an alternative sentencing program based on the fact this was Crampton's first offense and he was a veteran. Crampton fails to demonstrate counsel's performance was deficient or resulting prejudice. Crampton did not qualify for drug court because his crime was a crime against a person that was punishable as a felony. *See* NRS 453.580; NRS 458.300(1)(a). Crampton also would not have qualified for a program for treatment of mental illness or veterans and military because his crimes involved the use of force and Crampton fails to demonstrate the State would have stipulated to treatment given the fact the State opposed probation and requested a prison term in this case.¹ *See* NRS 176A.260(2); NRS 176A.290(2). Therefore, Crampton fails to demonstrate counsel was deficient for failing to pursue these alternative sentencing options or a reasonable probability of a different outcome at sentencing had counsel


¹To the extent Crampton argues he lacked intent to harm anyone, and therefore, would have qualified for a program for treatment of veterans and military, *see* NRS 176A.290(2), Crampton made this argument for the first time in his reply brief. This court will not consider arguments raised for the first time in a party's reply brief. *LaChance v. State*, 130 Nev. ___, ___ n.7, 321 P.3d 919, 929 n.7 (2014). We note intent is only one factor to consider when determining whether the crime involved the use or threatened use of force. NRS 176A.290(2). In this case, Crampton shot at officers after being given several warnings to put down his firearm. His intent to harm the police officers can be inferred from those actions.

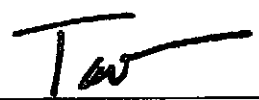
pursued these options. Accordingly, the district court did not err in denying this claim without holding an evidentiary hearing.

To the extent Crampton claims the district court erred in denying his claims that his guilty plea was not voluntarily entered into and that counsel was ineffective for failing to interview witnesses to determine inconsistencies in their accounts, Crampton fails to support these claims with cogent argument and merely cites to his supplemental petition below. This was improper and we decline to consider these claims on appeal. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987); NRAP 28(e)(2) (prohibiting incorporation by reference).

Having concluded the district court did not err in denying the petition without holding an evidentiary hearing, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Douglas Smith, District Judge
Matthew D. Carling
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk