

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NATHAN MYPHRON WILLIAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71093

FILED

APR 19 2017

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

ORDER OF AFFIRMANCE

Appellant Nathan Williams appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on April 28, 2016.¹ Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

First, Williams claims the district court erred by denying his claim pre-*Faretta*² counsel was ineffective. Williams claimed his pre-*Faretta* counsel was ineffective for failing to discover evidence regarding the victim's prior false allegation and for failing to communicate with Williams. Williams failed to demonstrate counsel was deficient or resulting prejudice. *Strickland v. Washington*, 466 U.S. 668, 687-88

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

²*Faretta v. California*, 422 U.S. 806 (1975).

(1984); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*).

Williams failed to demonstrate counsel failed to discover evidence regarding the victim's prior false allegation. Williams had the written statements taken by the police and the 911 call from the incident. The record indicates no police report was created and Williams failed to demonstrate a portion of the 911 call was withheld from him. Further, he failed to demonstrate the alleged missing portion of the 911 call contained exculpatory or impeachment evidence. Finally, Williams failed to demonstrate counsel failed to communicate with him or that had counsel communicated further, the result of the proceedings would have been different because Williams ultimately represented himself at trial. Therefore, the district court did not err by denying these claims.

Second, Williams claims the district court erred by denying his claim that standby counsel was ineffective. Because Williams was not entitled to the appointment of standby counsel, *see Harris v. State*, 113 Nev. 799, 804, 942 P.2d 151, 155 (1997), he was not entitled to the effective assistance of standby counsel, *McConnell v. State*, 125 Nev. 243, 252-53, 212 P.3d 307, 314 (2009); *see also McKague v. Warden*, 112 Nev. 159, 164-65, 912 P.2d 255, 258 (1996) (holding a postconviction petitioner who has no constitutional or statutory right to the appointment of counsel has no right to the effective assistance of post-conviction counsel). Therefore, the district court did not err in denying this claim.

Next, Williams claims the district court erred by denying his claims he received ineffective assistance of appellate counsel. To prove ineffective assistance of appellate counsel, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such 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). Appellate counsel is not required to raise every non-frivolous issue on appeal. *Jones v. Barnes*, 463 U.S. 745, 751 (1983). Rather, appellate counsel will be most effective when every conceivable issue is not raised on appeal. *Ford v. State*, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989). Both components of the inquiry must be shown, *Strickland*, 466 U.S. at 697. We give deference to the 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. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

First, Williams claimed appellate counsel should have argued the prosecutor committed misconduct by withholding evidence. Specifically, he claimed the State withheld a police report and a portion of a 911 call from a previous incident involving the victim. Williams failed to demonstrate appellate counsel was deficient or resulting prejudice because he failed to demonstrate his claims of prosecutorial misconduct would have a reasonable likelihood of success on appeal. Williams failed to demonstrate the State withheld evidence or the evidence was material.

See Mazzan v. Warden, 116 Nev. 48, 66, 993 P.2d 25, 36 (2000) (setting forth the components to prove a *Brady v. Maryland*, 373 U.S. 83 (1963), violation).

Second, Williams also claimed appellate counsel should have argued the district court demonstrated judicial bias because the judge admonished him several times during his cross-examination of witnesses and stated it did not “care about the Nevada Supreme Court.” Williams failed to demonstrate the district court was biased against Williams, and therefore he failed to demonstrate appellate counsel was ineffective.


[R]ulings and actions of a judge during the course of official judicial proceedings do not establish legally cognizable grounds for disqualification.” *See In re Petition to Recall Dunleavy*, 104 Nev. 784, 789-90, 769 P.2d 1271, 1275 (1988). The district court admonished Williams several times during his cross-examination because he repeatedly ignored the order of the court to refrain from asking about certain issues pertaining to the victim’s HIV status and a sexual assault. These admonishments were within the actions of a judge made during the course of official judicial proceedings.


As to Williams’ claim regarding the district court’s statement about the Nevada Supreme Court, Williams failed to demonstrate this statement was made or how this alleged statement demonstrated bias. The district court did not state it did not care about the Nevada Supreme Court. Instead, the district judge stated she followed the Nevada Supreme Court, she followed the law, but did not make decisions based upon what

she “think[s] the Nevada Supreme Court’s going to do.” Therefore, we conclude, the district court did not err in denying these claims.

Having considered Williams’ claims and concluded he is not entitled to relief, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

³To the extent Williams also claimed appellate counsel was ineffective for failing to argue prosecutorial misconduct because the State “convinced” pre-*Faretta* counsel to try to force Williams to enter a guilty plea and judicial bias because the district court did not know what day trial would start and knew the district attorney paid witnesses to show up at trial, these claims were not raised below and we decline to consider them in the first place. 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 (2004).

cc: Hon. Michelle Leavitt, District Judge
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Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk