IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTHONY K. ANDERSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69858

FILED

AUG 16 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
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.[1] Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

Appellant Anthony K. Anderson argues the district court erred in denying his claims of ineffective assistance of counsel raised in his December 7, 2015, petition. To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate that his 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, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Kirksey v.*

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

State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 697 (1984). To warrant an evidentiary hearing, a petitioner must raise claims that are 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, Anderson argues his counsel was ineffective for permitting him to be sentenced to count two. Count two involved allegations from minor victims CP and KS, and Anderson asserts that the State agreed to dismiss all charges involving those victims. Anderson failed to demonstrate counsel's performance was deficient or resulting prejudice.

In the guilty plea agreement, which Anderson acknowledged having read and understood, the State agreed to dismiss separate criminal matters involving those minor victims in exchange for Anderson's guilty plea in this matter. As explained in the guilty plea agreement, count two in this matter involved an allegation of child abuse and neglect with substantial mental injury involving CP and KS. Given the terms of the plea agreement to which Anderson agreed, he failed to demonstrate it was objectively unreasonable for counsel to decline to argue that the dismissal of the separate criminal matters meant that Anderson also could not be sentenced for count two in this matter. Given Anderson's decision to plead guilty to count two, he failed to demonstrate a reasonable probability of a different outcome had counsel argued the district court should decline to

impose sentence for count two. Therefore, the district court did not err in denying this claim without conducting an evidentiary hearing.

Second, Anderson appears to argue that his counsel was ineffective for not having knowledge of the law and for failing to conduct research or adequately prepare for this case. Anderson failed to demonstrate either deficiency or prejudice for this claim. Anderson makes only a bare and unsupported allegation regarding his counsel's conduct in this matter. A bare claim, such as this one, is insufficient to demonstrate a petitioner is entitled to relief. *See Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225. Therefore, the district court did not err in denying this claim without conducting an evidentiary hearing.

Next, Anderson argues his appellate counsel was ineffective. 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*, 112 Nev. at 998, 923 P.2d at 1114. Both components of the inquiry must be shown, *Strickland*, 466 U.S. at 697. 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).

First, Anderson appears to argue that his appellate counsel was ineffective for failing to assert on direct appeal Anderson's guilty plea was invalid because Anderson did not understand he was subject to

punishment for allegations made by the victims CP and KS. Anderson failed to demonstrate his appellate counsel's performance was deficient or resulting prejudice.

Generally, a criminal defendant may not challenge the validity of a guilty plea on direct appeal, but must raise a challenge to the validity of a plea in the district court in the first instance. *See Harris v. State*, 130 Nev. ___, ___, 329 P.3d 619, 628 (2014); *O'Guinn v. State*, 118 Nev. 849, 851-52, 59 P.3d 488, 489-90 (2002). This issue was not raised in Anderson's presentence motion to withdraw his guilty plea, and therefore, he could not have properly raised this issue on direct appeal. Accordingly, Anderson did not demonstrate objectively reasonable appellate counsel would have raised this issue on direct appeal. Anderson also fails to demonstrate a reasonable probability of a different outcome had counsel raised this issue on direct appeal. Therefore, the district court did not err in denying this claim without considering it at an evidentiary hearing.

Second, Anderson appears to argue that his appellate counsel was ineffective for not having knowledge of the law, and for failing to conduct research or adequately prepare for this case. Anderson failed to demonstrate either deficiency or prejudice for this claim. Anderson makes only a bare and unsupported allegation regarding his counsel's conduct in this matter. A bare claim, such as this one, is insufficient to demonstrate a petitioner is entitled to relief. *See Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225. Therefore, the district court did not err in denying this claim without conducting an evidentiary hearing.

Next, Anderson appears to argue that the district court erred in imposing a sentence greater than that recommended in the presentence investigation report and the district court should have suppressed evidence improperly obtained by child protective services. These claims were not based on an allegation that Anderson's plea was involuntarily or unknowingly entered or that his plea was entered without the effective assistance of counsel, and therefore, were not permissible in a postconviction petition for a writ of habeas corpus stemming from a guilty plea. *See* NRS 34.810(1)(a). Therefore, the district court did not err in denying relief for these claims.

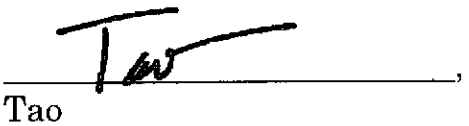
Next, Anderson argues he was entitled to an additional 432 days of presentence credit. However, the Nevada Supreme Court has already reviewed and rejected this claim. *Anderson v. State*, Docket No. 61371 (Order of Affirmance, April 9, 2013). The doctrine of the law of the case prevents further litigation of this issue and "cannot be avoided by a more detailed and precisely focused argument." *See Hall v. State*, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975).

Finally, Anderson appears to argue district court erred in declining to appoint postconviction counsel to represent him in this matter. The appointment of postconviction counsel was discretionary in this matter. *See* NRS 34.750(1). After a review of the record, we conclude the district court did not abuse its discretion in this regard as this matter

was not sufficiently complex so as to warrant the appointment of postconviction counsel. Accordingly, we

ORDER the judgment of the district court AFFIRMED.[2]


Gibbons, C.J.


Tao, J.


Silver, J.

cc: Hon. Kathleen E. Delaney, District Judge
Anthony K. Anderson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

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[2]We note the district court denied a number of Anderson's claims as procedurally barred pursuant to NRS 34.810(2). However, this petition was not a second or successive petition because it was filed after a direct appeal pursuant to NRAP 4(c). *See* NRAP 4(c)(5). Therefore, the procedural bar from NRS 34.810(2) was not applicable to this petition. *See id.* Nevertheless, the district court properly denied relief to Anderson, and we therefore affirm. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) ("If a judgment or order of a trial court reaches the right result, although it is based on an incorrect ground, the judgment or order will be affirmed on appeal.").