

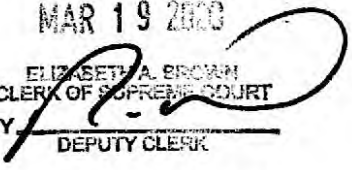
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DONTE WOODS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76841-COA

FILED

MAR 19 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING*

Donte Woods appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on April 25, 2018. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge. *Ineffective Assistance of Trial Counsel Claims*

Woods claims the district court erred by denying his ineffective-assistance-of-trial-counsel claims. Woods also claims the district court erred by not conducting 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, 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. 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).

Pretrial Claims

Woods claimed counsel was ineffective for failing to challenge the "fatally flawed" information. Woods claimed the information was flawed because there is no specific statute addressing attempted murder, attempted burglary, or attempted home invasion; there is no such crime as conspiracy to commit attempted murder, attempted burglary or attempted home invasion; the complaint used ambiguous language and alleged different theories; and he was not charged with a conspiracy but a conspiracy was alleged.

First, NRS 193.330(1) is the attempt statute and defines an attempt to commit a crime as "[a]n act [that] is done with the intent to commit a crime, and tend[s] but fail[s] to accomplish it." Therefore, NRS 193.330(1) modifies NRS 200.030(1) (murder), NRS 205.060(1) (burglary), and NRS 205.067(1) (home invasion) and makes an attempt to commit one of those crimes also a crime. Accordingly, Woods was properly charged with attempted murder, attempted burglary while in possession of a firearm, and attempted home invasion with the use of a deadly weapon, and any

objection by counsel would have been futile. *See Donovan v. State*, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978). Thus, the district court did not err by denying this claim without first conducting an evidentiary hearing.

Second, Woods was not charged with conspiracy. Therefore, his argument that it was not a crime does not avail this court. Further, conspiracy to commit a crime is a theory under which a person may be alleged to have committed a crime, *see Bolden v. State*, 121 Nev. 908, 915, 124 P.3d 191, 196 (2005) (recognizing co-conspirator liability as a theory of criminal liability), *receded from on other grounds by Cortinas v. State*, 124 Nev. 1013, 1016, 195 P.3d 315, 317 (2008), and Woods has not demonstrated it was error for the State to allege the theory of co-conspirator liability. Accordingly, any objection by counsel would have been futile. *See Donovan*, 94 Nev. at 675, 584 P.2d at 711. Thus, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Third, under NRS 173.075(2), the State may allege, in a single count, that the defendant committed an offense “by one or more specified means.” Therefore, counsel was not deficient for failing to object to the allegation of different theories in each count of the information. Further, counsel was not deficient for failing to object to the information on the basis that it did not specifically name one of Woods’ codefendants. Woods was aware of who his codefendants were and had counsel objected, he would not have received any relief because “[t]he court may permit an indictment or information to be amended at any time before verdict or finding if no additional or different offense is charged and if substantial rights of the

defendant are not prejudiced.” NRS 173.095(1); *Viray v. State*, 121 Nev. 159, 162, 111 P.3d 1079, 1081 (2005). Therefore, the district court did not err by denying this claim without first conducting an evidentiary hearing.

Fourth, “it is not necessary to plead a conspiracy in the charging document if the evidence actually shows its existence.” *Walker v. State*, 116 Nev. 670, 673, 6 P.3d 477, 479 (2000). Therefore, any objection by counsel would have been futile. *See Donovan*, 94 Nev. at 675, 584 P.2d at 711. Accordingly, the district court did not err by denying this claim without first conducting an evidentiary hearing.

Next, Woods claimed counsel was ineffective for failing to argue the attempted murder charge and the battery charge were redundant and violated double jeopardy. He also claimed the attempted burglary and the attempted home invasion charges were redundant and violated double jeopardy.

“The Double Jeopardy Clause protects against three abuses: (1) a second prosecution for the same offense after acquittal, (2) a second prosecution for the same offense after conviction, and (3) multiple punishments for the same offense.” *Jackson v. State*, 128 Nev. 598, 604, 291 P.3d 1274, 1278 (2012). “To determine whether two statutes penalize the ‘same offence,’” this court “inquires whether each offense contains an element not contained in the other; if not they are the ‘same offence’ and double jeopardy bars additional punishment and successive prosecution.” *Id.* (quotation marks omitted).

In *Jackson*, the Nevada Supreme Court determined that attempted murder and battery are not redundant and do not violate the

Double Jeopardy Clause. *See id.* at 607, 291 P.3d at 1280. Therefore, counsel was not deficient for failing to make this argument and Woods cannot demonstrate a reasonable probability of a different outcome at trial had counsel made this argument.

Further, the Nevada Supreme Court determined that home invasion and burglary are not redundant and do not violate the Double Jeopardy Clause. *See Servin v. State*, 117 Nev. 775, 788-89, 32 P.3d 1277, 1287 (2001). Accordingly, counsel was not deficient for failing to make this argument and Woods cannot demonstrate a reasonable probability of a different outcome at trial had counsel made this argument. Thus, we conclude the district court did not err by denying Woods' double jeopardy claim without first conducting an evidentiary hearing.

Woods also claimed counsel was ineffective for failing to challenge the subject matter jurisdiction of the district court because Woods is a "sovereign citizen" and the Nevada Revised Statutes were not properly enacted. Woods failed to demonstrate his self-declared status as a "sovereign citizen" divested the district court of jurisdiction. Nev. Const. art. 6, § 6; NRS 171.010. Further, Woods failed to demonstrate that the Nevada Revised Statutes were not properly enacted. The Statutes of Nevada contain the laws with the enacting clauses required by the constitution. The Nevada Revised Statutes simply reproduce those laws as classified, codified, and annotated by the Legislative Counsel. *See* NRS 220.120. Further, the Nevada Revised Statutes include citations to the Statutes of Nevada at the bottom of each statute. Therefore, Woods failed to demonstrate counsel was deficient for failing to challenge the jurisdiction

of the district court on these bases or a reasonable probability of a different outcome at trial had counsel challenged the jurisdiction of the district court. Accordingly, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Trial Claims

Woods claimed counsel was ineffective for failing to object to a “tainted” photo that was used at trial. He claimed counsel should have objected to the use of a Facebook photo where one person was cropped out of the photo. While the State introduced the photo, the photo was used by Woods’ counsel as part of counsel’s strategy to show the photo lineup done by the police was tainted. Specifically, Woods’ counsel used this photo to demonstrate to the jury that the victim saw pictures of Woods prior to doing a photo lineup with the police. Accordingly, counsel was not deficient for failing to challenge the admissibility of the photo because it was a tactical decision to use the photo, and “tactical decisions are virtually unchallengeable absent extraordinary circumstances.” *See Ford v. State*, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989). Therefore, the district court did not err by denying this claim without first conducting an evidentiary hearing.

Woods also claimed counsel was ineffective for failing to share discovery with him. Specifically, Woods claimed counsel should have shared the victim’s criminal background and the witnesses’ voluntary

statements.¹ Woods failed to allege a reasonable probability of a different outcome at trial had counsel provided him with these documents prior to trial. Therefore, he failed to demonstrate he was prejudiced, and we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Woods next claimed counsel was ineffective for failing to ensure a detective and the doctors who treated the victim were called at trial. He claimed it was the detective, and not the victim, who actually wrote that the victim was 100 percent sure of the identification of Woods. He also claimed the doctors could testify regarding the trajectory of the bullets that hit the victim. Counsel cross-examined the victim regarding whether he wrote the information on the photo identification. Counsel also cross-examined another officer who was there at the time. Woods failed to demonstrate calling the detective would have resulted in a reasonable probability of a different outcome at trial. As to the doctors, Woods failed to demonstrate counsel was deficient for failing to call them. Woods failed to demonstrate the trajectory of bullets is something within the expertise of a medical

¹To the extent Woods claimed there was a *Brady v. Maryland*, 373 U.S. 83 (1963), violation because the State withheld these documents from the defense, this claim lacked merit. Counsel used these documents at trial; therefore, Woods failed to demonstrate these documents were withheld. See *Mazzan v. Warden*, 116 Nev. 48, 67, 993 P.2d 25, 37 (2000) (A *Brady* violation occurs when “the evidence at issue is favorable to the accused; the evidence was withheld by the state, either intentionally or inadvertently; and prejudice ensued.”).

doctor. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Woods next claimed counsel was ineffective for failing to prepare for cross-examination because counsel did not point out that witnesses were lying or emphasize discrepancies in the evidence. Counsel cross-examined the witnesses at length at trial using their prior statements and pointing out the discrepancies in the evidence. Woods failed to demonstrate how counsel could have cross-examined these witnesses more thoroughly or how a more thorough cross-examination would have resulted in a reasonable probability of a different outcome at trial. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Woods also claimed counsel was ineffective for failing to challenge the State's version of events. This claim lacks merit. Counsel challenged the State's version of events at trial; therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Woods next claimed counsel was ineffective for failing to present an alibi defense. Specifically, Woods claimed he was at his grandmother's home preparing for a funeral the night of the shooting. In response to his petition, the State argued Woods failed to support his claim with specific facts that, if true, would entitle him to relief because he did not allege specific facts regarding his alibi. Reviewing the record, we conclude the State's argument lacked merit because Woods provided

affidavits in support of his alibi claim that specified what his proposed alibi defense was.

On appeal, the State argues that Woods failed to allege he actually informed counsel he had a potential alibi defense. This is a new argument that was not raised below and this court may decline to consider it. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999). Further, while Woods did not specifically state he told counsel about the alibi defense, he did allege that counsel failed to investigate it and present it at trial. It can be inferred from those statements that Woods actually informed counsel of the alibi defense. Woods supported his claim with specific facts that, if true, and not belied by the record, would entitle him to relief. Therefore, we conclude the district court erred by denying this claim without first conducting an evidentiary hearing. Accordingly, we reverse the district court's denial of this claim and remand this claim to the district court to hold an evidentiary hearing.

Woods also claimed counsel was ineffective based on a conflict of interest. Woods claimed there was a conflict because counsel chose a different defense at trial than Woods wanted presented. Woods failed to demonstrate an actual conflict of interest. *See Cuyler v. Sullivan*, 446 U.S. 335, 348 (1980). Woods failed to demonstrate counsel was placed in a situation conducive to divided loyalties, *Clark v. State*, 108 Nev. 324, 326, 831 P.2d 1374, 1376 (1992), or that his counsel actively represented conflicting interests, *Burger v. Kemp*, 483 U.S. 776, 783 (1987). Counsel is entrusted with making decisions regarding trial tactics, including what defenses to present. *Rhyne v. State*, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002)

“Once counsel is appointed, the day-to-day conduct of the defense rests with the attorney. He, not the client, has the immediate—and ultimate—responsibility of deciding if and when to object, which witnesses, if any to call, and what defenses to develop.” (quoting *Wainwright v. Sykes*, 433 U.S. 72, 93 (1977))). Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Jury Instructions

Woods claimed counsel was ineffective for failing to proffer any jury instructions. Woods claimed counsel should have proffered an instruction on identity, a missing witness instruction, and a mere presence instruction. This was a bare claim made by Woods as he failed to allege what instructions on identity, missing witness, or mere presence should have been given. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Woods also claimed counsel was ineffective for failing to challenge several jury instructions. First, he claimed counsel should have objected to the jury instructions regarding conspiracy because he was not charged with conspiracy. As stated previously, the State may present conspiracy as a theory of criminal liability even if the person is not charged separately with conspiracy. Here, it was alleged that one of the means of which these crimes were carried out was pursuant to a conspiracy. Therefore, it was not error to instruct the jury regarding conspiracies and counsel was not deficient for failing to make futile objections. *See Donovan*, 94 Nev. at 675, 584 P.2d at 711. Therefore, we conclude the district court

did not err by denying this claim without first conducting an evidentiary hearing.

Second, Woods claimed counsel should have objected to jury instruction 10 because the instruction included vicarious liability, which is not allowed when instructing on a specific intent crime. This claim lacks merit. Instruction 10 does not contain a reference to vicarious liability. Because the jury was properly instructed, counsel was not deficient for failing to make futile objections. *See id.* 94 Nev. at 675, 584 P.2d at 711. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Third, Woods claimed counsel should have objected to jury instruction 10 because it stated, “where two or more persons accused of committing a crime together, their guilt may be established without proof that each personally did every act constituting the offense charged.” Woods claimed jury instruction 10 was also flawed because it says “whether present or not.” Woods claimed these portions of the instruction negated the specific intent element of the attempted murder charge.

After reviewing the jury instruction, we conclude Woods’ claim lacked merit because the instruction is clear that each person aiding or abetting must have the intent to commit the crime. Because the jury was properly instructed, counsel was not deficient for failing to make futile objections. *See id.* 94 Nev. at 675, 584 P.2d at 711. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Fourth, Woods claimed counsel should have objected to jury instruction 11 because it informed the jury that a burglary requires entry. He claimed this confused the jury because he was charged with attempted burglary and there was no entry into the apartment. Instruction 11 stated, "A defendant cannot be criminally responsible under an aiding or abetting theory of burglary for acts committed by an accomplice unless that defendant also had the specific intent to commit assault and/or battery and/or murder when entry was made." This was a correct statement of the law; therefore, counsel was not deficient for failing to object to this instruction. *See id.* 94 Nev. at 675, 584 P.2d at 711. Accordingly, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Fifth, Woods claimed counsel should have objected to jury instruction 16 because it is the same jury instruction disapproved of in *Bolden*, 121 Nev. at 915-16, 922, 124 P.3d at 196, 200-01. While instruction 16 does mirror the language in *Bolden*, instruction 15 informs the jury that "a defendant cannot be liable under a conspiracy theory of liability for acts committed by a co-conspirator unless the defendant also had the intent necessary for the particular crime." Therefore, the jury was correctly instructed that Woods had to have the specific intent to commit the crime, even if it was actually committed by a co-conspirator. Because the jury was properly instructed, counsel was not deficient for failing to make futile objections. *See Donovan*, 94 Nev. at 675, 584 P.2d at 711. Therefore, we

conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.²

Sixth, Woods claimed counsel should have objected to jury instruction 22 because of the use of the language “a heart fatally bent on mischief.” Woods claimed the use of this language had undue influence on the jury because it may have encouraged the jury to apply a subjective rather than an objective standard or to decide that Woods has a despicable character. The Nevada Supreme Court has approved the use of “heart fatally bent on mischief.” *See Guy v. State*, 108 Nev. 770, 776-77, 839 P.2d 578, 582-83 (1992) (finding that an instruction using the “heart fatally bent on mischief” did “not necessarily import ill will toward the victim, but signific[d] general malignant recklessness of others’ lives and safety or disregard of social duty”). Further, Woods’ claim that these words would cause the jury to be confused and apply a subjective standard is merely speculative. *See Leonard v. State*, 117 Nev. 53, 79, 17 P.3d 397, 413 (2001). Because the jury was properly instructed, counsel was not deficient for failing to make futile objections. *See Donovan*, 94 Nev. at 675, 584 P.2d at 711. Accordingly, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Seventh, Woods claimed counsel should have objected to jury instruction 23 because of the use of “abandoned and malignant heart.”

²We note Woods was also charged with general intent crimes, and the Nevada Supreme Court stated in *Bolden* that the natural and probable consequences language for general intent crimes was not necessarily problematic for such crimes. *Bolden*, 121 Nev. at 923, 124 P.3d at 201.

Woods claimed this would cause the jury to believe that he had a conscious disregard for life. On appeal, Woods provided this court with a recent unpublished order from the Nevada Supreme Court that reversed a conviction for attempted murder based on the jury being instructed regarding implied malice. *See Banks v. State*, Docket No. 75106, 2019 WL4791704 (September 27, 2019) (unpublished disposition). After reviewing the record below, the case provided by Woods, and the State's response, we conclude it was error to give this instruction at Woods' trial. *See Keys v. State*, 104 Nev. 736, 740, 766 P.2d 270, 272 (1988). Therefore, counsel was deficient for failing to object to this jury instruction. However, Woods failed to demonstrate a reasonable probability of a different outcome at trial. The jury was correctly informed regarding express malice and the State limited its argument at trial to express malice. Therefore, the error in instructing the jury was harmless. *See Crawford v. State*, 121 Nev. 744, 756, 121 P.3d 582, 590 (2005) (providing that an error is harmless if the reviewing court is "convinced beyond a reasonable doubt that the jury's verdict was not attributable to the error and that the error was harmless under the facts and circumstances of this case"). Accordingly, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Eighth, Woods claimed counsel should have objected to jury instruction 27 because it allows for constructive possession of a deadly weapon. Woods believes constructive possession did not demonstrate he had the specific intent to commit a crime. The jury was correctly instructed on constructive possession of a deadly weapon. *See Brooks v. State*, 124 Nev.

203, 210, 180 P.3d 657, 661 (2008). And Woods failed to demonstrate the instruction negated the specific intent where the instruction informed the jury that the unarmed offender must be liable for the underlying offense and have knowledge of the use of the deadly weapon. Because the jury was properly instructed, counsel was not deficient for failing to make futile objections. *See Donovan*, 94 Nev. at 675, 584 P.2d at 711. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Ninth, Woods claimed counsel should have objected to jury instructions 29, 30, 31, 32, and 33, which dealt with burglary and home invasion. Specifically, he claimed the instructions were improper because the charges are redundant. Further, he claimed the instructions misinstructed the jury that he had to enter the dwelling where there was no entry in this case. As stated previously, the charges are not redundant. Further, these instructions were correct statements of the law and properly instructed the jury on the elements for each offense. *See* NRS 205.060(1); NRS 205.067(1). Because the jury was properly instructed, counsel was not deficient for failing to make futile objections. *See Donovan*, 94 Nev. at 675, 584 P.2d at 711. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Tenth, Woods claimed counsel should have objected to jury instruction 36. Woods argued this instruction did not belong in this case because he was not charged with murder. Instruction 36 reads "In the State of Nevada, the crime of murder is a felony." Even assuming without deciding that it was improper to give this instruction, Woods failed to

demonstrate a reasonable probability of a different outcome at trial had counsel objected to this instruction. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Post Trial

Woods claimed counsel was ineffective for failing to correct errors in his presentence investigation report. Specifically, he claimed the report misrepresented how many times he had been convicted of a crime. This was a bare claim because Woods failed to provide specific facts demonstrating the report misrepresented how many times he had been convicted of a crime. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Ineffective Assistance of Appellate Counsel Claims

Woods claims the district court erred by denying his ineffective-assistance-of-appellate-counsel claims. 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, 1113-14 (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*, 105 Nev. at 853, 784

P.2d at 953. 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*, 121 Nev. at 686, 120 P.3d at 1166.

First, Woods claimed counsel was ineffective for missing two deadlines for filing the opening brief. He claimed this caused his appeal to not be heard. This claim lacks merit. While counsel did miss two deadlines, the opening brief was eventually filed and decided on the merits by the Nevada Supreme Court. *See Woods v. State*, Docket No. 73985 (Order of Affirmance, September 21, 2018). Therefore, the district court did not err by denying this claim without first conducting an evidentiary hearing.

Second, Woods claimed counsel was ineffective for failing to argue the sentence he received constituted cruel and unusual punishment because the charges were duplicative. Regardless of its severity, “[a] sentence within the statutory limits is not ‘cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.’” *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting *Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); *see also Harmelin v. Michigan*, 501 U.S. 957, 1000-01 (1991) (plurality opinion) (explaining the Eighth Amendment does not require strict proportionality between crime and sentence; it forbids only an extreme sentence that is grossly disproportionate to the crime).

Woods failed to demonstrate his sentence was cruel and unusual because the sentence imposed is within the parameters provided by the relevant statutes. *See* NRS 193.165(1); NRS 193.330(a)(1)-(3); NRS 200.030; NRS 200.481; NRS 202.285(1)(b); NRS 205.060(4); NRS 205.067(4). The sentence imposed was not grossly disproportionate to the crime and does not constitute cruel and unusual punishment. To the extent Woods claimed the charges were duplicative because they arose out of the same conduct, this claim lacked merit. *See Jackson*, 128 Nev. 598, 604, 291 P.3d 1274, 1278 (2012). Therefore, counsel was not deficient for failing to raise this claim on appeal. Accordingly, we conclude the district court did not err by denying this claim without first holding an evidentiary hearing.

Other Claims

Next, Woods claims the district court erred by denying his claim that ineffective assistance of trial counsel amounted to structural error. Woods failed to demonstrate structural error because he failed to demonstrate counsel's performance deprived him of "basic protections without which a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence." *Neder v. United States*, 527 U.S. 1, 8-9 (1999) (internal quotation marks omitted). Therefore, we conclude the district court did not err by denying this claim without first holding an evidentiary hearing.

Next, Woods claims the district court erred by denying several of his claims because these claims could have been raised on direct appeal. In his petition, Woods raised numerous claims that could have been raised on direct appeal: the district court erred by sentencing him to consecutive

terms for the deadly weapon enhancement, there was lost evidence, there were irregularities with the jury, he was coerced by the State because he is actually innocent and the State suborned perjury, the State failed to include his codefendant in the information, insufficient evidence was presented at trial, and there is reasonable doubt he committed the crime. As the district court correctly concluded, these were all claims that could have been raised on direct appeal and were therefore procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.810(1)(b), (3). Woods failed to demonstrate good cause or actual prejudice for failing to raise these claims on appeal. Therefore, we conclude the district court did not err by denying these claims without first conducting an evidentiary hearing.

Next, Woods claimed he is not receiving the correct amount of good time or work time credits. This claim was not properly raised in a postconviction petition challenging a judgment of conviction. *See* NRS 34.738(3). Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.


Finally, Woods argues the district court erred because he was not allowed the opportunity to review and respond to the proposed draft order denying his petition in violation of *Byford v. State*, 123 Nev. 67, 69, 156 P.3d 691, 692 (2007). Even assuming the district court erred by not allowing Woods to review and respond to the proposed draft, we conclude any error was harmless and Woods fails to demonstrate prejudice. *See* NRS 178.598. Woods fails to demonstrate that any failure to be allowed to review the proposed factual findings adversely affected the outcome of the

proceedings or his ability to seek full appellate review. Therefore, we conclude Woods is not entitled to relief on this claim.

Having concluded Woods is only entitled to relief with regard to his potential alibi defense, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

³We conclude the district court did not err by denying Woods' motion for change of venue. See NRS 34.738(1) (providing a postconviction petition for a writ of habeas corpus that challenges the validity of a judgment of conviction must be filed in the district court for the county where the conviction occurred).

cc: Hon. Douglas W. Herndon, District Judge
Donte Woods
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk