

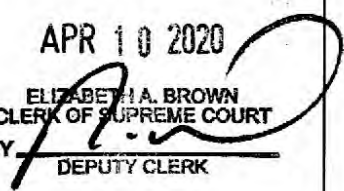
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARLON LORENZO BROWN,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN,
Respondent.

No. 79128-COA

FILED

APR 10 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Marlon Lorenzo Brown appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on February 25, 2019. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Brown contends the district court erred by denying his claim that trial counsel were ineffective. To demonstrate ineffective assistance of trial counsel, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that there was a reasonable probability of a different outcome absent counsel's errors. *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. A petitioner's claims must be supported by specific factual allegations that are not belied by the record and, if true, would entitle him to relief. *Cf. Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

To the extent Brown claimed his counsel were ineffective for not cross-examining the victim at trial regarding the differences between her

recorded statements to police and her testimony at trial, Brown failed to specify how the victim's versions of events differed or how it would have affected the outcome of the trial. And to the extent Brown claimed his counsel were ineffective for not cross-examining other witnesses, he failed to specify what questions counsel should have posed, what the responses would have been, or how they would have affected the outcome of the trial. Brown's bare claims did not demonstrate he was entitled to relief. Trial counsels' statements to the trial court that they would be ineffective if the court did not continue closing arguments did not amount to specific facts that would demonstrate Brown was entitled to relief. We therefore conclude the district court did not err by denying this claim.


Brown also claimed he was subjected to illegal post-arrest seizure that violated his 4th and 14th Amendment rights, he was subject to excessive bail in violation of his 8th Amendment rights, and the trial court denied him his right to counsel of his choice. Claims that could have been raised in a direct appeal must be dismissed absent a demonstration of cause for the failure to raise them on direct appeal and actual prejudice. NRS 34.810(1)(b)(2). Brown's claims were appropriate for direct appeal, and he did not attempt to demonstrate cause and prejudice.

For the first time in his reply to the State's response below, Brown contended that these claims were ineffective assistance of counsel claims. Brown's contention lacked merit. First, it is belied by the record. Brown clearly raised some claims of ineffective assistance of trial counsel, demonstrating he knew how to indicate that a claim was one of ineffective assistance. His remaining claims were devoid of any reference to ineffective assistance or even a claim of something counsel should or should not have done. Second, claims may not be raised for the first time in a reply, because

it deprives the State of the opportunity to respond. *See Barnhart v. State*, 122 Nev. 301, 303, 130 P.3d 650, 651 (2006) (“Generally, the only issues that should be considered by the district court . . . on a post-conviction habeas petition are those which have been pleaded in the petition or a supplemental petition and those to which the State has had an opportunity to respond.”). We therefore conclude the district court did not err by denying these claims as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

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

¹In light of our disposition, we deny Brown’s pro se motions filed in this appeal.