

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JUAN MANUEL ARAIZA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78052-COA

FILED

OCT 09 2020

ELITE COURT REPORTING
CLERK OF SUPERIOR COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Juan Manuel Araiza appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Egan K. Walker, Judge.

Araiza argues the district court erred by dismissing his claims of ineffective assistance of counsel raised in his August 7, 2015, petition. 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 687. To warrant an evidentiary hearing, the 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, Araiza claimed his trial counsel was ineffective for failing to object to the arresting officer's testimony regarding what Araiza was

initially charged with in this case. Araiza was tried for robbery with the use of a deadly weapon. During trial, the State presented evidence that Araiza struck two casino security staff members with bottles during his attempt to escape after stealing those bottles from the casino. The security staff members eventually detained Araiza until a police officer arrived. The officer testified he arrested Araiza for robbery and two counts of battery. In his petition, Araiza contended that the officer's reference to two counts of battery amounted to improper prior-bad-act evidence. Araiza asserted his counsel should have objected to this testimony or should have requested a *Petrocelli*¹ hearing concerning that evidence.

The officer's testimony concerning his charging decision did not amount to prior-bad-act evidence because it was not evidence that Araiza committed "other crimes, wrongs or acts." NRS 48.045(2). Notably, Araiza did not dispute that the acts underlying the battery charges also supported the robbery charge, and he has not challenged the admission of the evidence regarding those acts at trial. Because the officer's testimony did not amount to improper prior-bad-act evidence, Araiza failed to demonstrate counsel's performance fell below an objective standard of reasonableness. Araiza also failed to demonstrate a reasonable probability of a different outcome at trial had counsel objected or requested a *Petrocelli* hearing regarding the evidence. Therefore, we conclude the district court did not err by dismissing this claim without conducting an evidentiary hearing.

Second, Araiza claimed his trial counsel was ineffective for failing to adequately prepare a defense in order to demonstrate that Araiza

¹*Petrocelli v. State*, 101 Nev. 46, 692 P.2d 503 (1985), *superseded in part by statute as stated in Thomas v. State*, 120 Nev. 37, 44-45, 83 P.3d 818, 823 (2004).

committed only misdemeanor offenses rather than robbery with the use of a deadly weapon. Araiza did not identify what additional actions counsel should have undertaken in order to prepare for this type of defense at trial. In addition, counsel urged the jury during closing argument to find that Araiza simply committed petit larceny and not robbery with the use of a deadly weapon. Araiza failed to demonstrate objectively reasonable counsel would have performed further actions in support of Araiza's assertion that he committed only misdemeanor offenses. Araiza also did not demonstrate a reasonable probability of a different outcome had counsel undertaken further efforts to show that he committed only misdemeanor offenses. Therefore, we conclude the district court did not err by dismissing this claim without conducting an evidentiary hearing. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Egan K. Walker, District Judge
Tanner Law & Strategy Group, Ltd.
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk