

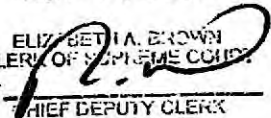
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THOMAS MATTHEW SUPRANOVICH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 80085-COA

FILED

NOV 09 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Thomas Matthew Supranovich appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on August 5, 2019. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Misconduct and abuse of discretion

Supranovich claims the district court erred by denying his misconduct and abuse-of-discretion claims because he had good cause for failing to raise them on direct appeal: “a government lawyer forced upon [him]” failed to raise these claims on direct appeal and court rules prohibited him from filing or amending claims pro se. The district court found that Supranovich raised eight claims of prosecutorial misconduct, four claims of police misconduct, two claims of judicial misconduct, and eight claims of abuse of discretion that were not raised as claims of ineffective assistance of counsel. We conclude the district court’s findings are supported by the record and the district court did not err by concluding these claims were waived. *See* NRS 34.810(1)(b)(2).

Ineffective assistance of trial counsel

Supranovich claims the district court erred by denying his claims of ineffective assistance of trial counsel. To prevail on a claim of ineffective assistance of trial counsel, a petitioner must demonstrate counsel's performance was deficient because it fell below an objective standard of reasonableness, and resulting prejudice in 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 (1984).

The petitioner must demonstrate both components of the ineffective-assistance inquiry—deficiency and prejudice. *Id.* at 697. The petitioner must demonstrate the underlying facts of his claim by a preponderance of the evidence. *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). And the petitioner is not entitled to relief if his claims are bare or belied by the record. *See Ripppo v. State*, 134 Nev. 411, 426, 423 P.3d 1084, 1100 (2018). We give deference to the district court's factual findings if supported by substantial evidence and not clearly wrong 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, Supranovich claimed trial counsel was ineffective for providing the prosecution with confidential defense strategy information. The district court found that this was a bare claim because Supranovich failed to identify the specific information trial counsel provided to the prosecution and he failed to allege how the outcome of the trial would have been different if the information had not been given to the prosecution. We conclude these findings are supported by the record and are not clearly

wrong, Supranovich failed to demonstrate trial counsel was ineffective, and the district court did not err by rejecting this claim.

Second, Supranovich claimed trial counsel was ineffective for falsifying or distorting the court record to make it appear as if he was requesting the appointment of new counsel instead of exercising his right to represent himself. The record demonstrates that Supranovich discussed his complaints about counsel with the district court. He stated that he had "considered" representing himself, he stated that he would "hash out" his concerns with counsel, and he did not unequivocally state that he wanted to represent himself. Based on this record, we conclude Supranovich failed to demonstrate that trial counsel was ineffective and the district court did not err by rejecting this claim.

Third, Supranovich claimed trial counsel was ineffective for lying to him in an attempt to secure a guilty plea. The district court found that this was a bare claim because Supranovich could not show he was prejudiced by counsel's performance as he did not enter a guilty plea, he proceeded to trial, and he was found guilty by a jury. We conclude these findings are supported by the record and are not clearly wrong, Supranovich failed to demonstrate trial counsel was ineffective, and the district court did not err by rejecting this claim.

Fourth, Supranovich claimed trial counsel was ineffective for negating his right to a speedy trial by filing an unauthorized pretrial petition for a writ of habeas corpus. The district court found that this claim was belied by the record because an affidavit filed with the pretrial habeas petition demonstrated that Supranovich authorized counsel to file the petition and the court minutes demonstrated that Supranovich informed the district court he was waiving his speedy trial rights. We conclude these

findings are supported by the record and are not clearly wrong, Supranovich failed to demonstrate trial counsel was ineffective, and the district court did not err by rejecting this claim.

Fifth, Supranovich claimed trial counsel was ineffective for attempting to obtain confidential financial, medical, and other personal records under false pretenses for fraudulent purposes. The district court found that this was a bare claim because Supranovich failed to specify what prejudice, if any, occurred from counsel's attempts to get the information. We conclude this finding is supported by the record and is not clearly wrong, Supranovich failed to demonstrate trial counsel was ineffective, and the district court did not err by rejecting this claim.

Sixth, Supranovich claimed trial counsel was ineffective for failing to address the misconduct that occurred when the police recorded him without his knowledge, consent, or a court order, and coached a witness by putting words in her mouth when they interviewed her. The district court found that this was a bare claim because Supranovich failed to explain how a challenge to this alleged misconduct would have changed the outcome of the trial. We conclude this finding is supported by the record and is not clearly wrong, Supranovich failed to demonstrate trial counsel was ineffective, and the district court did not err by rejecting this claim.

Seventh, Supranovich claimed trial counsel was ineffective for failing to introduce "an independent pathologist's report disputing [the] coroner's finding of 'undetermined' cause of death and indicating arrhythmia (heart attack) as [the] likely cause of death." However, even assuming this report exists, Supranovich has not explained how it would

have changed the outcome of the trial.¹ Therefore, we conclude Supranovich failed to demonstrate he was prejudiced by trial counsel's performance and the district court did not err by rejecting this claim.

Eighth, Supranovich claimed trial counsel was ineffective for failing to investigate the jury selection process, particularly, the placement of a long-term friend of the district judge in the jury venire.² The district court found that this was a bare claim because Supranovich failed to explain how he was prejudiced by counsel's decision to not investigate that venireperson. The district court further found that Supranovich could not demonstrate prejudice because the Nevada Supreme Court had previously determined there was "no evidence that the empaneled jury was not impartial." We conclude these findings are supported by the record and are not clearly wrong, Supranovich failed to demonstrate trial counsel was ineffective, and the district court did not err by rejecting this claim. *See Supranovich v. State*, Docket No. 69355 (Order of Affirmance, July 26, 2018).

Ninth, Supranovich claimed trial counsel was ineffective for failing to object to instances of prosecutorial and judicial misconduct. The district court found that this was a bare claim because Supranovich failed to explain how objections to these alleged instances of misconduct would have changed the outcome of the trial. We conclude this finding is

¹We note the medical examiner who performed the autopsy on the victim testified that the victim had an enlarged heart with thickening of the lower chambers, this condition could cause an abnormal beating of the heart called dysrhythmia or arrhythmia, and arrhythmia could cause death.

²Supranovich did not identify this person or demonstrate that this person was a member of the empaneled jury.

supported by the record and is not clearly wrong, Supranovich failed to demonstrate trial counsel was ineffective, and the district court did not err by rejecting this claim.

Ineffective assistance of appellate counsel

Supranovich claims the district court erred by denying his claims of ineffective assistance of appellate counsel. To prevail on a claim of ineffective assistance of appellate counsel, a petitioner must demonstrate counsel's performance was deficient and resulted in prejudice. *Kirksey v. State*, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996). Appellate counsel's performance is prejudicial if an "omitted issue would have a reasonable probability of success on appeal." *Id.* at 998, 923 P.2d at 1114. The petitioner must demonstrate both components of the ineffective-assistance inquiry—deficiency and prejudice. *Strickland*, 466 U.S. at 697.

First, Supranovich claimed appellate counsel was ineffective for delaying his direct appeal. The district court found that Supranovich failed to state a cognizable claim of ineffective assistance of counsel because he did not have a right to a speedy appeal. We conclude this finding is supported by the record and is not clearly wrong, Supranovich failed to demonstrate appellate counsel was ineffective, and the district court did not err by rejecting this claim. *See* U.S. Const. amend. VI.

Second, Supranovich claimed appellate counsel was ineffective for failing to effectively argue his *Faretta*³ claim. The district court found this was a bare claim because Supranovich failed to specifically allege what counsel should have done differently or how a different argument would have yielded a more favorable result on appeal. We conclude this finding is

³*See Faretta v. California*, 422 U.S. 806 (1975).

supported by the record and is not clearly wrong, Supranovich failed to demonstrate appellate counsel was ineffective, and the district court did not err by rejecting this claim.

Third, Supranovich claimed appellate counsel was ineffective for failing to raise various prosecutorial misconduct, judicial misconduct, abuse of discretion, and *Brady*⁴ claims. Supranovich designated these claims 3, 4, 6, 8, and 9 in his petition, and the district court found they did not contain “specific factual allegations and [did] not explain how Appellate Counsel could have raised or succeeded on those claims [on] appeal.” We conclude this finding is supported by the record and is not clearly wrong, Supranovich failed to demonstrate appellate counsel was ineffective, and the district court did not err by rejecting this claim.

Fourth, Supranovich claimed appellate counsel was ineffective for failing to challenge the selection of a juror who was a long-term friend of the district judge. The district court found this claim lacked merit because the Nevada Supreme Court addressed the issue of jury impartiality on direct appeal and determined that there was “no evidence that the empaneled jury was not impartial.” We conclude this finding is supported by the record and is not clearly wrong, Supranovich failed to demonstrate appellate counsel was ineffective, and the district court did not err by rejecting this claim. *See Supranovich*, Docket No. 69355 (Order of Affirmance, July 26, 2018).

Fifth, Supranovich claimed appellate counsel was ineffective for failing to review audio/video materials from the trial and the coroner’s inquiry. The district court found this was a bare claim because Supranovich

⁴*See Brady v. Maryland*, 373 U.S. 83 (1963).

failed to specifically allege what counsel would have found and how the result of the appeal would have been different if counsel had reviewed those materials. We conclude this finding is supported by the record and is not clearly wrong, Supranovich failed to demonstrate appellate counsel was ineffective, and the district court did not err by rejecting this claim.

Sixth, Supranovich claimed appellate counsel was ineffective for being “hostile” toward him. The district court found this was a bare claim because Supranovich merely speculated as to counsel’s state of mind and did not make any specific allegations which, if true, would have entitled him to relief. We conclude this finding is supported by the record and is not clearly wrong, Supranovich failed to demonstrate appellate counsel was ineffective, and the district court did not err by rejecting this claim.

Actual innocence


Supranovich claims the district court erred by denying his claim of actual innocence. A gateway claim of actual innocence is unavailable in this case because Supranovich’s petition was not procedurally barred. See *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001) (describing gateway claim of actual innocence), *abrogated on other grounds by Rippo*, 134 Nev. at 423 n.12, 423 P.3d at 1097 n.12. And the Nevada Supreme Court has never held that a freestanding claim of actual innocence can be raised in a postconviction petition for a writ of habeas corpus. See *Berry v. State*, 131 Nev. 957, 966 n.2, 967 n.3, 363 P.3d 1148, 1154 nn. 2, 3 (2015) (noting it is not clear whether a freestanding claim of actual innocence may be raised in a postconviction petition for a writ of habeas corpus). However, the Legislature recently created a remedy that allows people who have been convicted to assert their factual innocence based on newly discovered evidence. See NRS 34.900-.990. In light of this new remedy, we decline to


consider Supranovich's freestanding claim of actual innocence as he may raise this claim in a petition filed pursuant to NRS 34.900.⁵

Self-representation

Supranovich claims the district court erred by denying his claim that he was deprived of his Sixth Amendment right to represent himself. However, this claim was barred by the doctrine of the law of the case because it was previously decided on direct appeal and therefore could not be reargued in the instant petition. *See Supranovich*, Docket No. 69355 (Order of Affirmance, July 26, 2018); *Pellegrini*, 117 Nev. at 888, 34 P.3d at 538; *Hall v. State*, 91 Nev. 314, 315-16, 535 P.2d 767, 798-99 (1975). Accordingly, we conclude the district court did not err by denying this claim.

Having concluded Supranovich is not entitled to relief, we ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

⁵We express no opinion as to whether Supranovich can satisfy the requirements of a petition to establish factual innocence.

cc: Hon. Joseph Hardy, Jr., District Judge
Thomas Matthew Supranovich
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk