

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SEAN CEDENO,
Appellant,
vs.
WARDEN, LOVELOCK
CORRECTIONAL CENTER,
Respondent.

No. 79734-COA

FILED

NOV 09 2020

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

ORDER OF AFFIRMANCE

Sean Cedeno appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on May 11, 2018. Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.

Cedeno claims the district court erred in denying his claims that trial and appellate counsel were ineffective without first conducting an evidentiary hearing. In his petition below, Cedeno argued that trial counsel should have filed a motion to suppress Cedeno's statement to the police based on Cedeno not receiving a complete recitation of the *Miranda*¹ rights. Cedeno also argued that appellate counsel should have raised the *Miranda* issue on appeal.

To demonstrate ineffective assistance of 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.

¹*Miranda v. Arizona*, 384 U.S. 436 (1966). Our review of Cedeno's claims is made more difficult by his failure to provide this court with a full transcript of his police interview. See *Greene v. State*, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980) ("The burden to make a proper appellate record rests on appellant.").

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*). In the context of appellate counsel, a petitioner must demonstrate prejudice by showing that the omitted issue had a reasonable probability of success on appeal. *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). A petitioner must demonstrate both components of the ineffective-assistance inquiry—deficiency and prejudice. *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. See *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Cedenó contends the district court erred by failing to consider his claim that trial counsel was ineffective. Cedenó's contention is belied by the record. The district court stated, "The Ground is denied without a hearing because even if all of Mr. Cedenó's factual assertions were true, he would not be entitled to relief." The district court concluded that Cedenó failed to demonstrate prejudice because he failed to demonstrate a reasonable probability of a different outcome at trial had the interview been suppressed. And given the evidence presented at trial, especially the surveillance videotapes, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Second, Cedenó contends the district court erred by applying an incorrect prejudice standard when determining he was not entitled to relief. Cedenó's argument that the standard discussed in *Brecht v. Abrahamson*, 507 U.S. 619, 637 (1993), is the appropriate standard fails because *Brecht* did not involve claims of ineffective assistance of counsel. Cedenó has not demonstrated that *Brecht* applies in this case, and we conclude the district court did not err by applying the *Strickland* prejudice standard to Cedenó's claims.

Finally, Cedeno claims the district court erred by denying his claim that appellate counsel was ineffective. We note that 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).

Because the *Miranda* issue was not raised in the district court during the trial proceedings, the claim would have been subject to plain error review. *See Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48-49 (2018). To demonstrate plain error, an appellant must show there was an error, the error was plain or clear, and the error affected appellant's substantial rights. *Id.* at 50, 412 P.3d at 48. Given the evidence presented at trial, especially the surveillance videotapes, Cedeno failed to demonstrate that the admission of the interview affected his substantial rights. Therefore, Cedeno failed to demonstrate this claim had a reasonable probability of success on appeal, and we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Barry L. Breslow, District Judge
Edward T. Reed
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk