

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DELPHONSO DERRAY BRADLEY, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 80773-COA

FILED

JAN 08 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Delphonso Derray Bradley, Jr., appeals from an order of the district court denying a November 18, 2019, postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Bradley argues the district court erred by denying his claims of ineffective assistance of counsel without conducting an evidentiary hearing. 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, a petitioner must raise claims that are supported by specific 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, Bradley argued trial counsel was ineffective for failing to request the jury be instructed that it had to find that an unarmed coconspirator must have knowledge of his armed accomplice's use of a deadly weapon. The district court instructed the jury regarding this issue. Bradley thus did not demonstrate that his counsel's performance fell below an objective standard of reasonableness. Bradley also failed to demonstrate a reasonable probability of a different outcome at trial had counsel sought additional instruction regarding this issue. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Second, Bradley argued trial counsel was ineffective for failing to request a mere-presence jury instruction. The evidence produced at trial demonstrated that Bradley was an active participant in the crimes. Therefore, he failed to demonstrate counsel was objectively unreasonable for declining to request a mere-presence instruction or a reasonable probability of a different outcome at trial had counsel sought such an instruction. *See Walker v. State*, 113 Nev. 853, 869, 944 P.2d 762, 773 (1997) (“[A]lthough mere presence cannot support an inference that one is a party to an offense, presence together with other circumstances may do so.” (internal quotation marks omitted)). Therefore, the district court did not err by denying this claim without conducting an evidentiary hearing.

Third, Bradley argued trial counsel was ineffective for failing to question detectives regarding coercive interviewing techniques used on both

him and his girlfriend. Bradley asserted counsel should have done so in an effort to bolster his girlfriend's trial testimony that she was coerced into aiding the investigation because a detective told her she would be deported if she refused to do so. However, the detective testified that he did not threaten the girlfriend as she claimed. In light of the detective's denial, Bradley did not demonstrate that any failure of counsel to pose additional questions of a similar nature to that detective or additional witnesses fell below an objective standard of reasonableness. In addition, significant evidence of Bradley's guilt was presented at trial. This evidence included the victim's identification of Bradley and the recovery of Bradley's cell phone from the crime scene. Thus, Bradley failed to demonstrate a reasonable probability of a different outcome had counsel attempted to question detectives regarding this issue. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Fourth, Bradley argued trial counsel was ineffective for failing to object when the prosecutor commented on a witness's veracity during closing arguments. The State is allowed reasonable latitude to argue concerning the credibility of witnesses and may demonstrate through inferences that a witness's testimony is untrue. *Rowland v. State*, 118 Nev. 31, 39 & n.7, 39 P.3d 114, 119 & n.7 (2002). Here, the State did not improperly comment on a witness's veracity. Rather, the State noted that the witness was in a relationship with Bradley and urged the jury to consider the nature of their relationship when weighing her credibility. Accordingly, Bradley did not demonstrate that any failure by counsel to

object to this comment fell below an objective standard of reasonableness. Bradley also failed to demonstrate a reasonable probability of a different outcome at trial had counsel objected to this comment. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Fifth, Bradley argued trial counsel was ineffective for failing to object when the State permitted the victim to make false statements during his testimony. Bradley contended that the victim's trial testimony regarding details of the crime differed from the victim's testimony before the grand jury. For that reason, Bradley argued counsel should have asserted that the victim's trial testimony contained false statements. At trial, counsel cross-examined the victim at length concerning the victim's version of events. Bradley failed to demonstrate that counsel's performance in this regard fell below an objective standard of reasonableness. Moreover, in light of the significant evidence of Bradley's guilt presented at trial, Bradley failed to demonstrate a reasonable probability of a different outcome at trial had counsel objected or further challenged the victim's version of events. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Sixth, Bradley argued he was entitled to relief due to the cumulative effect of counsel's errors. However, Bradley failed to demonstrate any errors, and accordingly, he was not entitled to relief. Therefore, the district court did not err by denying this claim without conducting an evidentiary hearing.

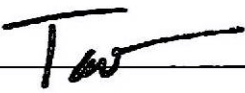
Bradley next argues on appeal that the district court erred by denying the petition without allowing him to amend it. Bradley contends he should have been permitted to amend his petition to raise additional issues because he did not have the trial transcripts. The district court has the discretion to allow a petitioner to file supplemental pleadings, *see* NRS 34.750(5); *State v. Powell*, 122 Nev. 751, 758, 138 P.3d 453, 458 (2006), but has no obligation to permit a petitioner to raise issues that had not been raised in an appropriately filed pleading, *see Barnhart v. State*, 122 Nev. 301, 304, 130 P.3d 650, 652 (2006). “An abuse of discretion occurs if the district court’s decision is arbitrary or capricious or if it exceeds the bounds of law or reason.” *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). At a hearing concerning the petition, the district court noted Bradley’s trial counsel had already sent the trial transcripts to Bradley and concluded that additional briefing was not necessary. The district court accordingly denied the petition without allowing Bradley to amend it. Bradley does not argue that the district court’s decision in this regard was arbitrary or capricious, or that it exceeded the bounds of law or reason. Therefore, we conclude Bradley fails to demonstrate the district court abused its discretion by declining to permit him to amend his petition.

Finally, Bradley appears to assert that the district court erred by declining to appoint postconviction counsel. The appointment of counsel in this matter was discretionary. *See* NRS 34.750(1). When deciding whether to appoint counsel, the district court may consider factors, including whether the issues presented are difficult, whether the petitioner is unable to comprehend the proceedings, or whether counsel is necessary

to proceed with discovery. *Id.* However, the district court found that the issues in this matter were not difficult, Bradley was able to comprehend the proceedings, and discovery with the aid of counsel was not necessary. See NRS 34.750(1); *Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 761 (2017). Therefore, the district court declined to appoint postconviction counsel. The record supports the decision of the district court, and we conclude the district court did not abuse its discretion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District
Eighth Judicial District, Dept. 21
Delphonso Derray Bradley, Jr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk