

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DEON MARQUIEST KILES,
Appellant,
vs.
WARDEN OF H.D.S.P. BRIAN
WILLIAMS; AND JAMES DZURENDA,,
DIR. OF N.D.O.C.,
Respondents.

No. 80741-COA

FILED

FEB 12 2021

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

ORDER OF AFFIRMANCE

Deon Marquiest Kiles appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on August 1, 2019. Eighth Judicial District Court, Clark County; Cristina D. Silva, Judge.

First, Kiles argues the district court erred by denying a claim of ineffective assistance of appellate counsel without conducting an evidentiary hearing. To demonstrate ineffective assistance of appellate counsel, a petitioner must show that counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that the omitted issue would have a reasonable probability of success on appeal. *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). Both components of the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). 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). To warrant an evidentiary hearing, a petitioner

must raise claims 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).

Kiles claimed his appellate counsel was ineffective for canceling oral argument before the Nevada Supreme Court. Kiles contended counsel improperly missed an opportunity to present argument concerning the trial court's restrictions on questioning potential jurors during voir dire.

However, counsel did not cancel oral argument, but rather moved for a continuance due to a scheduling conflict. The Nevada Supreme Court granted counsel's motion. *Kiles v. State*, Docket No. 72726 (Order Vacating Oral Argument, October 2, 2018). The Nevada Supreme Court subsequently notified the parties that the matter had been reassigned to a reconfigured panel and the reconfigured panel concluded that oral argument was not warranted. *Kiles v. State*, Docket No. 72726 (Order Submitting for Decision Without Oral Argument, November 26, 2018). Kiles' contention that his appellate counsel canceled oral argument is belied by the record, and he did not demonstrate that his appellate counsel's motion for a continuance fell below an objective standard of reasonableness.

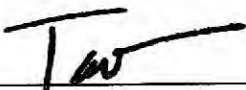
Moreover, the Nevada Supreme Court considered Kiles' contention on direct appeal that the trial court unreasonably restricted voir dire before all the potential jurors were seated and concluded that the district court committed error. *Kiles v. State*, Docket No. 72726 (Order of Affirmance, January 31, 2019). The Nevada Supreme Court concluded Kiles was not entitled to relief because he failed to demonstrate the impaneled jury was not impartial or any resulting prejudice stemming from the district court's error. *Id.* Kiles did not identify additional arguments that counsel failed to make or demonstrate a reasonable likelihood of

success on direct appeal had counsel been permitted to orally argue the issue.

Because Kiles failed to allege specific facts that are not belied by the record and, if true, would have demonstrated deficiency and prejudice, we conclude the district court did not err by denying 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. Cristina D. Silva, District Judge
Deon Marquiest Kiles
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk