

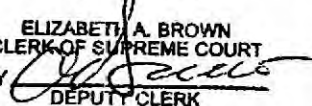
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL KEITH WILLIAMS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 81902-COA

**FILED**

JUN 08 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Michael Keith Williams appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; David M. Jones, Judge.

In his June 12, 2020, petition, Williams claimed his trial counsel was ineffective. 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. A 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). We give deference to the district court's factual findings if supported by substantial evidence and not clearly erroneous 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, Williams argued his trial counsel was ineffective for failing to demonstrate the jury venire was not composed of a fair cross section of Clark County because African Americans were systematically excluded. Williams' trial counsel argued that the jury venire did not contain a fair cross section because African Americans were underrepresented. The district court heard counsel's argument, reviewed information from the jury commissioner regarding selection of prospective jurors, and found that any underrepresentation of a group in the venire was not due to systematic exclusion. Williams did not demonstrate trial counsel's performance fell below an objective standard of reasonableness by failing to raise additional arguments concerning this issue. In addition, the Nevada Supreme Court reviewed the underlying claim on direct appeal and concluded the district court did not err by denying Williams' fair-cross-section challenge. See *Williams v. State*, Docket No. 77178 (Order of Affirmance, February 5, 2020). Thus, Williams did not demonstrate a reasonable probability of a different outcome had trial counsel raised additional arguments concerning this issue. Therefore, we conclude the district court did not err by denying this claim.

Second, Williams argued his trial counsel was ineffective for failing to object to the kidnapping instruction because it did not properly instruct the jury regarding specific intent. Williams appeared to contend counsel's failure to object to this instruction caused him to be convicted despite the State's failure to present sufficient evidence of his guilt of kidnapping. The trial court provided instructions concerning kidnapping and the specific intent required to commit first-degree kidnapping. Those instructions properly instructed the jury concerning these issues. See NRS 200.310(1) (defining first-degree kidnapping); *Bolden v. State*, 121 Nev. 908,

923, 124 P.3d 191, 201 (2005) (“[S]pecific intent is the intent to accomplish the precise act which the law prohibits.” (internal quotation marks omitted)), *receded from on other grounds by Cortinas v. State*, 124 Nev. 1013, 1026-27, 195 P.3d 315, 324 (2008). In addition, the Nevada Supreme Court concluded on direct appeal that the evidence presented at trial was sufficient to support Williams’ kidnapping conviction. *Williams v. State*, Docket No. 77178 (Order of Affirmance, February 5, 2020). In light of the record, Williams did not demonstrate his counsel was objectively unreasonable for failing to raise these issues during trial or a reasonable probability of a different outcome at trial had counsel done so. Therefore, we conclude the district court did not err by denying this claim.

Next, Williams claimed his appellate counsel was ineffective. 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*, 466 U.S. at 687. 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).

Williams claimed his appellate counsel was ineffective for failing to properly argue on appeal that the jury venire did not contain a fair cross section of the community due to systematic exclusion of African Americans. Williams’ appellate counsel argued on direct appeal that the trial court erred by failing to conduct an evidentiary hearing concerning the

fair-cross-section challenge and by relying upon potentially outdated information from the jury commissioner concerning the systems used to reach potential jurors. The Nevada Supreme Court reviewed Williams' argument on direct appeal and concluded it lacked merit. In light of appellate counsel's argument and the Nevada Supreme Court's decision to reject the underlying claim, Williams did not demonstrate his counsel's performance fell below an objective standard of reasonableness or a reasonable likelihood of success on appeal had counsel raised additional arguments concerning that issue. Therefore, we conclude the district court did not err by denying this claim.

Next, Williams claimed the trial court erred by denying his fair-cross-section challenge to the jury venire and by violating his right to a speedy trial. The Nevada Supreme Court considered and rejected these claims on direct appeal. *Williams v. State*, Docket No. 77178 (Order of Affirmance, February 5, 2020). Because these claims have already been considered and rejected, the doctrine of the law of the case prevents further consideration of these issues. *See Hall v. State*, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975). Therefore, Williams was not entitled to relief based on these claims.

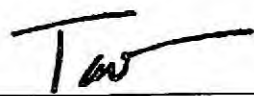
Finally, the district court denied Williams' motion for the appointment of counsel. The appointment of counsel in this matter was discretionary. *See* NRS 34.750(1). When deciding whether to appoint counsel, the district court may consider factors, including whether the issues presented are difficult, whether the petitioner is unable to comprehend the proceedings, or whether counsel is necessary to proceed with discovery. *Id.* The district court found that the issues in this matter were not difficult, Williams was able to comprehend the proceedings, and



discovery with the aid of counsel was not necessary. *See id.*; *Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 761 (2017). Therefore, the district court denied the motion to appoint counsel. The record supports the decision of the district court, and we conclude the district court did not abuse its discretion by denying the motion for the appointment of counsel. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. David M. Jones, District Judge  
Michael Keith Williams  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk