

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TRAVIS SHEFFIELD,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 82738-COA

**FILED**

**MAR 04 2022**

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

*ORDER OF AFFIRMANCE*

Travis Sheffield appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on July 22, 2020. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Sheffield argues the district court erred by denying his claims that trial counsel was ineffective without first 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 supported by specific factual 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, Sheffield claimed counsel was ineffective for failing to retain a DNA expert. Specifically, he claimed that a DNA expert could explain that the lack of DNA was exculpatory and/or the expert could attack the collection and testing methods of the State's expert. Sheffield failed to demonstrate that an expert was necessary to opine that the lack of DNA evidence was exculpatory. We note that counsel asked questions of the State's expert regarding the lack of DNA evidence and argued in closing regarding the lack of DNA evidence. Sheffield also failed to allege how the collection or testing methods of the State's expert were inadequate. Thus, Sheffield failed to demonstrate counsel's performance was deficient for failing to retain an expert or a reasonable probability of a different outcome at trial had counsel retained an expert. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Second, Sheffield claimed counsel was ineffective for failing to retain an eyewitness expert. Sheffield claimed that the in-court identification made by the victim's girlfriend was highly suggestive and an eyewitness expert could have explained why. The victim's girlfriend, who was able to view her boyfriend's killer for a period of time in the car, identified Sheffield as the perpetrator at the preliminary hearing and at trial. Further, Sheffield's codefendant also testified against him at trial, stating he left Sheffield in the victim's car to rob the victim and heard a gunshot as he walked away. Finally, another witness testified that

Sheffield told him he killed the victim after robbing him. Given this evidence, Sheffield failed to demonstrate a reasonable probability of a different outcome at trial had counsel hired an eyewitness expert. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Third, Sheffield claimed counsel was ineffective for failing to file a motion for a pretrial lineup. Sheffield again claimed that the in-court identification made by the victim's girlfriend was highly suggestive, and he argued that a pretrial lineup would have shown that the victim's girlfriend could not actually identify him. Sheffield failed to demonstrate the district court had the authority to grant a motion for pretrial lineup or that his motion would have been granted. As stated above, the victim's girlfriend identified him at two different court hearings, Sheffield's codefendant testified against him, and Sheffield confessed to the killing to another witness. Thus, Sheffield failed to demonstrate counsel's performance was deficient or a reasonable probability of a different outcome at trial had counsel filed the motion. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Fourth, Sheffield claimed counsel was ineffective during jury selection for failing to request individual sequestered voir dire. A motion for sequestered voir dire requires a defendant to demonstrate he would be prejudiced by the failure to sequester. *Haynes v. State*, 103 Nev. 309, 316, 739 P.2d 497, 501 (1987). Sheffield supported his claim only with generalities regarding juries and the potential that some of the jurors may have been biased against him based on their inability to speak freely about



past traumatic experiences. Because Sheffield did not support his claim with specific facts about this jury, he did not demonstrate such a motion would have been granted. Counsel is not deficient for failing to file futile motions. *See Donovan v. State*, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978). Further, Sheffield failed to demonstrate that any biased or prejudiced jurors were empaneled and thus failed to demonstrate a reasonable probability of a different outcome at trial had the motion been made and granted. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Fifth, Sheffield claimed counsel was ineffective for failing to retain a jury consultant for jury selection. Sheffield did not support this claim with specific facts about this jury or demonstrate that any biased or prejudiced jurors were empaneled. Thus, he failed to demonstrate counsel's performance was deficient or a reasonable probability of a different outcome for failing to retain a jury consultant. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Sixth, Sheffield claimed counsel was ineffective for failing to present a defense that another person was responsible for the murder.<sup>1</sup>

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<sup>1</sup>Sheffield's issue statement in his opening brief suggests he is also challenging the district court's denial of his claim that counsel was ineffective for failing to present an alibi defense at trial. However, he presents no argument on appeal in support of that claim. Therefore, we decline to consider this claim on appeal. *See Maresca v. State*, 103 Nev. 669, 748 P.2d 3 (1987) ("It is appellant's responsibility to present relevant

Specifically, Sheffield claimed that counsel should have argued that his codefendant was the actual perpetrator of the murder. This is the defense that counsel argued during closing argument. And Sheffield failed to allege how counsel could have done more to better present this defense at trial. Thus, Sheffield failed to demonstrate counsel's performance was deficient or that there was a reasonable probability of a different outcome at trial. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Seventh, Sheffield claimed counsel was ineffective for failing to object to the State arguing about facts that were not in evidence. Sheffield claimed the State improperly discussed a witness's plea agreement, stated the witness's level of involvement with the murder, and argued that the witness's testimony was reasonable. Sheffield failed to demonstrate that these statements were not based on facts presented at trial. The witness testified about his plea agreement at trial and that he did not know Sheffield was going to murder the victim or that Sheffield had a gun. The remainder of the argument by the State was proper argument regarding the credibility and consistency of the testimony from the witnesses. *See Randolph v. State*, 117 Nev. 970, 984, 36 P.3d 424, 433 (2001) ("The State is free to comment on testimony, to express its views on what the evidence shows, and to ask the jury to draw reasonable inferences from the evidence."). Thus, Sheffield failed to demonstrate counsel's performance

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authority and cogent argument; issues not so presented need not be addressed by this court.").

was deficient for failing to object or a reasonable probability of a different outcome at trial had counsel objected. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Eighth, Sheffield argued counsel was ineffective for failing to object to improper witness vouching by the State. “[V]ouching occurs when the prosecution places the prestige of the government behind the witness by providing personal assurances of the witness’s veracity.” *Browning v. State*, 120 Nev. 347, 359, 91 P.3d 39, 48 (2004). Sheffield argued in closing that the victim’s girlfriend was not truthful. In rebuttal, the State argued regarding the victim’s girlfriend, “She’s not going to guess. She’s not going to get it wrong” because this was her boyfriend. The State did not place the prestige of the government behind the witness’s veracity. Thus, Sheffield failed to demonstrate counsel’s performance was deficient for failing to object or a reasonable probability of a different outcome had counsel objected. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Ninth, Sheffield claimed counsel was ineffective for failing to prepare an adequate closing argument. Sheffield failed to allege specific facts to support this claim because he failed to specify what else counsel should have argued in closing. Thus, Sheffield failed to demonstrate counsel was deficient or that there was a reasonable probability of a different outcome at trial had counsel made a different argument in closing. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.



Sheffield next argues the district court erred by denying his claims that appellate counsel was ineffective without first 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*, 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).

First, Sheffield claimed appellate counsel was ineffective for failing to argue that his sentence was disproportionate to the crime and constituted cruel and unusual punishment. Regardless of its severity, "[a] sentence within the statutory limits is not 'cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.'" *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting *Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); see also *Harmelin v. Michigan*, 501 U.S. 957, 1000-01 (1991) (plurality opinion) (explaining the Eighth Amendment does not require strict proportionality between crime and sentence; it forbids only an extreme sentence that is grossly disproportionate to the crime).

The aggregated sentence imposed of 392 months to life in prison was within the parameters provided by the relevant statutes. *See* NRS 193.165(1); NRS 200.030(4); NRS 200.471(2)(b); 1999 Nev. Stat., ch. 517, § 3, at 2637. Sheffield did not allege that those statutes are unconstitutional or demonstrate the sentence imposed was grossly disproportionate to the crimes. Thus, Sheffield failed to show that his sentence constituted cruel and unusual punishment, counsel's performance was deficient for failing to raise the claim, or a reasonable likelihood of success on appeal had counsel raised the claim. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Second, Sheffield claimed appellate counsel was ineffective for failing to argue the trial court committed plain error by allowing the previously discussed prosecutorial misconduct during closing argument. As stated above, Sheffield failed to demonstrate the State committed prosecutorial misconduct. Thus, Sheffield failed to demonstrate counsel's performance was deficient for failing to raise this claim or a reasonable likelihood of success on appeal had he raised it. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Third, Sheffield claimed appellate counsel was ineffective for failing to argue that cumulative errors at trial required reversal of his conviction. Sheffield failed to demonstrate that any of the claims raised on appeal by counsel or any omitted claims had merit. *See Sheffield v. State*, No. 76200, 2019 WL 2764362 (Nev. July 1, 2019) (Order of Affirmance). Therefore, he failed to demonstrate he was entitled to relief under a

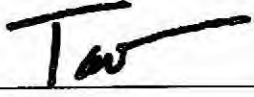


cumulative error theory. See *Burnside v. State*, 131 Nev. 317, 407, 352 P.3d 627, 651 (2015) (noting cumulative error claims require “multiple errors to cumulate”). Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Sheffield next argues the district court erred by denying his claim that the cumulative errors of both trial and appellate counsel entitled him to relief. Even assuming multiple deficiencies in counsel’s performance may be cumulated to find prejudice under the *Strickland* test, see *McConnell v. State*, 125 Nev. 243, 259 n.17, 212 P.3d 30, 318 n.17 (2009), based on the testimony and evidence presented at trial, we conclude that the cumulation of alleged deficiencies would not warrant relief. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

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

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

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

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

cc: Hon. Michael Villani, District Judge  
Terrence M. Jackson  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk