

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JEFFREY KENT BROWN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 83397-COA

**FILED**

**MAR 24 2022**

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

*ORDER OF AFFIRMANCE*

Jeffrey Kent Brown appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on April 11, 2019; an amended petition filed on May 10, 2019; and a supplemental petition filed on October 7, 2019. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Brown claims the district court erred by denying his claims of ineffective assistance of counsel without conducting an evidentiary hearing. 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. *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*). To demonstrate prejudice regarding the decision to enter a guilty plea, a petitioner must show a reasonable probability that, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Kirksey v. State*, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). Both

components of the inquiry—deficiency and prejudice—must be shown. *Strickland*, 466 U.S. at 687.

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). 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, Brown claimed counsel was ineffective for failing to investigate his claim of self-defense prior to advising Brown to plead guilty. Brown alleged he fired his gun in self-defense because the male victim approached him aggressively and grabbed him by the collar while he sat in his car. Brown claimed that counsel should have hired a ballistics expert to study the trajectory of the bullets and the position of the parties at the time of the shooting. He also claimed that counsel should have hired an investigator to determine if there were additional witnesses not listed in the police report who could corroborate Brown's account of what happened.

Brown failed to specify what the outcome of these investigations would have been. He did not indicate what the testimony of the ballistics expert would have been. He also failed to identify the potential witnesses counsel should have sought out or specify what they would have said. Finally, he failed to explain how further investigation would have prompted him to proceed to trial instead of pleading guilty. Accordingly, Brown failed to demonstrate a reasonable probability he would not have pleaded guilty and would have insisted on going to trial but for counsel's inaction. See *Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) (providing that

a petitioner claiming counsel did not conduct an adequate investigation must allege what the results of a better investigation would have been and how it would have affected the outcome of the proceedings). Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.<sup>1</sup>

Second, Brown claimed counsel was ineffective for failing to tell Brown about his right to testify at the grand jury proceeding.<sup>2</sup> Brown claimed that, but for counsel's error, he would have testified before the grand jury that he was forced to defend himself. Brown did not allege facts indicating he acted in self-defense. He did not allege that he fired his gun because he maintained a reasonable belief he was in imminent danger of death or great bodily harm and self-protection was absolutely necessary. See *Culverson v. State*, 106 Nev. 484, 487, 797 P.2d 238, 239 (1990) (providing requirements for justifiable homicide to apply); NRS 200.200 (providing the requirements for self-defense to apply); NRS 200.275

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<sup>1</sup>Brown also argues for the first time on appeal that counsel failed to investigate "potential conditions of post-traumatic stress disorder . . . that Appellant may have suffered from and would have contributed to his self-defense claim" and failed to effectively develop impeachment evidence. Brown did not raise these claims below, and we decline to consider them for the first time on appeal. See *McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).

<sup>2</sup>Brown fails to include the relevant grand jury proceeding transcript or a copy of his supplemental petition in his appendix to this case. As the appellant, it is Brown's obligation to provide this court with an adequate record for review. See *McConnell v. State*, 125 Nev. 243, 256 n.13, 212 P.3d 307, 316 n.13 (2009); see also NRAP 30(b)(3) (stating the appellant's appendix filed on appeal shall include "any other portions of the record essential to determination of issues raised in appellant's appeal"). However, we take judicial notice of the appendix filed in Docket No. 81648.

(applying the self-defense requirements beyond homicide). Brown also failed to explain how counsel telling him about his right to testify at the grand jury proceeding would have prompted Brown to proceed to trial instead of pleading guilty. Accordingly, Brown failed to demonstrate a reasonable probability of a different outcome at the grand jury proceedings or that he would not have pleaded guilty and would have insisted on going to trial but for counsel's inaction. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Third, Brown claimed counsel was ineffective for failing to prepare a sentencing memorandum to counter the State's sentencing memorandum. The State's memorandum contained excerpts from Brown's jail phone calls wherein Brown appeared to ask his son to destroy evidence, asked another person to lie on the witness stand, and stated that he "tried to kill" the male victim. During the sentencing hearing, Brown's counsel argued that the statements were made in anger after Brown's arrest and that the telephone calls also contained statements that Brown acted in self-defense because the male victim "got in his face." Counsel then argued several mitigating circumstances, including Brown's lack of criminal history, his military service, his poor health, and his lack of substance abuse history. Brown failed to allege what a sentencing memorandum should have contained beyond the arguments counsel made at sentencing or how it would have affected the outcome of his sentencing had counsel prepared a written memorandum. Therefore, Brown failed to demonstrate counsel's performance was deficient or a reasonable probability he would have received a more favorable sentence had counsel prepared a sentencing

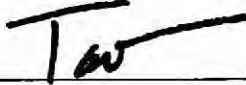
memorandum. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Brown also claimed the district court erred by denying his claim that he was entitled to relief due to the cumulative effect of counsel's errors. The Nevada Supreme Court has not held that multiple deficiencies of counsel may be cumulated to establish prejudice. See *McConnell v. State*, 125 Nev. 243, 259 n.17, 212 P.3d 30, 318 n.17 (2009). And Brown failed to demonstrate he was prejudiced by any cumulated deficiencies. Therefore, we conclude the district court did not err by denying this claim.

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.<sup>3</sup>

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

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

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

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<sup>3</sup>Brown's summary of argument in his opening brief suggests he is also challenging the district court's denial of his claims that counsel was ineffective for failing "to raise" notice pursuant to *Sheriff v. Marcum*, 105 Nev. 824, 783 P.2d 1389 (1989), failing to order a competency evaluation, making misleading representations, and failing to file a motion to withdraw guilty plea. However, Brown presents no argument on appeal in support of these claims. Therefore, we decline to consider these claims on appeal. See *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court.").

cc: Hon. Michelle Leavitt, District Judge  
Jeannie N. Hua  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk