

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SCHEMAJ GRAY, A/K/A WILLIE GRAY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83892-COA

FILED

JUN 02 2022

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

SCHEMAJ GRAY, A/K/A WILLIE GRAY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83893-COA

ORDER OF AFFIRMANCE

Schemaj Gray appeals from identical orders of the district court, filed in district court case nos. A839250 and C336141, that deny a postconviction petition for a writ of habeas corpus filed on August 10, 2021. These cases were consolidated on appeal. See NRAP 3(b). Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

In his petition, Gray argued that trial counsel was ineffective for failing to move for a directed verdict of not guilty for the crimes of burglary and obtaining money under false pretenses after he was acquitted of conspiracy to commit robbery, robbery with the use of a deadly weapon, first-degree kidnapping with the use of a deadly weapon, and possession of stolen property.

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. 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).

A directed verdict of not guilty is not available in Nevada as a remedy in a criminal case. *State v. Wilson*, 104 Nev. 405, 407, 760 P.2d 129, 130 (1988). Therefore, Gray failed to demonstrate counsel was deficient for failing to file a motion for directed verdict. *See Donovan v. State*, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (concluding counsel was not deficient for failing to file futile motions).

To the extent Gray argued that counsel should have filed a motion for an advisory instruction or motion for a judgment of acquittal, *see* NRS 175.381(1) (providing the court may advise the jury to acquit if it finds insufficient evidence to support a conviction); NRS 175.381(2) (providing the court may set aside the verdict and enter a judgment of acquittal if the evidence is insufficient to sustain a conviction), he failed to demonstrate these motions would have been successful. At trial, the State alleged that Gray and his codefendant posed as Uber drivers and robbed the victim of a Rolex watch. In his defense, Gray testified he and his codefendant did not pretend to be Uber drivers but instead were trying to collect on a drug debt. Gray stated he had prior drug transactions with the victim and the victim gave him the Rolex watch as collateral. When the victim did not pay the drug debt, Gray, using the identification of his cousin, pawned the watch

for \$3,600. Based on this evidence, the jury could have acquitted Gray of the other counts and still found sufficient evidence to find him guilty of burglary and obtaining money by false pretenses. *See* 2013 Nev. Stat., ch. 488, § 1, at 2987 (former NRS 205.060); NRS 205.380(1). Therefore, we conclude Gray failed to demonstrate counsel's performance was deficient or resulting prejudice for failing to make the motions. Thus, we conclude the district court did not err by denying this claim.


To the extent Gray also argued that the State was required to renew its notice of intent to seek habitual criminal treatment when it filed an amended information, this claim was barred because this claim could have been raised on direct appeal and Gray failed to demonstrate good cause and actual prejudice to overcome the procedural bar. *See* NRS 34.810(1)(b)(2). Therefore, we conclude the district court did not err by denying this claim.

Gray also sought the appointment of postconviction counsel, which the district court denied. 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.*; *Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 761 (2017). Because the district court granted Gray leave to proceed in forma pauperis and his petition was a first petition not subject to summary dismissal, *see* NRS 34.745(1), (4), Gray met the threshold requirements for the appointment of counsel. *See* NRS 34.750(1); *Renteria-Novoa*, 133 Nev. at 76, 391 P.3d at 761. However, the district court found that the issues in this matter were not difficult, Gray was able to comprehend the

proceedings, and discovery with the aid of counsel was not necessary. For these reasons, 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 judgments of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Joseph Hardy, Jr., District Judge
Schemaj Gray
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk