

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTHONY ODELL LONGSTREET, SR.,
Appellant,
vs.
THE STATE OF NEVADA; AND ELY
STATE PRISON WARDEN WILLIAM
GITTERE,
Respondents.

No. 84171-COA

FILED
JUN 23 2022
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Anthony Odell Longstreet, Sr., 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 Barker, Senior Judge.

Longstreet argues the district court erred by denying his September 30, 2021, petition without first conducting an evidentiary hearing. 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, Longstreet argued that his trial-level counsel was ineffective. 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*). 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).

Longstreet argued that his counsel was ineffective during the sentencing hearing because counsel urged the sentencing court to impose a prison sentence. Longstreet appeared to assert that he deserved a more lenient sentence because the evidence concerning the offense showed that he mistakenly believed the victim took money from a countertop and because Longstreet was intoxicated during the incident.

During the sentencing hearing, Longstreet's counsel requested imposition of a prison sentence of 19 to 48 months. Longstreet also explained to the sentencing court his version of the events that led to the incident, including that he mistakenly believed the victim took his money and that he was intoxicated. The sentencing court acknowledged that it considered Longstreet's statement and his intoxication during the incident. However, the sentencing court stated that it viewed the video recording of the incident and noted the recording depicted Longstreet kicking and stomping on the victim's face. In addition, the sentencing court stated its concern regarding Longstreet's multiple prior felony convictions. The sentencing court subsequently imposed a sentence of 19 to 48 months in prison.

As the sentencing court considered during the sentencing hearing Longstreet's version of events and his intoxication, Longstreet

failed to demonstrate a reasonable probability of a different outcome at the sentencing hearing had counsel discussed Longstreet's version of events or requested a more lenient sentence. Therefore, we conclude that the district court did not err by denying this claim without conducting an evidentiary hearing.

Second, Longstreet argued the administrative regulations utilized by the Nevada Department of Corrections improperly limit his access to the law library and to the courts. This claim challenged Longstreet's conditions of confinement. Challenges to the conditions of a petitioner's confinement are not within the scope of a postconviction petition for a writ of habeas corpus. *See Bowen v. Warden*, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984) (“[A] petition for writ of habeas corpus may challenge the validity of current confinement, but not the conditions thereof.”). Therefore, Longstreet was not entitled to relief based on this claim, and we conclude that the district court did not err by denying this claim without conducting an evidentiary hearing.

Third, Longstreet argued that EDCR 3.70 improperly limited his ability to file documents in the district court when he had counsel of record during the trial-level proceedings. Longstreet also appeared to claim that he was not criminally liable due to application of NRS 194.010 because he committed the offense due to a mistake and he acted under the influence of alcohol. These claims were not based on an allegation that Longstreet's guilty plea was involuntarily or unknowingly entered or that his plea was entered without the effective assistance of counsel. Therefore, these claims were not permissible in a postconviction petition for a writ of habeas corpus stemming from a guilty plea. *See* NRS 34.810(1)(a). Accordingly, we

conclude the district court properly denied relief for these claims without conducting an evidentiary hearing.

Fourth, Longstreet argues on appeal that the district court erred by denying his petition without considering his reply brief because it was not filed by the clerk's office and was instead forwarded to the public defender's office. The district court has the discretion to allow a petitioner to file documents to supplement the initial petition, but the district court did not grant Longstreet permission to file any additional documents. *See* NRS 34.750(5); *State v. Powell*, 122 Nev. 751, 758, 138 P.3d 453, 458 (2006). Because Longstreet did not have permission to file additional documents in support of his petition, he fails to demonstrate any prejudice stemming from any issue concerning the filing of his reply. *See* NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."). Therefore, Longstreet is not entitled to relief based upon this claim.

Finally, Longstreet appears to argue that the district court erred by conducting a hearing outside his presence concerning his postconviction petition. A criminal defendant does not have an unlimited right to be present at every proceeding. *See Gallego v. State*, 117 Nev. 348, 367-68, 23 P.3d 227, 240 (2001), *abrogated on other grounds by Nunnery v. State*, 127 Nev. 749, 776 n.12, 263 P.3d 235, 253 n.12 (2011). A "defendant must show that he was prejudiced by the absence." *Kirksey v. State*, 112 Nev. 980, 1000, 923 P.2d 1102, 1115 (1006). The record indicates the hearing at issue was not an evidentiary hearing, no testimony was presented, and the district court merely denied the petition. *Cf. Gebers v. State*, 118 Nev. 500, 504, 50 P.3d 1092, 1094-95 (2002) (concluding a

petitioner's statutory rights were violated when she was not present at a hearing where testimony and evidence were presented). Longstreet does not demonstrate he was prejudiced by his absence from the relevant hearing. Accordingly, Longstreet fails to demonstrate he is entitled to relief, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Hon. David Barker, Senior Judge
Anthony Odell Longstreet, Sr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk