


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHRISTOPHER SCOTT REEDER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 85696-COA

FILED

JUN 13 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY:   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Christopher Scott Reeder appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on May 26, 2022, and a supplemental petition filed on July 22, 2022. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Reeder argues the district court erred by denying his claims of ineffective assistance of counsel without 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

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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, Reeder claimed counsel was ineffective for failing to call a specific expert witness at trial. In particular, Reeder contended that (1) the State listed Dr. Vergara in its notice of witnesses, (2) Dr. Vergara was going to testify about a physical examination of a victim, and (3) the State ultimately declined to call Dr. Vergara because her findings revealed no penetration had occurred. Reeder further contended that Dr. Vergara's testimony and/or findings could have been used to rebut the victim's testimony that Reeder digitally penetrated her.

Reeder did not allege when Dr. Vergara examined the victim. The victim disclosed her sexual abuse to her mother, and a detective was assigned to investigate the case, approximately five years after the abuse occurred. An expert testified that (1) the tissue in the vaginal area heals quickly, (2) physical examinations of children conducted beyond five days from an instance of sexual abuse reveal injuries only approximately five percent of the time, and (3) she would not expect a physical examination conducted five years after an instance of sexual abuse to reveal any injuries. Moreover, the detective testified that she did not have the victim undergo a physical examination because there would be no evidence of an injury or DNA to collect due to the prolonged passage of time. In light of this evidence, Reeder failed to allege facts that, if true, would demonstrate a

reasonable probability of a different outcome at trial but for counsel's failure to call Dr. Vergara. Accordingly, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Second, Reeder claimed counsel was ineffective for failing to spend time with him or consult with him about his case. Reeder further contended that he could not openly communicate with counsel due to the presence of dangerous prisoners and that he did not have enough time to discuss the plausible reasons why the victims would have fabricated their allegations. Reeder did not specify what information he would have conveyed to counsel had counsel spent additional time with him, nor did he allege that there was a reasonable probability of a different outcome at trial had counsel consulted with him more. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Third, Reeder claimed counsel was ineffective for failing to mitigate his punishment at sentencing. In particular, Reeder contended counsel should have filed a sentencing memorandum arguing there was insufficient evidence to support his sexual assault convictions and, therefore, his consecutive sentences were overwhelmingly disproportionate to the crimes.<sup>1</sup>

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<sup>1</sup>On appeal, Reeder also argues a sentencing memorandum could have addressed: (1) invalid aggravators, (2) prejudicial and/or false information in the presentence investigation report, and (3) mitigators. Reeder also argues counsel should have contacted his family members and used their statements to mitigate his punishment. These additional arguments were

The victim testified that, after they got into bed to watch a movie with the victim's friend, Reeder put his hands under the victim's clothes and digitally penetrated her vagina twice. In light of this evidence, counsel was not deficient for failing to argue that there was insufficient evidence to support the sexual assault convictions. *See Origel-Candido v. State*, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998) (stating there is sufficient evidence to support a conviction if, "after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt" (quotation marks omitted)); *see also Rose v. State*, 123 Nev. 194, 203, 163 P.3d 408, 414 (2007) (stating a victim's testimony alone is sufficient to uphold a conviction for sexual assault).

Moreover, counsel could not have argued Reeder's consecutive sentences were disproportionate to the crime until after Reeder had been sentenced. To the extent Reeder suggested counsel should have argued for concurrent sentences, Reeder did not specify what arguments counsel should have made beyond challenging the sufficiency of the evidence. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Reeder also argues on appeal that trial counsel was ineffective for failing to interview and then call his family members at trial and for failing "to present the investigator's report." Reeder also suggests trial

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not raised below, and we therefore decline to consider them on appeal in the first instance. *See McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).

counsel was ineffective for failing to object to the victims' tainted testimonies and argues appellate counsel was ineffective for failing to raise his ineffective-assistance-of-counsel claims on direct appeal. Reeder did not raise these claims in his petition below;<sup>2</sup> therefore, we decline to consider them on appeal in the first instance. *See McNelton*, 115 Nev. at 415-16, 990 P.2d at 1275-76.

Reeder also argues the district court erred by denying his claim that his sentence was disproportionate to the severity of the crimes. This claim was waived because it could have been raised on direct appeal. *See* NRS 34.810(1)(b)(2). Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Reeder also appears to argue that the district court misapplied the law when it stated it did not have a responsibility to determine whether counsel was ineffective and that "just being adequate is enough." Reeder misstates the district court's order. The district court stated that its role was not to pass upon the merits of the action not taken but to determine whether counsel failed to render reasonably effective assistance. The district court also stated that counsel need not make every conceivable motion to protect himself against allegations of inadequacy. Reeder fails to demonstrate the district court misapplied the legal standards governing his

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<sup>2</sup>The district court denied Reeder's "amended petition for postconviction relief" because Reeder did not seek the court's leave to file it as required by NRS 34.750(5). Reeder does not contend that the district court erred by denying his amended petition on procedural grounds; therefore, any claims raised therein are not before this court on appeal.

ineffective-assistance-of-counsel claims, *see Donovan v. State*, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978), and we conclude Reeder is not entitled to relief on this claim.

Reeder also argues the district court erred by allowing the State to adjudicate his petition, supplemental petition, and motion for appointment of counsel and request for an evidentiary hearing. Reeder contends that the State denied these pleadings on October 20, 2022, and that the judge's name and signature are not on the order.


On October 13, 2022, the district court held a hearing in which it denied the above pleadings and requested that the State prepare an order. The State filed a proposed, unsigned order on October 20, 2022. Thereafter, the district court struck that order from the record. On November 16, 2022, the district court filed its written order denying Reeder's petition and related pleadings. This order contains the judge's name and signature. Therefore, Reeder fails to demonstrate the district court allowed the State to adjudicate his petition and related pleadings, and we conclude Reeder is not entitled to relief on this claim.

Finally, Reeder argues the district court erred by denying his motion to appoint 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.*; *Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 761 (2017). Because the district court granted Reeder leave to proceed in


forma pauperis and his petition was a first petition not subject to summary dismissal, *see* NRS 34.745(1), (4), Reeder met the threshold requirements for the appointment of counsel. *See* NRS 34.750(1); *Renteria-Novoa*, 133 Nev. at 76, 391 P.3d at 760-61. However, the district court found that the issues in this matter were not difficult, Reeder 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.

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.

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

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

  
\_\_\_\_\_, J.  
Westbrook

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