

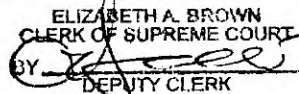
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JESSE BAILEY, IV,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87785-COA

FILED

JUL 15 2024

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

ORDER OF AFFIRMANCE

Jesse Bailey, IV, appeals from a district court order dismissing a postconviction petition for a writ of habeas corpus filed on December 9, 2022. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

First, Bailey argues the district court erred by dismissing Ground 1 of his petition alleging the ineffective assistance of trial counsel.¹ 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

¹Bailey was represented by two attorneys during trial and a different attorney during sentencing and on direct appeal.

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 petitioner must raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle them to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

In Ground 1, Bailey appeared to claim that counsel suborned Bailey to commit perjury by coercing Bailey into complying with counsel's trial strategy, despite Bailey's repeated objections to the strategy. At a *Young*² hearing that occurred during trial, counsel responded to Bailey's complaints about his representation, including the failure to present certain evidence, and stated that his decisions in this regard were strategic. Bailey failed to allege specific facts demonstrating extraordinary circumstances that would warrant challenging counsel's strategic decision. *See Lara v. State*, 120 Nev. 177, 180, 87 P.3d 528, 530 (2004) (stating "trial counsel's strategic or tactical decisions will be virtually unchallengeable absent extraordinary circumstances" (internal quotation marks omitted)). Further, Bailey failed to allege specific facts demonstrating how counsel's actions amounted to coercion or the subornation of perjury. *See* NRS 199.120 (defining perjury and suborning perjury); NRS 207.190 (defining coercion). Accordingly, Bailey failed to demonstrate that counsel's actions were objectively unreasonable or a reasonable probability of a different outcome. Therefore, we conclude the district court did not err by dismissing this claim.

Second, Bailey argues that the district court erred by denying Grounds 2, 4, and 6 of his petition alleging the ineffective assistance of

²*Young v. State*, 120 Nev. 963, 102 P.3d 572 (2004).

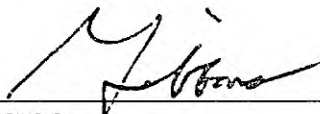
counsel. Bailey fails to specifically argue counsel's alleged deficiency and prejudice in support of each of these claims on appeal. Accordingly, Bailey fails to demonstrate that counsel's actions were objectively unreasonable or a reasonable probability of a different outcome. *See Chappell v. State*, 137 Nev. 780, 787-88, 501 P.3d 935, 949-50 (2021) (providing that an appellant alleging the district court erred by denying their claims of ineffective assistance of counsel must specifically articulate counsel's alleged deficiency and prejudice for each claim in their appellate briefing). Therefore, we conclude that Bailey fails to demonstrate the district court erred by dismissing these claims.

Finally, Bailey appears to argue that Judge Hardy should not have considered his postconviction petition because Judge Hardy called Bailey "cowardly" during sentencing. Bailey also appears to contend that Judge Hardy did not correctly address his claims because he was biased. NRS 34.730(4)(b) provides that a postconviction petition for a writ of habeas corpus that challenges the validity of a judgment of conviction or sentence must be assigned to the original judge or court "[w]henver possible," and Bailey fails to demonstrate assignment to Judge Hardy in compliance with that statute was improper.


Further Bailey has not demonstrated that the district court's decision to dismiss his petition was based on knowledge acquired outside of the proceedings, and the decision does not otherwise reflect "a deep-seated favoritism or antagonism that would make fair judgment impossible." *Canarelli v. Eighth Jud. Dist. Ct.*, 138 Nev. 104, 107, 506 P.3d 334, 337 (2022) (quotation marks omitted) (explaining that, unless an alleged bias has its origins in an extrajudicial source, disqualification is unwarranted absent a showing that the judge formed an opinion based on facts

introduced during official judicial proceedings and which reflects deep-seated favoritism or antagonism that would render fair judgment impossible); *see In re Petition to Recall Dunleavy*, 104 Nev. 784, 789, 769 P.2d 1271, 1275 (1988) (providing that rulings made during official judicial proceedings generally “do not establish legally cognizable grounds for disqualification”); *see also Rivero v. Rivero*, 125 Nev. 410, 439, 216 P.3d 213, 233 (2009) (stating that the burden is on the party asserting bias to establish sufficient factual grounds for disqualification), *overruled on other grounds by Romano v. Romano*, 138 Nev. 1, 6, 501 P.3d 980, 984 (2022), *abrogated in part on other grounds by Killebrew v. State ex rel. Donohue*, 139 Nev., Adv. Op. 43, 535 P.3d 1167 (2023). Therefore, we conclude Bailey is not entitled to relief based on this claim, and we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

³We have reviewed all documents Bailey has filed in this matter, and we conclude no relief based upon those submissions is warranted.

Insofar as Bailey has raised other issues which are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.

cc: Hon. David A. Hardy, District Judge
Jesse Bailey, IV
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk