

IN THE SUPREME COURT OF THE STATE OF NEVADA

BLAKE LAWRENCE ANDERSON,
Appellant,
vs.
CALVIN JOHNSON, WARDEN AT
HIGH DESERT STATE PRISON; AND
THE STATE OF NEVADA,
Respondents.

No. 87098

FILED

AUG 14 2024

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jennifer L. Schwartz, Judge. The district court denied appellant Blake Lawrence Anderson's petition without holding an evidentiary hearing. We affirm.

A jury convicted Anderson of first-degree kidnapping with the use of a deadly weapon and four counts of sexual assault with the use of a deadly weapon. Anderson appealed, and the court of appeals affirmed. *Anderson v. State*, No. 75776-COA, 2019 WL 6247674 (Nev. Ct. App. Nov. 21, 2019) (Order of Affirmance). The remittitur issued on December 16, 2019. Anderson filed a first postconviction habeas petition in January 2022, asserting generally that he received ineffective assistance of counsel. The district court denied the petition as bare and procedurally barred. Anderson filed another petition in April 2023, arguing that counsel provided ineffective assistance in several regards and that COVID-19 restrictions at the prison provided good cause to excuse the procedural bars. The district court agreed that Anderson had shown good cause but concluded that he had not shown ineffective assistance and denied the petition.

Anderson's postconviction habeas petition was untimely because it was filed three years after remittitur issued on appeal from the judgment of conviction. *See* NRS 34.726(1). Anderson's petition was also successive because he had previously filed a postconviction habeas petition and an abuse of the writ because he asserted new claims. *See* NRS 34.810(3). Thus, Anderson's petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(4). Good cause requires showing "an impediment external to the defense prevented [Anderson] from complying with the state procedural default rules." *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). "An impediment external to the defense may be demonstrated by a showing that the factual or legal basis for a claim was not reasonably available to counsel, or that some interference by officials, made compliance impracticable." *Id.* (internal quotation marks omitted).

While COVID-19 restrictions may have provided good cause for a period of time, Anderson filed the first pro se postconviction habeas petition in January 2022 and has filed other documents with the district court after that date. This indicates that Anderson's access to the court was not limited by restrictions on access to the prison law library. *See Lewis v. Casey*, 518 U.S. 343, 351 (1996) (a prisoner must "demonstrate that the alleged shortcomings in the library or legal assistance program hindered his efforts to pursue a legal claim"). Further, the requests to the law library that Anderson includes in the record repel his contention that COVID-19 restrictions impeded him in filing a petition—notes on the requests indicate that the requests were rejected because Anderson sought legal advice beyond the prison law library's purview, not because of a lockdown. Given that more than 15 months passed between Anderson's first postconviction

habeas petition and the one at issue, let alone the 39 months that elapsed after the remittitur issued on direct appeal, Anderson has not shown good cause for the entire period of the delay. *Rippo v. State*, 134 Nev. 411, 422, 423 P.3d 1084, 1097 (2018) (concluding that good cause must be asserted within one year of becoming available). The district court concluded that good cause excused the procedural bars without making any findings in support. Although we conclude that the district court erred in finding good cause, *see Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005) (deferring to the district court's factual findings that are supported by substantial evidence and not clearly erroneous), we nevertheless affirm because the district court reached the correct result in denying the petition, *see Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).

Further, Anderson has not shown actual prejudice to excuse the procedural bars. Actual prejudice requires a petitioner to show error that caused him an actual and substantial disadvantage. *Hogan v. Warden*, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993). On appeal, Anderson maintains two theories of ineffective assistance of counsel. We address the merits of these claims only to review whether Anderson has demonstrated actual prejudice.

To establish ineffective assistance of counsel, Anderson must show that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability that, but for counsel's errors, the outcome of the proceedings would have been different. *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 697, and the petitioner

must demonstrate the underlying facts by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). For purposes of the deficiency prong, counsel is strongly presumed to have provided adequate assistance and exercised reasonable professional judgment in all significant decisions. *Strickland*, 466 U.S. at 690.

Anderson first argues that trial counsel should have investigated Anderson's competence on the basis of his nonparticipation in the proceedings, which he attributes to sovereign citizen beliefs. Such beliefs do not establish a lack of competence to stand trial. See *United States v. Pryor*, 842 F.3d 441, 445 n.2 (6th Cir. 2016) (describing the "sovereign citizen' movement, [as] an ideology that rejects the legitimacy of United States jurisdiction over its adherents"); *United States v. Neal*, 776 F.3d 645, 657 (9th Cir. 2015) (recognizing that the "[defendant's] comments and conduct were indicative of [his sovereign citizen] belief, not a lack of competence[, and he] cannot now use those beliefs as an expression of incompetency"). Moreover, Anderson's numerous pro se filings before trial belie the contention that he was not capable of understanding the proceedings. See *United States v. Coleman*, 871 F.3d 470, 476-77 (6th Cir. 2017) (rejecting incompetency on the basis of sovereign citizen views because the defendant demonstrated an understanding of the proceedings where he made legal arguments challenging the court's jurisdiction); cf. *Lipsitz v. State*, 135 Nev. 131, 135, 442 P.3d 138, 142 (2019) ("An incompetent defendant is one who lacks the present ability to understand either the nature of the criminal charges against him or the nature and purpose of the court proceedings, or is not able to aid and assist his counsel in the defense at any time during the proceedings with a reasonable degree of rational understanding." (internal quotation marks omitted)). Anderson

has not shown deficient performance or a reasonable probability of a different outcome in this regard.


Anderson next argues that trial counsel should have discovered benefits that the victim received for testifying. He acknowledges that trial counsel successfully moved for an order compelling production of discovery but contends that the State did not fully comply with that order. This claim thus maintains that trial counsel knew the State to be bound by court order to provide information regarding any benefits provided to the victim and was unaware of benefits purportedly received by the victim. Even if such benefits existed, Anderson does not specifically allege what counsel should have done differently to obtain a more complete satisfaction of that order. *See Ortiz v. State*, 140 Nev., Adv. Op. 23, 545 P.3d 1142, 1148-49 (2024) (rejecting a claim of ineffective assistance of counsel that “did not articulate what trial counsel should have done[, and] [a]s a result . . . failed to establish either deficient performance or prejudice”); *cf. Strickland*, 466 U.S. at 689 (assessing attorney performance with the aim “to evaluate the conduct from counsel’s perspective at the time”). Accordingly, Anderson has not shown deficient performance or a reasonable probability of a different outcome in this regard.

Having considered Anderson’s contentions and concluded that relief is not warranted, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Stiglich


_____, J.
Pickering


_____, J.
Parraguirre

cc: Hon. Jennifer L. Schwartz, District Judge
The Law Office of Kristina Wildeveld & Associates
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk