


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GREGORY GANCI A/K/A
CHRISTOPHER GREGORY GANCI,
Appellants,
vs.
THE STATE OF NEVADA; AND JAMES
DZURENDA,
Respondents.

No. 87194-COA

FILED

SEP 12 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Gregory Ganci appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on November 17, 2020, and a supplemental petition filed on January 8, 2022. Eighth Judicial District Court, Clark County; Mary Kay Holthus, Judge.

First, Ganci argues that the district court erred by denying his claim that trial counsel was ineffective for failing to file a substitution of counsel after there was a complete collapse of the attorney-client relationship. 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, 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). 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).

The district court found that Ganci failed to allege or demonstrate he was prejudiced by counsel's failure to request that he be substituted off of Ganci's case. This finding is supported by the record. Neither the petition nor the supplement alleged a reasonable probability of a different outcome at trial had counsel requested that he be removed from the case. Therefore, we conclude that the district court did not err by denying this claim.

Second, Ganci argues the district court erred by denying his claim that appellate counsel was ineffective for failing to argue that the trial court erred by denying his motions for new counsel. To demonstrate ineffective assistance of appellate counsel, a petitioner must show that counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that the omitted issue would have a reasonable probability of success on appeal. *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). Appellate counsel is not required to raise every non-frivolous issue on appeal. *Jones v. Barnes*, 463 U.S. 745, 751 (1983). Rather, appellate counsel will be most effective when every conceivable issue is not raised on appeal. *Ford v. State*, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989).

Ganci claimed he made numerous oral motions to remove counsel and filed two motions to dismiss counsel. He also claimed that he demonstrated at hearings on these motions that there was a complete breakdown in the attorney-client relationship. In reviewing the denial of a motion for substitution of counsel, this court considers “(1) the extent of the conflict between the defendant and counsel, (2) the adequacy of the court’s inquiry into the defendant’s complaint, and (3) the timeliness of the motion and the extent of any inconvenience or delay.” *Young v. State*, 120 Nev. 963, 965, 102 P.3d 572, 574 (2004).

The district court found that Ganci failed to meet the factors set out in *Young*, such that the trial court should have granted his motions to dismiss counsel, and thus the issue did not have a reasonable probability of success on appeal. The district court reviewed the transcripts of the hearings on the motions to dismiss counsel and found that there was no real conflict between Ganci and counsel. Specifically, the district court found that (1) counsel and his investigator met with Ganci on several occasions individually and once together, (2) the trial court facilitated several more visits with trial counsel after the hearings, (3) trial counsel stated he could continue to work with Ganci, and (4) trial counsel obtained the records that Ganci requested he obtain. Further, the district court found that the trial court adequately inquired into Ganci’s claims at the hearings. Ganci did not provide this court with either a copy of the transcripts of the hearings with respect to Ganci’s motions to dismiss or a copy of his written motions. Therefore, we presume that the transcripts and motions support the district court’s findings. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev.

598, 603, 172 P.3d 131, 135 (2007) (noting that it is appellant's burden to ensure that a proper record is prepared and that, if the appellant fails to do so, "we necessarily presume that the missing [documents] support[] the district court's decision"). Thus, we conclude that the district court did not err by denying this claim, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Mary Kay Holthus, District Judge
SDS Chartered, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk