

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CASEY ALAN JOHNS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87931-COA

FILED

OCT 16 2024

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

ORDER OF AFFIRMANCE

Casey Alan Johns appeals from a district court order dismissing a postconviction petition for a writ of habeas corpus filed on August 21, 2023, and supplement.¹ Tenth Judicial District Court, Churchill County; Thomas L. Stockard, Judge.

In his petition, Johns contended that (1) there was insufficient evidence to support his convictions for counts 1-5, (2) he was subjected to cruel and unusual punishment, (3) his speedy trial rights were violated, (4) certain evidence was tampered with or altered, and (5) he acted in self-defense. These claims could have been presented to the trial court or raised on direct appeal and were therefore procedurally barred pursuant to NRS

¹Johns filed a “motion to submit amended petition” on October 30, 2023. The district court appears to have construed the amended petition as a supplemental pleading and granted Johns’ motion in its December 21, 2023, order.

34.810(1)(b).² Johns did not allege cause or actual prejudice to overcome the procedural bar, and we conclude the district court did not err by dismissing these claims.³ NRS 34.810(1)(b); NRS 34.810(4).

Johns also appeared to raise a freestanding claim of actual innocence. The Nevada Supreme Court has never held that such a claim can be raised in a postconviction petition for a writ of habeas corpus. *See Berry v. State*, 131 Nev. 957, 967 n.3, 363 P.3d 1148, 1154 n.3 (2015) (noting the Nevada Supreme Court “has yet to address whether and, if so, when a free-standing actual innocence claim exists”). Because Johns has a remedy with which to pursue his freestanding claim of actual innocence, *see* NRS 34.900-.990, we decline to consider it here.

Lastly, Johns contended that counsel was ineffective. To demonstrate ineffective assistance of trial counsel, a petitioner must show

²The district court failed to consider whether these claims were barred by NRS 34.810. *See State v. Eighth Jud. Dist. Ct. (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) (“Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory.”). We nevertheless affirm the district court’s dismissal of these claims for the reasons stated herein. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (holding a correct result will not be reversed simply because it is based on the wrong reason).

³As correctly noted by the district court, Johns raised some of his claims on direct appeal—that there was insufficient evidence to support his convictions for counts 1 and 3 and that his sentence constituted cruel and unusual punishment. *See Johns v. State*, No. 83064-COA, 2022 WL 3211439 (Nev. Ct. App. Aug. 8, 2022) (Order of Affirmance). In addition to the procedural bar outlined in NRS 34.810(1)(b), further consideration of these claims was barred by the doctrine of the law of the case. *See Hall v. State*, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975).

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. A petitioner must raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle the petitioner to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). To overcome the presumption that counsel performed effectively, "a petitioner must do more than baldly assert that his attorney could have, or should have, acted differently. Instead, he must *specifically explain* how his attorney's performance was objectively unreasonable." *Chappell v. State*, 137 Nev. 780, 788, 501 P.3d 935, 950 (2021) (internal citation and quotation marks omitted). 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, Johns appeared to claim trial counsel was ineffective for allowing court hearings to proceed in Johns' absence after he had requested to be present at every hearing. Johns' bare claim failed to specify the purpose of the hearings held in his absence such that reasonable counsel would have ensured Johns' presence, and he did not allege there was a reasonable probability of a different outcome at trial had counsel ensured he was present for those hearings. Therefore, Johns failed to support his claims with specific factual allegations that are not belied by the record and,

if true, would entitle him to relief, and we conclude the district court did not err by dismissing this claim.

Second, Johns claimed trial counsel was ineffective for failing to pursue any of his defenses. Johns' bare claim failed to specify what defenses counsel did not pursue or why counsel's failure to pursue any such defenses was deficient. Johns also did not allege that there was a reasonable probability of a different outcome at trial had counsel pursued his defenses. Therefore, Johns failed to support his claims with specific factual allegations that are not belied by the record and, if true, would entitle him to relief. Accordingly, we conclude the district court did not err by dismissing this claim.

Third, Johns claimed trial counsel was ineffective for failing to respond to his letters. Johns did not allege that there was a reasonable probability of a different outcome at trial had counsel responded to his letters. Therefore, Johns failed to support his claims with specific factual allegations that are not belied by the record and, if true, would entitle him to relief, and we conclude the district court did not err by dismissing this claim.

Johns also claimed that appellate counsel was ineffective. 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). As with a claim of ineffective assistance of trial counsel, both components of the inquiry must be shown. *See Strickland*, 466 U.S. at 687.

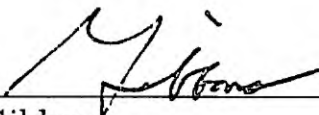
First, Johns claimed appellate counsel was ineffective for failing to raise certain grounds on appeal. Specifically, Johns stated that he wanted counsel to raise “[his] 90 day violation, tampered evidence, [and] discovery Brady issues.” Johns’ bare claim did not specify what these claims were. To the extent Johns was referring to other claims raised in his petition, he did not allege why counsel’s failure to raise these claims was deficient. *See Jones v. Barnes*, 463 U.S. 745, 751 (1983) (stating appellate counsel is not required to raise every non-frivolous issue on appeal); *see also Ford v. State*, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989) (stating appellate counsel will be most effective when every conceivable issue is not raised on appeal). Johns also did not allege that these claims had a reasonable probability of success on appeal. Therefore, Johns failed to support his claims with specific factual allegations that are not belied by the record and, if true, would entitle him to relief, and we conclude the district court did not err by dismissing this claim.

Second, Johns claimed appellate counsel was ineffective for failing to provide him with a copy of the remittitur issued in his direct appeal. Johns did not allege why counsel’s alleged failure to provide him with a copy of the remittitur was deficient. Even assuming counsel had a duty to provide Johns with a copy of the remittitur, Johns’ claim did not implicate the merits of his direct appeal, and he did not allege any prejudice resulted from counsel’s alleged error. Therefore, Johns failed to support his claims with specific factual allegations that are not belied by the record and, if true, would entitle him to relief, and we conclude the district court did not err by dismissing this claim.

Finally, Johns claimed appellate counsel was ineffective for failing to respond to a letter in which he requested that counsel write a letter back. Johns did not allege that there was a reasonable probability of success on appeal had counsel responded to his letter. Therefore, Johns failed to support his claims with specific factual allegations that are not belied by the record and, if true, would entitle him to relief, and we conclude the district court did not err by dismissing this claim.

In light of the foregoing, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Thomas L. Stockard, District Judge
Casey Alan Johns
Attorney General/Carson City
Churchill County District Attorney/Fallon
Churchill County Clerk