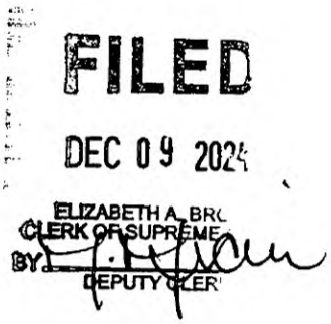
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DONALD RAY LAMONT WANNER, SR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87594-COA



ORDER OF AFFIRMANCE

Donald Ray Lamont Wanner, Sr., appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on May 5, 2022. Eleventh Judicial District Court, Pershing County; Jim C. Shirley, Judge.

Wanner first argues the district court erred by denying his claims of ineffective assistance of trial and appellate counsel. 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*). 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). 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 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 the petitioner to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Wanner claimed that trial and appellate counsel failed to argue that the 1968 Mustang was not stolen because there was a verbal agreement between C. Loper (the man alleged to own the Mustang in the charging document) and a divorced couple (D. Mock and M. Jiminez) to transfer ownership of the Mustang to the couple's son. In support of this claim, Wanner pointed to Loper's trial testimony, wherein Loper (1) acknowledged his previous statement that he would not mind giving the son the Mustang and (2) agreed with the State's question that there had been "a friendly verbal agreement with friends."

The district court found that Loper was the owner of the Mustang. This finding is supported by the record. The evidence presented at trial was that the certificate of title listed Loper as the owner. And while Loper told a friend he was not opposed to giving the car to the son, even telling the friend "let's get the paperwork together," at the time Wanner was alleged to have committed the offense, no paperwork had been prepared and Loper himself still owned the car. As to Wanner's second point regarding the "friendly agreement" acknowledged by Loper at trial, taken in context, the agreement was one to store the Mustang on Mock and Jiminez's property, not an agreement to give the Mustang to their son. In addition, this court determined on direct appeal that sufficient evidence supported Wanner's convictions for offenses related to the Mustang. *See Wanner v. State*, 81589-COA, 2021 WL 2473890, *3-4 (Nev. Ct. App. 2021) (Order of Affirmance). In light of these circumstances, Wanner failed to demonstrate

trial or appellate counsel's performance was deficient or a reasonable probability of a different outcome at trial or on appeal had counsel argued the existence of a verbal agreement transferring ownership of the Mustang. Therefore, we conclude the district court did not err by denying this claim.

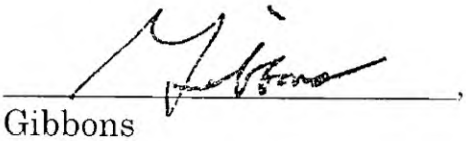
Second, Wanner claimed that trial and appellate counsel failed to argue that the ATV was not stolen because B. Hughes testified that he "may have told [Wanner] he could take [the ATV] off [Wanner's] property," thus making Wanner the legal owner of the ATV. Hughes testified that the ATV was on Wanner's property so Wanner could repair it and he never authorized Wanner to sell or give away the ATV. And while Hughes testified that Wanner said he wanted the ATV off of his property and Hughes may have authorized Wanner to remove it, Hughes "didn't assume that it would go elsewhere, other than back to my house." In light of these circumstances, Wanner failed to demonstrate trial or appellate counsel's performance was deficient or a reasonable probability of a different outcome at trial or on appeal had counsel argued that Hughes verbally transferred ownership of the ATV to Wanner. Therefore, we conclude the district court did not err by denying this claim.

Third, Wanner claimed that he was illegally seized, denied a fair trial, and had his due process rights otherwise violated because the State failed to prove that the Mustang or the ATV were stolen. Because Wanner could have raised these claims on direct appeal but did not, his claims are waived. *See* NRS 34.810(1)(b)(2). Therefore, we conclude the district court did not err by denying these claims.

Finally, Wanner claimed the trial court lacked jurisdiction because neither the Mustang nor the ATV were stolen. Warner's claim challenged the sufficiency of the evidence underlying his convictions—issues Wanner raised on direct appeal. To the extent Wanner's claim was not raised on direct appeal, it could have been raised on direct appeal and

is thus waived. *See id.* Finally, Wanner's claim does not implicate the jurisdiction of the courts. *See* Nev. Const. art. 6, § 6; NRS 171.010; *United States v. Cotton*, 535 U.S. 625, 630 (2002) ("[T]he term jurisdiction means . . . the courts' statutory or constitutional power to adjudicate the case." (internal quotation marks omitted)). Therefore, we conclude the district court did not err by denying this claim, and we

ORDER the judgment of the district court AFFIRMED.[1]



_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

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[1]To the extent Wanner presents claims in his briefing on appeal that were not included in his petition or properly presented to the district court below, *see Barnhart v. State*, 122 Nev. 301, 303-04, 130 P.3d 650, 651-52 (2006), we decline to consider them in the first instance, *see State v. Wade*, 105 Nev. 206, 209 n.3, 772 P.2d 1291, 1293 n.3 (1989).

We have considered all documents Wanner has filed in this matter and conclude no relief based upon those documents is warranted. Insofar as Wanner 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. Jim C. Shirley, District Judge
Donald Ray Lamont Wanner, Sr.
Attorney General/Carson City
Pershing County District Attorney
Clerk of the Court/Court Administrator