

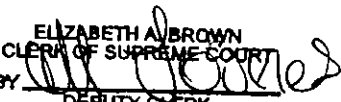
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANDREW YOUNG,
Appellant,
vs.
WARDEN BEAN AND THE STATE OF
NEVADA,
Respondents.

No. 89411-COA

FILED

SEP - 3 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Andrew Young appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on February 21, 2024. Eighth Judicial District Court, Clark County; Erika L. Mendoza, Judge.

Young's postconviction habeas petition challenged his conviction of battery with the use of a deadly weapon causing substantial bodily harm. Young argues the district court erred by denying his claims of ineffective assistance of trial and appellate counsel without conducting an evidentiary hearing. To demonstrate ineffective assistance of trial and appellate 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*); see *Kirksey v. State*, 112 Nev. 980,

998, 923 P.2d 1102, 1113-14 (1996) (applying *Strickland* to appellate-counsel claims). Both components of the inquiry must be shown. *Strickland*, 466 U.S. at 687. To warrant an evidentiary hearing, 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, Young contends that trial counsel was ineffective for not moving to suppress or exclude mention of the rock used in the battery because forensic testing did not reveal Young's DNA on the rock. Where a claim of ineffective assistance is predicated on counsel's failure to move to suppress evidence, the prejudice prong requires a showing that (1) the basis for the motion was meritorious and (2) there was a reasonable likelihood that exclusion of the evidence would have led to a different result at trial. *Kirksey*, 112 Nev. at 990, 923 P.2d at 1109 (citing *Kimmelman v. Morrison*, 477 U.S. 365, 375 (1986)). Aside from a mention of the Fourth Amendment, Young's claim did not describe the argument counsel should have made to exclude this evidence. *See Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225. Therefore, his claim was insufficient and the district court did not err in denying this claim without conducting an evidentiary hearing.

Second, Young contends that trial counsel was ineffective for relying on the State's investigation. Young did not allege what avenues of investigation counsel should have pursued or what counsel would have discovered had counsel conducted their own investigation. *See id.*; *see also Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) (stating a petitioner claiming counsel did not conduct an adequate investigation must

specify what a more thorough investigation would have uncovered). Therefore, the district court did not err in denying this claim without conducting an evidentiary hearing.

Third, Young contends that trial counsel was ineffective for failing to investigate and produce an alibi witness. Young's claim did not identify who counsel should have investigated or called as an alibi witness. *See Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225; *see also Molina*, 120 Nev. at 192, 87 P.3d at 538. Therefore, the district court did not err in denying this claim without conducting an evidentiary hearing.

Fourth, Young contends that trial counsel was ineffective for not investigating the criminal history and parole status of the eyewitness to the attack. During both direct and cross-examination, the witness acknowledged she had been convicted of battery causing substantial bodily harm and was in custody. Young did not allege what counsel would have further discovered had counsel investigated and questioned the witness about her criminal history and parole status. *See Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225; *see also Molina*, 120 Nev. at 192, 87 P.3d at 538. Therefore, the district court did not err in denying this claim without conducting an evidentiary hearing.

Fifth, Young contends that trial counsel should have moved to dismiss the indictment because he was denied notice of the grand jury proceedings pursuant to *Sheriff v. Marcum*, 105 Nev. 824, 783 P.2d 1389 (1989). Because he was convicted at trial, Young faced a considerable burden of demonstrating any evidence he would have presented to the grand jury could have disputed the evidence presented to such an extent

that he would not have been indicted. *See United States v. Mechanik*, 475 U.S. 66, 70 (1986) (holding a guilty verdict demonstrates that there was probable cause to believe the defendant committed the charged crimes and renders any error in the grand jury proceedings harmless); *Lisle v. State*, 114 Nev. 221, 224-25, 954 P.2d 744, 746-47 (1998) (addressing a challenge involving a *Marcum* notice). Nevertheless, he did not identify what evidence he intended to offer during grand jury proceedings. *See Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225. Therefore, the district court did not err in denying this claim without conducting an evidentiary hearing.

Young also contends that appellate counsel was ineffective for not filing a reply brief on direct appeal. He insists that this failure was the basis for a conflict of interest with appellate counsel. Young did not allege what arguments counsel should have made in a reply brief. *See id.* Therefore, the district court did not err in denying this claim without conducting an evidentiary hearing.

Young also argues that the State committed prosecutorial misconduct and the trial court committed judicial misconduct. He asserts these claims were not procedurally barred because appellate counsel was ineffective for failing to argue the claims on appeal. He also argues that the failure to consider these claims on the merits would result in a fundamental miscarriage of justice.

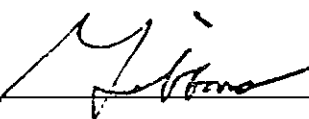
These claims could have been raised on direct appeal and Young did not assert in his petition below that he had good cause for his failure to do so. *See* NRS 34.810(1)(b)(2). Young's arguments that appellate counsel was ineffective for failing to raise these claims on direct appeal and that the

failure to consider the claims on the merits would result in a fundamental miscarriage of justice are raised for the first time on appeal; thus, we decline to consider them. *See State v. Wade*, 105 Nev. 206, 209 n.3, 772 P.2d 1291, 1293 n.3 (1989) ("This court will not consider issues raised for the first time on appeal."). Therefore, the district court did not err in denying this claim without conducting an evidentiary hearing.

Having considered Young's contentions and concluding that they lack merit, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Erika L. Mendoza, District Judge
Andrew Young
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk