

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL RODRIGUEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89659-COA

FILED

NOV 12 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING*

Michael Rodriguez appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on June 28, 2023. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

Rodriguez filed his petition more than one year after issuance of the remittitur on direct appeal on June 17, 2022. *Rodriguez v. State*, No. 82135, 2022 WL 1514773 (Nev. May 12, 2022) (Order of Affirmance). The petition was filed 11 days late. Thus, Rodriguez's petition was untimely filed. *See* NRS 34.726(1). Rodriguez's petition was procedurally barred absent a demonstration of good cause for the delay—that the delay was not his fault and that he would be unduly prejudiced by the dismissal of his petition as untimely. *See id.* To demonstrate the delay was not his fault, Rodriguez had to show that an impediment external to the defense prevented him from complying with the state procedural default rules. *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). "A showing of undue prejudice necessarily implicates the merits of the . . . claim[s]" raised in the petition. *Rippo v. State*, 134 Nev. 411, 422, 423 P.3d 1084, 1097 (2018). To warrant an evidentiary hearing, a petitioner's good-cause claims must be supported by specific factual allegations that are not belied

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by the record and, if true, would entitle the petitioner to relief. *Berry v. State*, 131 Nev. 957, 967, 363 P.3d 1148, 1154-55 (2015).

Rodriguez argues the district court erred by finding he failed to demonstrate the delay was not his fault. Rodriguez alleged he was not at fault for the delay because the prison mailroom staff failed to send his petition out for mailing in a timely manner. Rodriguez's petition was due June 17, 2023. He claimed he gave his petition, along with sufficient postage, to the mailroom on June 4, 2023, 13 days prior to the one-year deadline. On June 18, 2023, he claimed he inquired with the mailroom as to whether his petition had been sent. The mailroom informed him that his slip stated he was sending four boxes but the mailroom only received one box. Four days later, the mailroom sent out the petition for mailing. Rodriguez supported these allegations with documentation from the prison. The petition was received by the clerk's office on June 26, 2023, and filed on June 28, 2023.

The district court found, based on the declaration by Rodriguez and the documents provided, that Rodriguez failed to demonstrate the delay was not his fault because the documentation showed the petition was not sent out due to Rodriguez's failure to give the mailroom the correct number of boxes for mailing. However, the documentation does not demonstrate why the prison could not have sent out the box it received in a timely manner, particularly where Rodriguez alleged he provided separate postage for each box. The documentation also does not demonstrate why, without being provided anything further from Rodriguez, the prison sent out the petition and supporting documents on June 22. Thus, we conclude the district court erred by denying Rodriguez's claim that the delay was not his fault without first holding an evidentiary hearing. *Cf. Mann v. State*, 118

Nev. 351, 354, 356, 46 P.3d 1228, 1230, 1231 (2002) (holding “it is improper for the district court to resolve a factual dispute created by affidavits without conducting an evidentiary hearing”).

Notwithstanding that error, Rodriguez was also required to show the dismissal of his petition as untimely would unduly prejudice him in order to show good cause for the delay. As noted above, undue prejudice implicates the merits of the claims raised in the petition, and Rodriguez argues the merits of two of his ineffective-assistance-of-counsel claims on appeal.

To demonstrate ineffective assistance of counsel, a petitioner must show counsel’s performance was deficient in that it fell below an objective standard of reasonableness. *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 prejudice based on trial counsel’s deficient performance, a petitioner must show that prejudice resulted in that there was a reasonable probability of a different outcome absent counsel’s errors. *Strickland*, 466 U.S. at 694. To demonstrate prejudice based on appellate counsel’s deficient performance, a petitioner must show 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. 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). 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). 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, Rodriguez argues the district court erred by denying his claim that appellate counsel was ineffective for failing to argue the State withheld evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). He argues the withheld evidence would have supported his motions to suppress his statements to police, and that if appellate counsel had made a *Brady* argument on direct appeal, it would have had a reasonable probability of success. To address this claim, we first examine the suppression motions, and the Nevada Supreme Court's conclusion on direct appeal that the district court did not err in denying them.

Rodriguez filed motions to suppress statements he made on December 3, 2010, and December 8, 2010. On December 3, 2010, the police stopped Rodriguez on the side of the highway to execute a search warrant of his vehicle. Rodriguez was handcuffed and went with police to the police station to give a statement. The police did not inform Rodriguez of his *Miranda*¹ warnings with regard to this statement. In this statement, Rodriguez told police that he had an alibi for the time of the murder. After giving his statement, he left the police station. On direct appeal, the supreme court concluded that Rodriguez was not in custody for purposes of *Miranda*, see *Rodriguez*, No. 82135, 2022 WL 1514773 at *1, and that, even

¹*Miranda v. Arizona*, 384 U.S. 436 (1966).

if he were, there was sufficient other evidence presented at trial to convict Rodriguez had this statement not been presented to the jury, *see id.* at *2. Thus, any error in failing to suppress the December 3 statement was harmless.

On December 8, 2010, Rodriguez called the detective on the case and stated he wanted to talk. In his motions to suppress, Rodriguez claimed that the interview started much earlier than what was recorded and that, during that unrecorded time, the detective called the district attorney's office and that office promised Rodriguez immunity. However, Rodriguez went on to contradict this promise of immunity by stating the detective only told him the district attorney was "willing to play ball." On direct appeal, the supreme court concluded that Rodriguez failed to demonstrate he was promised immunity in exchange for his confession when Rodriguez admitted he was only told the district attorney was "willing to play ball" and admitted on cross-examination he had not been promised immunity. *See id.* Therefore, the supreme court found no error in failing to suppress the December 8 statement.

Rodriguez contends appellate counsel should have argued the State withheld two types of evidence that would have supported his motions to suppress his statements to police: (1) the CAD log from December 3, 2010, when his vehicle was searched and he gave his first statement to police; and (2) the December 8, 2010, logs from the jail showing when Rodriguez was removed from his jail cell and when the detective arrived at the jail. Under *Brady*, the State is required to disclose evidence favorable to the defense when that evidence is material to guilt or punishment. *Mazzan v. Warden*, 116 Nev. 48, 66, 993 P.2d 25, 36 (2000). "Evidence also must be disclosed if it provides grounds for the defense to attack the reliability, thoroughness,

and good faith of the police investigation, to impeach the credibility of the state's witnesses, or to bolster the defense case against prosecutorial attacks." *Id.* at 67, 993 P.2d at 37. "[T]here are three components to a *Brady* violation: the evidence at issue is favorable to the accused; the evidence was withheld by the state, either intentionally or inadvertently; and prejudice ensued, i.e., the evidence was material." *Id.*

As to the CAD logs, Rodriguez argues the logs could have been used to impeach the detective who testified at the suppression hearing. Specifically, he alleges the detective could have been impeached regarding his testimony that he arrived with his partner and that this was not a high risk stop. The logs show the detective showed up separately from his partner and there is language in the log that the suspect was armed. Rodriguez argues that this would have shown his stop was high risk and that he was thrown up against the car² and searched prior to being put into handcuffs.

While we conclude Rodriguez demonstrated the State withheld the CAD logs as they were not produced until after the motion to suppress hearing, Rodriguez fails to demonstrate the CAD logs were material. The supreme court concluded on direct appeal that the stop effectuated on Rodriguez was not an arrest, *see Rodriguez*, No. 82135, 2022 WL 1514773 at *2, and the CAD logs do not contain information that would undermine the finding that Rodriguez was not in custody for purposes of *Miranda* under the factors set forth in *State v. Taylor*, 114 Nev. 1071, 1082 n.1, 968 P.2d 315, 323 n.1 (1998), *see Rodriguez*, No. 82135, 2022 WL 1514773 at *1.

²We note the CAD logs do not demonstrate Rodriguez was "thrown up against the car," and Rodriguez did not testify at the suppression hearing that this occurred.

Thus, Rodriguez fails to demonstrate that this additional information regarding his stop would have changed the outcome of his direct appeal. Further, the supreme court concluded that any error in presenting the December 3 statement to the jury was harmless. Therefore, Rodriguez fails to demonstrate the district court erred by finding this *Brady* claim related to the CAD logs did not have a reasonable probability of success on appeal.

As to the jail logs, while Rodriguez demonstrates the evidence was withheld as they were not produced until after the motion to suppress hearing, Rodriguez again fails to demonstrate the evidence was material. The supreme court concluded on direct appeal that Rodriguez's contradictory statements regarding the alleged promise made by the detective undermined Rodriguez's claim that he was promised immunity. *See Rodriguez*, No. 82135, 2022 WL 1514773 at *2. The jail logs do not change that determination. Therefore, Rodriguez fails to demonstrate the district court erred by finding this *Brady* claim related to the jail logs did not have a reasonable probability of success on appeal. Because Rodriguez fails to demonstrate his *Brady* claims had merit, he fails to demonstrate appellate counsel was ineffective. Thus, he fails to demonstrate undue prejudice with regard to his claim against appellate counsel.

Second, Rodriguez argues the district court erred by denying his claim that trial counsel was ineffective for coercing his stipulation to waive his penalty hearing and waive his right to appeal most of his trial related claims.³ After trial, Rodriguez stipulated to a sentence of life in

³Rodriguez also argues that, because his stipulation and waiver were coerced and therefore not validly entered, the Nevada Supreme Court did not have jurisdiction over his appeal from his judgment of conviction and thus this court cannot rely on the disposition on direct appeal. Rodriguez

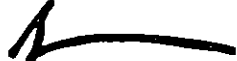
prison without the possibility of parole and to waive his right to appeal. He later withdrew from that stipulation. Subsequently, Rodriguez entered into a second stipulation wherein he agreed to a sentence of life in prison without the possibility of parole and to waive his right to appeal, except he retained the right to appeal the denial of the issues raised in his motions to suppress.

Rodriguez argues trial counsel coerced his second stipulation in two ways: (1) by wrongfully informing him his *Brady* claims were preserved for appeal by the stipulation; and (2) by promising to raise the above discussed *Brady* claims on appeal and failing to do so. We conclude Rodriguez fails to demonstrate that his *Brady* claims were not preserved for appeal by the stipulation and therefore fails to demonstrate undue prejudice related to this claim. However, Rodriguez asserts he only entered into the second stipulation because counsel promised he would raise the *Brady* claims on appeal, and counsel did not raise those claims on appeal. Because counsel purportedly misled Rodriguez about what issues would be raised on appeal, Rodriguez contends his second stipulation and appeal waiver were entered into unknowingly and involuntarily. This claim was supported by specific factual allegations that are not belied by the record and, if true, would entitle Rodriguez to relief. *See Aldape v. State*, 139 Nev. 388, 390, 535 P.3d 1184, 1188 (2023) (stating that “[i]n evaluating appeal waiver claims, courts consider whether . . . the waiver . . . [was] entered into knowingly and voluntarily” (internal quotation marks omitted)). Therefore, we conclude the district court erred by denying this claim of undue prejudice without first conducting an evidentiary hearing.

fails to demonstrate the Nevada Supreme Court lacked jurisdiction on appeal from the judgment of conviction. *See* NRS 177.015(3).

Given the above conclusions, we affirm the denial of Rodriguez's petition in part, reverse the denial in part, and remand the matter to the district court for an evidentiary hearing on whether Rodriguez demonstrated the delay in filing the petition was not his fault and whether Rodriguez demonstrated undue prejudice because counsel was ineffective regarding the entry of his second stipulation and appeal waiver such that Rodriguez overcame the procedural time bar in NRS 34.726. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Tierra Danielle Jones, District Judge
Lowe Law LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk