

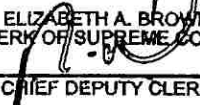
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARIO BLADIMIR TREJO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 90037-COA

FILED

NOV 26 2025

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

ORDER OF AFFIRMANCE

Mario Bladimir Trejo appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on November 12, 2024. Eighth Judicial District Court, Clark County; Mary Kay Holthus, Judge.

Trejo argues the district court erred by denying four claims of ineffective assistance of appellate counsel without first conducting an evidentiary hearing. 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 v. Washington*, 466 U.S. 668, 687 (1984). 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, Trejo argued appellate counsel was ineffective for failing to argue the trial court improperly limited his trial testimony and did not state on the record why the testimony was limited. Trejo failed to demonstrate the trial court improperly limited his testimony at trial or did not state on the record why the testimony was limited. Trejo read a statement, through an interpreter, that the State objected to several times. The trial court sustained those objections because the objected-to statements were either not relevant or contained hearsay. Trejo failed to demonstrate the trial court erred by sustaining those objections. Further, we conclude any error would have been harmless given the Nevada Supreme Court's finding that the evidence against Trejo was overwhelming. *See Trejo v. State*, No. 84724, 2024 WL 609297, at *2 (Nev. Feb. 13, 2024) (Order of Affirmance). Therefore, Trejo failed to demonstrate that appellate counsel's performance was deficient or that this claim had a reasonable probability of success on appeal. Thus, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Second, Trejo argued appellate counsel was ineffective for failing to investigate his medical records, which showed he was under an involuntary commitment at the time of his interviews with law enforcement and was unable to legally waive his *Miranda*¹ rights. It appears Trejo claimed counsel should have argued that his confession should have been suppressed based on this alleged inability to waive his rights due to his mental health status based on medical records that were not in either the pretrial or trial record.

Trejo failed to demonstrate appellate counsel had a duty to investigate information outside the trial record. *See Rippo v. State*, 134 Nev. 411, 429, 423 P.3d 1084, 1102 (2018) (providing that “appellate counsel could not have expanded the record before this court to include evidence that was not part of the trial record”). Further, the mental health crisis statutes do not state that a person held for such a crisis cannot make legal decisions. *See* NRS 433A.145-.330. In fact, NRS 433A.215 allows such a person to prosecute a writ of habeas corpus. Thus, Trejo failed to demonstrate that appellate counsel’s performance was deficient or that this claim had a reasonable probability of success on appeal. Accordingly, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Third, Trejo appeared to claim appellate counsel was ineffective for failing to argue his confession should have been suppressed pursuant to *Missouri v. Seibert*, 542 U.S. 600, 611-12 (2004), because the detective began

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

the interview prior to recording it and prior to reading Trejo his *Miranda* warnings. Even assuming this claim had merit, Trejo failed to demonstrate that this claim had a reasonable probability of success on appeal given the overwhelming evidence presented at trial. *See Carroll v. State*, 132 Nev. 269, 287, 317 P.3d 1023, 1035 (applying harmless error analysis to a statement admitted at trial in violation of *Miranda*). Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Fourth, Trejo argued appellate counsel was ineffective for failing to allege prosecutorial misconduct when the State made representations at a calendar call that Trejo was ready for trial when he was not. Trejo contended he was not ready for trial because he was trying to get witnesses and evidence for a *Jackson v. Denno*² hearing and he was unable to communicate that to the trial court because he was mute. At the April 13, 2022, calendar call, the State accurately represented to the trial court that the parties had previously announced ready for trial. Further, the judge at the April 13 hearing was not the trial judge, and Trejo failed to demonstrate that this judge would have granted any request on the part of Trejo for a continuance given that the judge specifically refused to consider Trejo's motion to suppress but left the motion for the trial judge to handle on the first day of trial. Finally, the trial judge ultimately denied the motion to suppress because it was not timely filed. Thus, Trejo failed to demonstrate that appellate counsel's performance was deficient or that this

²378 U.S. 368 (1964).

claim had a reasonable probability of success on appeal. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

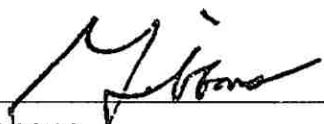
Next, Trejo argues he never received the full transcripts from appellate counsel. Trejo did not make this argument below; therefore, we decline to consider it for the first time on appeal. *See State v. Wade*, 105 Nev. 206, 209 n.3, 772 P.2d 1291, 193 n.3 (1989) (“This court will not consider issues raised for the first time on appeal.”).

Finally, Trejo argues the district court erred by denying his motion to appoint counsel. The appointment of counsel in this matter was discretionary. *See* NRS 34.750(1). When deciding whether to appoint counsel, the district court may consider factors, including whether the issues presented are difficult, whether the petitioner is unable to comprehend the proceedings, or whether counsel is necessary to proceed with discovery. *Id.*; *Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 761 (2017). Trejo filed a motion for leave to proceed in forma pauperis, had previously had an attorney provided by the State, and filed a petition that was not subject to summary dismissal. *See* NRS 34.745(1), (4). Therefore, Trejo met the threshold requirements for the appointment of counsel. *See* NRS 34.750(1); *Renteria-Novoa*, 133 Nev. at 76, 391 P.3d at 760-61. However, the district court found that the issues in this matter were not difficult, Trejo was able to comprehend the proceedings, and discovery with the aid of counsel was not necessary. For these reasons, the district court denied the motion to appoint counsel. The record supports the decision of the district court, and we conclude the district court did not abuse its

discretion by denying the motion for the appointment of counsel. Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Mary Kay Holthus, District Judge
Mario Bladimir Trejo
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³To the extent Trejo raised the issues underlying his claims of ineffective assistance of counsel as substantive claims, we conclude they were procedurally barred because they could have been raised on direct appeal and Trejo failed to demonstrate good cause and prejudice to overcome the procedural bar. *See* NRS 34.810(1)(b). Therefore, we conclude the district court did not err by denying these claims without first conducting an evidentiary hearing.