IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT J. COLLINS, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 41505

FILED

APR 2 7 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [signature]
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant Robert J. Collins' post-conviction petition for a writ of habeas corpus.

On August 28, 1995, the district court convicted Collins, pursuant to a jury verdict, of presenting false information for insurance benefits (count I), conspiracy to provide false information for insurance benefits (count II), and obtaining money or property by false pretenses (count IV). The district court sentenced Collins to serve six-year terms in the Nevada State Prison for counts I and II, and a term of eight years for count IV. All sentences were imposed to run concurrently. This court affirmed Collins' judgment of conviction and sentence,[1] and denied a subsequent petition for rehearing.[2] The remittitur issued on May 20, 1998.

On April 28, 1999, Collins filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Collins or to conduct an evidentiary hearing. On May 18, 1999,

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[1]Collins v. State, 113 Nev. 1177, 946 P.2d 1055 (1997).

[2]Collins v. State, Docket No. 27810 (Order Denying Rehearing, May 12, 1998).

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the district court denied Collins' petition on the ground that it was untimely. On appeal, this court noted that Collins' petition was timely filed and reversed and remanded the matter to the district court.[3] On April 4, 2001, Collins filed an amended petition for a writ of habeas corpus. On May 12, 2003, the district court denied Collins' petition on the merits. This appeal followed.[4]

In his petition, Collins raised numerous claims of ineffective assistance of trial counsel.[5] To state a claim of ineffective assistance of trial counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness.[6] A petitioner must further establish that there is a reasonable probability that in the absence of counsel's errors, the results of the proceedings would have been different.[7] The court can

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[3]Collins v. Warden, Docket No. 34294 (Order of Reversal and Remand, March 15, 2001).

[4]Although Collins did not receive permission from the district court to file supplemental pleadings, the district court considered the claims Collins raised in his amended petition. See NRS 34.750(5). Consequently, we have addressed the claims Collins raised in his original petition and his amended petition.

[5]To the extent that Collins raised any of the following claims independently from his ineffective assistance of counsel claims, they are waived. See Franklin v. State, 110 Nev. 750, 877 P.2d 1058 (1994) overruled in part on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

[6]See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

[7]Id.

dispose of the claim if the petitioner makes an insufficient showing on either prong.[8]

First, Collins contended that his trial counsel was ineffective for failing to challenge the fact that he was interrogated by Detective Dreher without receiving a Miranda[9] warning. A review of the record on appeal reveals that Collins' trial was devoid of any references to an interrogation by Detective Dreher, or evidence obtained as a result of an interrogation. Therefore, Collins failed to demonstrate that the results of his trial would have been different if his counsel had challenged the interrogation, and the district court did not err in denying this claim.

Second, Collins claimed that his trial counsel was ineffective for failing to impeach Trooper Gager with his police report. We initially note that Trooper Gager did not testify at Collins' trial. To the extent that Collins is arguing that his trial counsel should have impeached Trooper Gager's testimony during the pre-trial suppression hearing, we conclude that Collins did not present specific facts or articulate on what basis his trial counsel should have used Trooper Gager's police report to impeach him.[10] Accordingly, Collins failed to demonstrate that his counsel was ineffective on this issue, and we affirm the order of the district court with respect to this claim.

Third, Collins alleged that his trial counsel was ineffective for failing to utilize testimony from his daughter, Ashley Collins, for impeachment purposes. Collins contended that Ashley would have testified that she was sleeping in the back seat of Collins' car when he was

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[8]Strickland, 466 U.S. at 697.

[9]See Miranda v. Arizona, 384 U.S. 436 (1966).

[10]See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

pulled over by Trooper Gager. This would have impeached Trooper Gager and Investigator Schmidt's testimony at the pre-trial suppression hearing, Collins argued, in which they stated that radio equipment and bags were found in the back seat of Collins' car. We conclude that Collins failed to demonstrate that Ashley's testimony would have likely changed the outcome of the suppression hearing. Even if Trooper Gager and Officer Schmidt were mistaken concerning the exact location of the radio equipment and bags, Collins failed to articulate how this would have resulted in an illegal inventory search of his vehicle.[11] Consequently, Collins did not establish that his trial counsel was ineffective on this issue, and the district court did not err in denying the claim.

Fourth, Collins contended that his trial counsel was ineffective for failing to call tow-truck driver Ronny Goetz as a witness in order to impeach Trooper Gager. Collins argued that Goetz would have testified that the bags found in Collins' car were closed, and Trooper Gager opened them during the inventory search. As stated previously, Trooper Gager did not testify during Collins' trial. We further note that Goetz did testify during the pre-trial suppression hearing in which Trooper Gager was also a witness. Although Collins' trial counsel did not question Goetz concerning the status of the bags, Goetz did testify that various items were in plain view in the car. Collins failed to articulate how testimony that Trooper Gager opened the bags would have altered the outcome of his suppression hearing.[12] As such, he failed to demonstrate that his trial counsel was ineffective on this issue, and we affirm the order of the district court with respect to this claim.

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[11]See Colorado v. Bertine, 479 U.S. 367 (1987); Weintraub v. State, 110 Nev. 287, 871 P.2d 339 (1994).

[12]See id.

Fifth, Collins alleged that his initial trial counsel was ineffective for failing to provide Collins' subsequent trial counsel with information concerning Goetz. Collins argued that his initial trial counsel possessed "critical evidence" in which Goetz stated that the bags found in Collins car were opened by Trooper Gager. For the reasons discussed above, however, we conclude that Collins failed to demonstrate that his counsel was ineffective on this issue, and the district court did not err in denying the claim.

Sixth, Collins claimed that his trial counsel was ineffective for failing to argue at the suppression hearing that Jeanne McAllister Collins did not have the right to grant police permission to search the storage unit. A review of the record reveals that the police had a valid warrant to search the storage unit. Therefore, the validity of McAllister's consent to search the storage unit was of no consequence. Thus, Collins did not demonstrate that his trial counsel was ineffective on this issue, and the district court did not err in denying the claim.

Seventh, Collins claimed that his trial counsel was ineffective for failing to question McAllister about hypnosis that she allegedly underwent to alter her memory. Collins contended that his trial counsel did not ensure that McAllister's hypnosis was conducted pursuant to the requirements of NRS 48.039. In support of this claim, Collins attached McAllister's answer to a November 1995 interrogatory[13] in which she stated that she had been hypnotized approximately six times from 1991 to 1993. McAllister further stated, however, that the subject matter of her hypnosis did not include the insurance claim that was the basis for Collins' convictions in the instant case, and about which McAllister

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[13]Collins served McAllister with interrogatories in a subsequent action in family court.

provided testimony at trial.[14] We conclude that Collins did not demonstrate that McAllister was hypnotized to recall events that were the subject of her testimony, such that the results of his trial would likely have been different if McAllister had been questioned about the hypnosis. Further, Collins did not establish that his trial counsel was aware of McAllister's hypnosis prior to trial. Consequently, Collins failed to demonstrate that his trial counsel was ineffective on this issue, and the district court did not err in denying this claim.

Eighth, Collins contended that his trial counsel was ineffective for failing to present evidence at trial that Collins possessed a replacement insurance policy for his coins. Collins failed to specify how evidence of a replacement policy would have aided his defense. Accordingly, he did not establish that his counsel was ineffective on this issue, and we affirm the order of the district court with respect to this claim.

Ninth, Collins claimed that his trial counsel was ineffective for failing to procure testimony from Collins' mother that she sent him two shipments of coins after the alleged burglaries occurred. In light of the substantial evidence introduced against Collins at trial, we conclude that such testimony from Collins' mother would not have had a reasonable probability of altering the outcome of the trial. Moreover, Collins did not allege that the coins his mother shipped to him were the same coins believed to be the subject of insurance fraud in the instant case. Therefore, Collins failed to demonstrate that his trial counsel was ineffective on this issue, and the district court did not err in denying the claim.

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[14]See NRS 48.039 (provides requirements for the admission of witness testimony when the witness previously underwent "hypnosis to recall events that are the subject matter of the testimony").

Tenth, Collins alleged that his trial counsel was ineffective for failing to question McAllister and Detective Dreher concerning the absence of medical evidence to corroborate Collins' alleged domestic abuse of McAllister. A review of the record on appeal reveals that Collins' trial counsel questioned McAllister about the existence of police reports documenting the abuse outside the presence of the jury. McAllister responded that she had several police reports and medical records, but had not been asked to produce them. Based on this exchange, we conclude that trial counsel's decision to refrain from questioning McAllister about corroborating evidence in front of the jury was a reasonable tactical choice and entitled to deference.[15] Further, Collins did not articulate how Detective Dreher would have personal knowledge of the existence of medical evidence to corroborate McAllister's testimony.[16] Therefore, Collins did not establish that his trial counsel was ineffective on this issue, and we affirm the order of the district court in this regard.

Eleventh, Collins claimed that his trial counsel was ineffective for failing to procure the testimony of various witnesses. Collins alleged that two neighbors would have testified that they saw juveniles near the Collins residence the weekend of the alleged burglary, and another neighbor would have testified that there had been several burglaries in the neighborhood over the last few years. We conclude that in view of the large amount of evidence introduced against Collins at trial, he failed to demonstrate that the results of his trial would have been different if his trial counsel had obtained this testimony from his neighbors.

Collins further claimed that the property manager of his residence would have testified that Collins had complained to him that

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[15]See Riley v. State, 110 Nev. 638, 653, 878 P.2d 272, 281-82 (1994).

[16]See NRS 50.025.

some of the locks on the house were not functioning properly. A review of the record reveals that McAllister testified that Collins called the property manager to complain about the locks to make the alleged burglary appear believable. Therefore, we conclude that testimony from the property manager would not have had a reasonable probability of altering the outcome of Collins' trial. Thus, Collins did not establish that his trial counsel was ineffective for not utilizing testimony from the above witnesses, and the district court did not err in denying these claims.

Lastly, Collins alleged that his trial counsel was ineffective for failing to: (1) investigate and interview witnesses, (2) adequately cross-examine the State's witnesses, and (3) properly voir dire the jury. Collins failed to include specific facts, however, and articulate how his counsel was defective in these areas.[17] Consequently, we affirm the order of the district court with respect to these claims.

Collins also raised several claims of ineffective assistance of appellate counsel.[18] To establish ineffective assistance of appellate counsel, a petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness, and the deficient performance prejudiced the defense.[19] "To establish prejudice based on the deficient assistance of appellate counsel, the defendant must show that the omitted issue would have had a reasonable probability of success

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[17]See Hargrove, 100 Nev. at 502, 686 P.2d at 225.

[18]Collins additionally alleged ineffective assistance of trial counsel on some of the following claims. Consistent with the reasoning discussed below, we conclude that Collins failed to demonstrate that his trial counsel was ineffective on these issues.

[19]See Strickland, 466 U.S. 668; Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1113 (1996).

on appeal."[20] Appellate counsel is not required to raise every non-frivolous issue on appeal.[21]

First, Collins contended that his appellate counsel was ineffective for failing to challenge the sufficiency of the evidence presented at his preliminary hearing. Collins alleged that the State did not establish probable cause to bind him over for trial. A review of the record on appeal reveals that Collins' preliminary hearing was postponed, and the State subsequently sought and obtained a grand jury indictment against Collins. Once the grand jury indictment was obtained, Collins' preliminary hearing was not completed because the State established probable cause to bind him over for trial in the proceeding before the grand jury.[22] Given that the State proceeded by grand jury indictment, Collins failed to demonstrate that his appellate counsel was ineffective for failing to challenge the sufficiency of the evidence at his preliminary hearing.

To the extent that Collins may have intended to argue that there was insufficient evidence adduced at the grand jury proceeding to support an indictment against him, we conclude that he failed to demonstrate that an appeal of this issue would have had a reasonable likelihood of success. The grand jury has power to issue an indictment

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[20]Kirksey, 112 Nev. at 998, 923 P.2d at 1114.

[21]Jones v. Barnes, 463 U.S. 745, 751-52 (1983).

[22]See State v. Maes, 93 Nev. 49, 51, 559 P.2d 1184, 1185 (1977) (providing that "[u]nder Article I, Section 8, of the Nevada Constitution, and NRS 173.015 et seq., the State may proceed against a defendant either by indictment or information. This court has upheld the right of the prosecutor to elect to proceed by indictment even though proceedings by information may be pending"); Maskaly v. State, 85 Nev. 111, 113, 450 P.2d 790, 792 (1969) (reciting that probable cause to believe that the defendant committed a crime must be established either in a preliminary hearing or in a proceeding before a grand jury).

when there is probable cause to believe that the defendant committed a crime.[23] Collins was eventually convicted of the three charges beyond a reasonable doubt. Therefore, any error in the grand jury proceeding, as measured by the eventual verdict of guilty beyond a reasonable doubt, was harmless.[24]

Collins next contended that his appellate counsel was ineffective for failing to challenge the inadequate notice he received regarding the State's intent to seek a grand jury indictment against him. Collins argued that because he did not receive adequate notice of the grand jury proceeding, he was unable to appear in front of the grand jury, call witnesses on his behalf, and confront witnesses.

Contrary to Collins' assertion, the target of a grand jury proceeding does not have the constitutional right to call witnesses to testify on his behalf, or confront adversarial witnesses.[25] The target of a grand jury may testify before the grand jury if he requests do so.[26] We conclude, however, that Collins failed to demonstrate that the allegedly inadequate notice prejudiced him as he was subsequently convicted of the three charges beyond a reasonable doubt.[27] Consequently, Collins did not establish that his appellate counsel was ineffective on this claim.

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[23]NRS 172.155(1).

[24]See Lisle v. State, 114 Nev. 221, 224-25, 954 P.2d 744, 746-47 (1998); United States v. Mechanik, 475 U.S. 66, 70 (1986).

[25]See Sheriff v. Bright, 108 Nev. 498, 502, 835 P.2d 782, 785 (1992) (stating that this court has never "suggested that the full panoply of rights enjoyed by criminal defendants attaches to persons targeted by grand juries").

[26]NRS 172.241(1).

[27]See Lisle, 114 Nev. at 224-25, 954 P.2d at 746-47; Mechanik, 475 U.S. at 70.

Collins next asserted that his appellate counsel was ineffective for failing to argue that the grand jury proceeding was flawed because his trial counsel was not present. Legal counsel may accompany the target of a grand jury proceeding during any appearances before the grand jury.[28] Counsel is limited to advising his client only, and may not directly address the grand jury or participate in any other way.[29] Because Collins did not appear before the grand jury himself, his counsel did not have the right to be present. Therefore, Collins did not establish that his appellate counsel was ineffective for not raising this issue on appeal.

Collins also alleged that: (1) his arrest was illegal and evidence subsequently obtained from his car and storage unit should have been suppressed, (2) the district court improperly admitted attorney-client testimony, (3) the district court erred in admitting evidence of alleged marital abuse, (4) the district court improperly restricted voir dire, (5) the district court erred in admitting spousal communications, and (6) the district court erred in admitting figurines that McAllister turned over to the State. This court addressed these issues on direct appeal, however, and denied Collins relief. The doctrine of the law of the case prevents further litigation of these issues and "cannot be avoided by a more detailed and precisely focused argument."[30] Accordingly, we affirm the order of the district court with respect to these claims.

Finally, Collins claimed that the district court improperly denied his request for a change of venue and erred in allowing his wife to testify against him at trial. These issues are outside the scope of a post-

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[28]NRS 172.239(1).

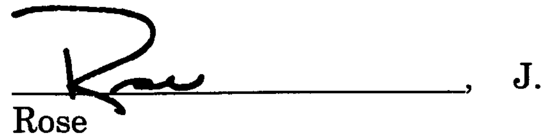
[29]NRS 172.239(2).

[30]Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975).

conviction petition for a writ of habeas corpus and Collins did not demonstrate good cause for failing to raise them earlier.[31] Therefore, the district court did not err in denying these claims.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Collins is not entitled to relief and that briefing and oral argument are unwarranted.[32] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[33]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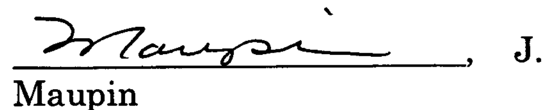
Rose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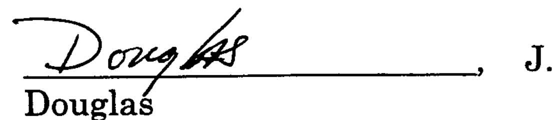
_____________________, J.
Douglas

cc: Hon. Peter I. Breen, District Judge
Robert J. Collins
Attorney General Brian Sandoval/Carson City
Washoe District Court Clerk

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[31]See NRS 34.810(1)(b).

[32]See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

[33]We have reviewed all documents that Collins has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that Collins has attempted to present claims or facts in those submissions that were not previously presented in the proceedings below, we have declined to consider them in the first instance.