

IN THE SUPREME COURT OF THE STATE OF NEVADA

ORLANDO VALLEJOS,  
Appellant,  
vs.  
WARDEN, NEVADA STATE PRISON,  
CRAIG FARWELL,  
Respondent.

No. 58058

**FILED**

DEC 12 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *R. Malone*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Third Judicial District Court, Lyon County; David A. Huff, Judge.

On appeal from the denial of his December 3, 2003, petition, appellant argues that the district court erred in denying his claims of ineffective assistance of trial counsel without first conducting an evidentiary hearing. To warrant an evidentiary hearing, a petitioner must raise claims supported by specific factual allegations that, if true and not repelled by the record, would entitle him to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). To warrant relief, appellant must demonstrate ineffective assistance of counsel by alleging (a) specific facts that demonstrate that counsel's performance was deficient such that it fell below an objective standard of reasonableness and (b) resulting prejudice such that there is a reasonable probability that, but for counsel's errors, the outcome of the proceedings would have been different. 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). Both components of the inquiry must be shown. Strickland, 466 U.S. at 697.

First, appellant argues that counsel failed to conduct any investigation or obtain all discovery. Appellant fails to allege specific facts that would demonstrate prejudice. Even assuming that appellant's allegations were true, he fails to specify what additional information counsel would have gleaned from an investigation or how it would have impacted the outcome at trial. We therefore conclude that the district court did not err in denying this claim without an evidentiary hearing.<sup>1</sup>

Second, appellant argues that counsel failed to object to jury instructions that referred to the complaining witness as "the victim." Appellant provides no cogent argument as to why counsel should have objected, Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987), nor does he explain how a successful objection would have affected the outcome at trial. Further, appellant's claim that the district court made no findings to support its denial of an evidentiary hearing on this claim is belied by the record. To the extent appellant argues that the district court's findings were in error, appellant failed to provide this court with

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<sup>1</sup>The district court erred insofar as it denied the claim as repelled by the record. Further, an appellant's burden to demonstrate facts by a preponderance of the evidence does not attach until an evidentiary hearing. Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). We nevertheless affirm the district court's decision for the reason stated above. See Wyatt v. State, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (holding that a correct result will not be reversed simply because it is based on the wrong reason).

an adequate appendix containing trial transcripts or any jury instructions, thus precluding review of the district court's findings.<sup>2</sup> We therefore conclude that the district court did not err in denying this claim without an evidentiary hearing.

Third, appellant argues that counsel failed to raise a statute-of-limitations defense. Appellant fails to allege specific facts that would demonstrate deficiency or prejudice. The statute of limitations on appellant's crime, sexual assault on a child under the age of fourteen, was governed by NRS 171.095(1)(b)(1), which provides that a charging document must be filed before the victim turns 21 years old. 1993 Nev. Stat., ch. 177, § 1, at 306; 1989 Nev. Stat., ch 627, §1, at 1443. The district court's finding that the victim was under 21 years old when the complaint was filed is supported by substantial evidence in the record, Lader v. Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005), and appellant's claim that the statute of limitations had run was thus belied by the record. We therefore conclude that the district court did not err in denying this claim without an evidentiary hearing.

Finally, appellant argues that counsel failed to object to procedural defects regarding the presentation of key evidence. Appellant fails to allege specific facts that would demonstrate deficiency or prejudice. He fails to specify the alleged defects, the key evidence, or how any of it would have affected the outcome at trial. We therefore conclude that the


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<sup>2</sup>We note that the State provided the trial transcripts, but the instructions to the jury were not transcribed.

district court did not err in denying this claim without an evidentiary hearing.<sup>3</sup>

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.

 \_\_\_\_\_, J.  
Saitta

 \_\_\_\_\_, J.  
Pickering

 \_\_\_\_\_, J.  
Hardesty

cc: Tenth Judicial District Court, Dept. 1  
The Law Office of Jacob N. Sommer  
Attorney General/Carson City  
Lyon County District Attorney  
District Court Clerk

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<sup>3</sup>To the extent this claim was a reference to more detailed claims raised in appellant's post-conviction habeas petition filed below, this was improper argument. See NRAP 28(e)(2).