

IN THE SUPREME COURT OF THE STATE OF NEVADA

JONATHAN JIMENEZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 63535

**FILED**

**JAN 21 2014**

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

**ORDER OF AFFIRMANCE**

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

In his February 26, 2013, petition, appellant claimed that his trial counsel was ineffective. To prove ineffective assistance of counsel, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and 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, and the petitioner must demonstrate the underlying facts

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<sup>1</sup>This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See *Lockett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).

First, appellant claimed that his trial counsel was ineffective for the untimely filing of a motion to introduce evidence of the victim's misdemeanor conviction for carrying a concealed weapon. Appellant appeared to assert that the district court denied the motion because it was untimely filed. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. The district court denied the motion prior to the start of trial on its merits, concluding that the victim's conviction was irrelevant. Counsel renewed the motion during the victim's testimony and the district court again concluded the conviction was irrelevant. In addition, this court concluded on direct appeal that the district court did not err in excluding evidence of the victim's conviction. *Jimenez v. State*, Docket No. 59412 (Order of Affirmance, September 14, 2012). Accordingly, appellant failed to demonstrate a reasonable probability that the outcome of the proceedings would have been different had counsel filed the motion at an earlier time. Therefore, the district court did not err in denying this claim.

Second, appellant claimed that his trial counsel was ineffective for failing to raise appellant's theory of defense at trial. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. At trial, counsel introduced evidence and posed questions to the witnesses in order to demonstrate that appellant and the victim were engaged in a mutual altercation. Appellant did not provide any additional theory that counsel should have presented at trial. See *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Appellant failed to demonstrate a reasonable probability of a

different outcome at trial had counsel attempted to raise an additional or different theory of defense. Therefore, the district court did not err in denying this claim.

Next, appellant claimed that his appellate counsel was ineffective. To prove ineffective assistance of appellate counsel, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such 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 697. 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).

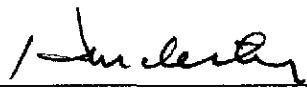
First, appellant claimed that his appellate counsel was ineffective for failing to file a supplemental brief. Appellant failed to demonstrate that he was prejudiced. Appellant failed to identify what claims counsel should have raised in a supplemental brief or that any additional claims would have had a reasonable likelihood of success on appeal. Therefore, the district court did not err in denying this claim.

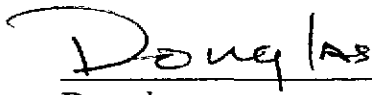
Second, appellant claimed that his appellate counsel was ineffective for failing to communicate with him. Appellant failed to demonstrate either deficiency or prejudice for this claim. Appellant made a bare claim and failed to state how communication with his appellate counsel would have affected the outcome of his direct appeal. See *Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225. Appellant did not

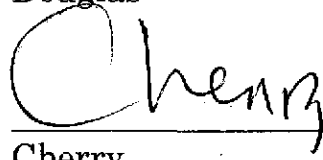
demonstrate a reasonable likelihood of success on appeal had appellate counsel communicated with appellant. Therefore, the district court did not err in denying this claim.

Third, appellant claimed that his appellate counsel was ineffective for failing to raise appellant's theory of defense on appeal. Appellant failed to demonstrate deficiency or prejudice for this claim as he did not identify a theory of defense that an objectively reasonable appellate counsel could have raised on appeal or that had a reasonable likelihood of success on appeal. *See id.* Therefore, the district court did not err in denying this claim.

Having concluded that appellant is not entitled to relief, we  
ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

, J.  
Hardesty

, J.  
Douglas

, J.  
Cherry

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<sup>2</sup>We have reviewed all documents that appellant 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 appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Michelle Leavitt, District Judge  
Jonathan Jimenez  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk