

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOAQUIN BROUSHON HILL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68348

FILED

JUN 22 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY J. Hedrick
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Appellant Joaquin Broushon Hill argues the district court erred in denying his claims of ineffective assistance of counsel raised in his February 13, 2009, petition. 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 by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).

First, Hill argues his trial counsel were ineffective due to a conflict of interest. Hill asserts the conflict occurred because one of his attorneys resided in Verdi, Nevada, the town in which the victim in this matter also resided. "Conflict of interest and divided loyalty situations can take many forms, and whether an actual conflict exists must be evaluated on the specific facts of each case. In general, a conflict exists when an attorney is placed in a situation conducive to divided loyalties." *Clark v. State*, 108 Nev. 324, 326, 831 P.2d 1374, 1376 (1992) (quoting *Smith v. Lockhart*, 923 F.2d 1314, 1320 (8th Cir.1991)). A conflict of interest exists if "counsel 'actively represented conflicting interests'" and the "conflict of interest adversely affected [the defendant's] lawyer's performance." *Strickland*, 466 U.S. at 692 (quoting *Cuyler v. Sullivan*, 446 U.S. 335, 350, 348 (1980)).

We conclude Hill fails to demonstrate an actual conflict of interest existed. Hill makes only a bare assertion that one of his attorneys resided in Verdi, he provides no support for this assertion, and fails to allege his counsel had any awareness of the victim other than due to counsel's work on this matter. A bare and unsupported claim, such as this one, is insufficient to demonstrate a petitioner is entitled to relief. See *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). As Hill provides no support for this claim, he fails to demonstrate his counsel were in a situation conducive to divided loyalties. Therefore, the district court did not err in denying this claim.

Second, Hill argues his trial counsel were ineffective for failing to investigate and present evidence of Hill's innocence. Hill asserts

counsel should have uncovered evidence showing that he could not have committed the murder because he did not have time to do so. Hill asserts he was released from jail in Sacramento, California at approximately 2:00 a.m. on June 8, 2001, and was apprehended in Ely, Nevada at 4:20 p.m. on June 9, 2001, amounting to approximately 38.5 hours between the two events. Hill argues he performed activities in Sacramento for a number of hours after his release from jail and, when added to his travel time between Sacramento and Ely, he did not have enough time to murder the victim. Hill fails to demonstrate his counsels' performances were deficient or resulting prejudice.

Hill asserts the travel time between Sacramento and Ely is approximately eight and a half hours. Assuming Hill is correct, this left more than one entire day with which Hill could have performed the various activities in Sacramento and also have committed the crimes. Hill does not demonstrate objectively reasonable counsel would have asserted during trial this was insufficient time to complete the crimes. Further, Hill's DNA was discovered at the crime scene, and accordingly, he fails to demonstrate a reasonable probability of a different outcome had counsel investigated and presented evidence related to Hill's travel time between Sacramento and Ely and his time performing activities in Sacramento. Therefore, the district court did not err in denying this claim.

Next, Hill argues the district court erred in denying his claims of ineffective assistance of appellate counsel. 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).

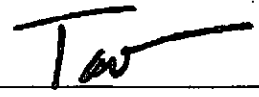
Hill argues his appellate counsel was ineffective for failing to raise all available issues on appeal. Hill asserts his appellate counsel could have raised issues regarding his mental health, staleness of the evidentiary samples for DNA testing, the State's failure to retain evidence found in two vehicles, and the admission of prior bad act evidence. Hill fails to demonstrate deficiency or prejudice for these issues. Hill provides a list of these issues, but does not identify any errors he believes the district court made in denying relief for these issues or explain how he was prejudiced by these issues on appeal. Because Hill does not provide relevant authority or cogent argument for these claims, he does not meet his burden to demonstrate he is entitled to relief.


Finally, Hill argues the trial court erred by failing to order Hill to undergo a reevaluation for competency shortly before trial. This claim could have been raised on direct appeal and Hill does not demonstrate cause for the failure to do so and actual prejudice. *See NRS*

34.810(1)(b)(2). Therefore, the district court did not err in denying relief for this claim.¹

Having concluded Hill is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Connie J. Steinheimer, District Judge
Troy Curtis Jordan
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

¹We note the district court denied this claim on the merits. However, as stated previously, the district court should have denied this claim as procedurally barred. Nevertheless, we affirm because the district court reached the right result in denying relief for this claim. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).