

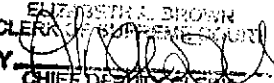
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JERUN TYRONE EDWARDS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72969

FILED

JAN 09 2018

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

*ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING*

Jerun Tyrone Edwards appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on August 3, 2016, and supplemental pleadings filed on October 18, 2016, and November 30, 2016.¹ Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

Edwards contends the district court erred by denying his claims that counsel was ineffective. To demonstrate ineffective assistance of counsel, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that there was a reasonable probability of a different outcome absent counsel's errors. *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. To warrant an evidentiary hearing, a petitioner must raise claims supported by specific factual allegations that, if true and

¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

not repelled by the record, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

First, Edwards claimed counsel should have asked for the victim's medical records because they would have shown the victim was not stabbed in the stomach. The district court found "ample evidence" demonstrated the victim suffered a stab wound to her abdomen: the victim's statement, the statements of two neighbors who saw the stabbing, and a police report indicating the victim was being treated at the hospital for a knife wound to her spleen. We defer to the district court's finding as it is supported by substantial evidence and is not clearly wrong. See *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005). In light of this evidence, Edwards failed to demonstrate counsel was objectively unreasonable in not requesting the victim's medical records prior to Edwards' guilty plea. We therefore conclude the district court did not err by denying this claim.

Second, Edwards claimed counsel should have obtained the services of a licensed psychiatrist to examine Edwards' competency prior to his entering a guilty plea. Edwards acknowledged counsel had questioned his competency in an earlier proceeding, and the competency court concluded Edwards was competent.² Edwards did not allege specific facts that would have caused counsel to again question his competency, that is, his ability to understand the nature of the charges against him or to assist

²To the extent Edwards attempted to challenge this finding, such a claim would have been appropriate for direct appeal and was thus waived. *Franklin v. State*, 110 Nev. 750, 877 P.2d 1058 (1994), *overruled on other grounds by Thomas v. State*, 115 Nev. 148, 979 P.2d 222 (1999). We note Edwards waived a direct appeal. Further, contrary to Edwards' assertion, Dr. Paglini was unable to rule out malingering.

counsel in his defense. *See Calvin v. State*, 122 Nev. 1178, 1182-83, 147 P.3d 1097, 1100 (2006). The mere fact that Edwards may have been taking prescribed psychotropic medications would not necessarily render him incompetent. We therefore conclude the district court did not err by denying this bare claim.


Third, Edwards claimed counsel purposely withheld his discovery from him and misrepresented that a DNA analysis implicated Edwards as the perpetrator, all in an effort to force him into a guilty plea he told counsel he did not want to take. Nothing in the record belies this claim. If it is true, Edwards would have demonstrated counsel was ineffective, which in turn would have demonstrated manifest injustice such that Edwards should be allowed to withdraw his guilty plea and proceed to trial. *See Rubio v. State*, 124 Nev. 1032, 1039, 194 P.3d 1224, 1228-29 (2008). We therefore conclude the district court erred by denying this claim without first conducting an evidentiary hearing.³

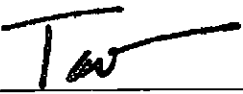
Edwards raises several claims for the first time on appeal: counsel was ineffective for forcing Edwards into a guilty plea with lies and threats and representing him when she had a conflict of interest; counsel was ineffective for not challenging the admissibility of statements, obtaining an insanity expert when that was his sole trial defense, not informing him of his right to appeal, and not withdrawing despite a conflict of interest; he told counsel he did not have the capacity to understand what was happening at the guilty plea colloquy; and Edwards' charges violated

³We also conclude the district court erred by finding the claim was waived by Edwards' guilty plea. Claims of ineffective assistance of counsel can only be raised in postconviction petitions for a writ of habeas corpus. *Franklin*, 110 Nev. at 751-52, 877 P.2d at 1059.

the Equal Protection Clause and the Double Jeopardy Clause. We decline to address these claims and allegations on appeal in the first instance where Edwards has not demonstrated good cause or prejudice for failing to include them in his petition. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999). Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Eric Johnson, District Judge
Jerun Tyrone Edwards
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk