

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BERNARD YOUNG,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 72166

**FILED**

DEC 28 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Bernard Young appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on October 5, 2016, and a supplemental pleading filed on November 4, 2016.<sup>1</sup> Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Young first contends the district court erred in entertaining the State's ex parte arguments at the hearing on the petition, not allowing him time to file a reply brief, and not appointing counsel to represent him. Although the district court's order indicates it entertained the State's arguments outside the presence of Young, the statement appears to be a typographical error. A review of the transcript of the proceedings indicates the district court entertained no argument from the State. Further, Young had no right to file a reply brief. See NRS 34.750(4), (5). Finally, Young did not request the appointment of counsel, and we cannot conclude the district court abused its discretion in not sua sponte appointing counsel. See NRS 34.750(1); *Renteria-Novoa v. State*, 133 Nev. \_\_\_, \_\_\_, 391 P.3d 760, 760-61

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

(2017). We therefore conclude Young is not entitled to relief on any of these grounds.


Young next contends the district court erred in denying his claim of ineffective assistance of counsel. 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*); see also *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996) (applying *Strickland* to claims of ineffective assistance of appellate counsel). Both components of the inquiry must be shown. *Strickland*, 466 U.S. at 697.


Young first claimed counsel was ineffective for failing to inform the court a detective had committed perjury. Young failed to identify any perjured testimony and was thus not entitled to relief. See *Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984) (concluding no relief warranted where claims were bare and not supported by specific factual allegations). We therefore conclude the district court did not err in denying this claim.


Young also claimed counsel was ineffective for not challenging the State's authority to bring an indictment after it dismissed an earlier complaint and information and the district court's jurisdiction to enter the indictment. Young failed to demonstrate deficiency or prejudice. Young's claims did not implicate the jurisdiction of the district court. See Nev. Const. art. 6, § 6; NRS 171.010. Further, the State had the authority to seek an indictment after the justice court granted Young's motion to dismiss

his complaint in justice court case number 13F14710X. *See* NRS 178.562(2). Finally, Young conceded the State indicted him on the crimes underlying justice court case number 13F15122X prior to dismissing the information that arose out of that case. The State's election to dismiss the information and proceed on the indictment was proper. *See Thompson v. State*, 125 Nev. 807, 812-13, 221 P.3d 708, 712 (2009) ("[T]he State may elect to proceed on one of two pending proceedings and dismiss the proceeding under which it has elected not to prosecute without running afoul of NRS 178.562(1) . . . [or] NRS 174.085."). Because Young's claim lacked merit, any attempt by counsel to raise the claim would have been futile, and counsel was thus not ineffective for failing to raise it. *See Ennis v. State*, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). We therefore conclude the district court did not err in denying this claim.<sup>2</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
Silver, C.J.

  
Tao, J.

  
Gibbons, J.

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<sup>2</sup>Young also raised the underlying substantive claim independently from the ineffective-assistance-of-counsel claim. Because he could have raised it on direct appeal, the claim was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.810(1)(b)(2). Even if Young had demonstrated good cause, he could not have demonstrated actual prejudice because, as discussed above, his claim lacked merit. *See Hogan v. Warden*, 109 Nev. 952, 959-60, 860 P.2d 710, 716 (1993) (holding actual prejudice requires a demonstration that the proceeding was affected by error of constitutional dimensions).

cc: Hon. Michael Villani, District Judge  
Bernard Young  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk