

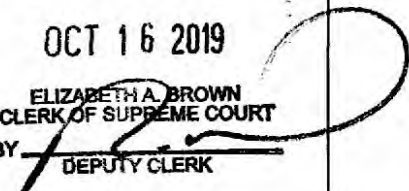
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

YADHIR RUIZ GONZALES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76642-COA

FILED

OCT 16 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Yadhir Ruiz Gonzales appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Mark B. Bailus, Judge.

Gonzales argues the district court erred by denying a claim of ineffective assistance of appellate counsel raised in his August 23, 2016, petition and later-filed supplement. Gonzales argues his appellate counsel was ineffective for failing to properly argue on direct appeal that he was entitled to relief due to cumulative error.

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 v. Washington*, 466 U.S. 668, 697 (1984). 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).

On direct appeal, the Nevada Supreme Court examined multiple issues and concluded two unpreserved issues constituted error but neither rose to plain error because they did not affect Gonzales' substantial rights. *Gonzales v. State*, Docket No. 67320 (December 18, 2015). First, the Nevada Supreme Court concluded the State improperly disparaged Gonzales' defense during its arguments when it accused the defense of distorting the issues by challenging the fingerprint evidence, but the error did not affect Gonzales' substantial rights because "there was overwhelming evidence that the fingerprints were his." *Id.* The Nevada Supreme Court also found the prosecutor improperly stated during arguments that he took offense to a defense argument concerning the scientific validity of the fingerprint evidence, but the issue did not affect Gonzales' substantial rights because "the comment was fleeting and the prosecutor then returned to arguing the evidence." *Id.*

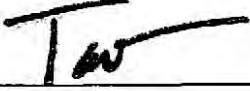
Gonzales also contended on direct appeal that he was entitled to relief due to cumulative error. *Id.* However, the Nevada Supreme Court declined to consider Gonzales' cumulative-error claim because he failed to provide cogent argument in support of that claim. *Id.*

The record before this court supports the district court's finding that Gonzales was not prejudiced by his counsel's failure to properly raise a cumulative-error claim on direct appeal. Gonzales' fingerprints were discovered on the interior of a window at the victim's residence. Given the fingerprint evidence and the plain-error standard under which the pertinent claims were evaluated on direct appeal, Gonzales failed to demonstrate a reasonable probability of success on direct appeal had

counsel cogently argued the cumulative-error claim. Therefore, we conclude the district court did not err by denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
The Law Office of Travis Akin
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk