

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

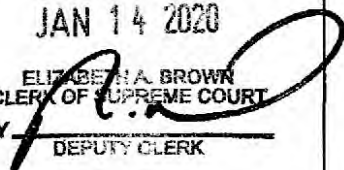
JOSHUA JAMES HAWKINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 79056-COA

FILED

JAN 14 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Joshua James Hawkins appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Elliott A. Sattler, Judge.

First, Hawkins argues the district court erred by dismissing his claim of ineffective assistance of counsel raised in his January 7, 2019, petition. To prove ineffective assistance of counsel, a petitioner must demonstrate 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, 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. We give deference to the district court's factual findings if supported by substantial evidence and not clearly erroneous but review the court's application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

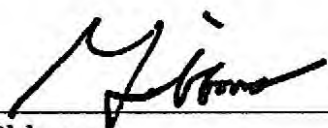
In his petition, Hawkins asserted his counsel was ineffective for failing to ensure he received the correct amount of presentence credits.

Hawkins acknowledged he was serving a prison sentence for a different criminal case when he was sentenced in this matter. However, Hawkins asserted he was entitled to additional presentence credits for this case because he was ordered to serve the sentence in this case concurrent with the sentence for the other case. Hawkins also contended each criminal matter actually arose from the same conduct and were improperly treated as two separate criminal matters and, therefore, all of his presentence credits should apply to both cases.

A district court must credit a defendant's sentence "for the amount of time which the defendant has actually spent in confinement before conviction, unless the defendant's confinement was pursuant to a judgment of conviction for another offense." NRS 176.055(1). The district court reviewed the record and found Hawkins was not entitled to additional presentence credits. The district court found Hawkins was confined for his other, prior offense before sentence was imposed for this matter. The district court found Hawkins was only entitled to presentence credits for time he was held in confinement for this offense and the judgment of conviction in this matter already accurately reflected that amount of time. Moreover, the district court found Hawkins' assertion that his cases were improperly treated as two separate criminal matters was "patently false" as "they were distinct offenses which occurred in different cities on different days" and, therefore, Hawkins was not entitled to apply all of his presentence credits to both cases. The record supports the district court's findings. Therefore, Hawkins failed to demonstrate his counsel was ineffective, and we conclude the district court did not err by dismissing this claim.

Next, Hawkins argues the district court erred by declining to consider his response to the State's motion to dismiss the petition. The district court noted Hawkins filed a response to the State's motion to dismiss on May 6, 2019, and contemporaneously submitted the matter for consideration. Hawkins filed another response to the State's motion to dismiss on May 17, 2019, but the district court specifically declined to consider Hawkins' May 17th response. In light of Hawkins' May 6th response, the district court's consideration of the May 6th response, and the district court's broad authority concerning the filing of supplemental pleadings, we conclude Hawkins fails to demonstrate the district court erred by declining to consider the May 17th response. *See* NRS 34.750(4), (5); *State v. Powell*, 122 Nev. 751, 758, 138 P.3d 453, 457-58 (2006). Therefore, Hawkins is not entitled to relief, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla



cc: Hon. Elliott A. Sattler, District Judge
Joshua James Hawkins
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk