

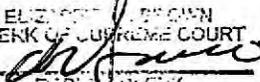
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TORRENCE LEWIS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 79914-COA

FILED

OCT 09 2020

ELIZABETH BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Torrence Lewis appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus, a motion to correct illegal sentence, a motion requesting the appointment of counsel, and a motion for psychological evaluation. Eighth Judicial District Court, Clark County; Jerry A. Wiese, Judge.

*Petition for a writ of habeas corpus*

Lewis argues the district court erred by failing to conduct an evidentiary hearing before denying the claims of ineffective assistance of counsel raised in his December 14, 2018, petition and supplements. To demonstrate ineffective assistance of trial 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 687. To warrant an evidentiary hearing, the petitioner must raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Lewis argued his trial counsel was ineffective for failing to properly investigate his competency and request a competency hearing. However, Lewis failed to allege that he did not have the ability to consult with his attorney with a reasonable degree of rational understanding or that he did not have a rational, as well as factual, understanding of the proceedings against him. See *Melchor-Gloria v. State*, 99 Nev. 174, 179-80, 660 P.2d 109, 113 (1983). In addition, Lewis did not state that counsel would have uncovered evidence through a reasonably diligent investigation which would have supported Lewis's assertion that he was incompetent during the trial-level proceedings. See *Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Therefore, Lewis did not demonstrate counsel's performance fell below an objective standard of reasonableness due to any failure to investigate competency issues.<sup>1</sup>

Moreover, counsel requested a competency hearing during trial and the trial court rejected that request. The Nevada Supreme Court concluded on direct appeal that "the record supports the district court's conclusion that Lewis had the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in

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<sup>1</sup>For these reasons, we conclude the district court did not err by denying Lewis's motion for psychological evaluation to further support his claim of incompetency.

preparing his defense.” *Lewis v. State*, Docket No. 72589 (Order of Affirmance, April 27, 2018). In light of the Nevada Supreme Court’s order and the record in this matter, Lewis did not demonstrate a reasonable probability of a different outcome had counsel undertaken further efforts to obtain a competency hearing. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Second, Lewis argued his trial counsel was ineffective for failing to investigate the case or contact potential witnesses. Lewis appeared to assert counsel should have attempted to discover additional surveillance recordings or witnesses in an effort to prove that the victims in this matter were involved in attacking Lewis approximately two hours before the incident that led to the charges in this matter. Lewis also appeared to assert that counsel should have investigated whether Lewis was physically able to attack the victims.

Lewis did not demonstrate he was entitled to relief. He would not have been legally justified in using a knife to cut the victims two hours after they were allegedly involved in attacking him. See NRS 200.275 (“[T]he infliction or threat of bodily injury is justifiable, and does not constitute mayhem, battery or assault, if done under circumstances which would justify homicide.”); *Runion v. State*, 116 Nev. 1041, 1051-52, 13 P.3d 52, 59 (2000) (explaining justified use of deadly force requires actual danger or that a person’s actions are based solely upon a reasonable belief that he “is confronted by the appearance of imminent danger which arouses in his mind an honest belief and fear that he is about to be killed or suffer great bodily injury”). In addition, Lewis did not demonstrate objectively

reasonable counsel would have investigated whether Lewis was physically able to attack the victims in light of the evidence presented at trial demonstrating that Lewis attacked the victims with a knife. He thus failed to demonstrate a reasonable probability of a different outcome at trial had counsel investigated Lewis's physical abilities. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Third, Lewis appeared to argue his trial counsel was ineffective for failing to properly challenge the State's evidence and cross-examine the State's witnesses. Lewis appeared to assert the State did not present sufficient evidence to prove he was guilty beyond a reasonable doubt and counsel's failure to appropriately challenge the State's evidence led to the guilty verdict. The record demonstrated counsel cross-examined witnesses at length and argued in closing that the State failed to prove Lewis's guilt beyond a reasonable doubt. Lewis did not demonstrate counsel's performance during trial fell below an objective standard of reasonableness. In addition, the Nevada Supreme Court concluded on direct appeal that the State presented sufficient evidence to support the jury's verdict. *Lewis v. State*, Docket No. 72589 (Order of Affirmance, April 27, 2018). Accordingly, Lewis did not demonstrate a reasonable probability of a different outcome had counsel performed additional actions to argue the evidence was insufficient to prove he was guilty. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Fourth, Lewis argued his trial counsel was ineffective for failing to point out problems with his prior convictions. Lewis did not provide any factual support for this claim. Accordingly, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Fifth, Lewis argued that his counsel was ineffective for cursing at him. Lewis raised this issue during the trial and counsel denied cursing at Lewis. In response, the trial court engaged in a lengthy discussion with Lewis about his concerns regarding the trial process. After that discussion, the trial went into a recess. Counsel and Lewis engaged in a discussion during the recess, and Lewis's counsel subsequently informed the trial court that he and Lewis had reconciled their differences and were ready to proceed. In light of the record, Lewis did not demonstrate a reasonable probability of a different outcome at trial had counsel communicated with him in a different manner. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Next, Lewis claimed the State failed to collect evidence and the trial court improperly allowed the State to pursue the habitual criminal enhancement. These claims could have been raised on direct appeal, and Lewis did not demonstrate cause for the failure to do so and actual prejudice. Therefore, the district court did not err by denying relief for these claims. *See* NRS 34.810(1).

Finally, Lewis appears to argue in his informal brief that counsel was ineffective because counsel only met with him on a few occasions prior to trial. Lewis did not raise this claim in his petition below,

and therefore, we decline to consider it for the first time on appeal. See *McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

*Motion to Correct an Illegal Sentence*

In his motion filed on December 14, 2018, Lewis claimed the sentencing court should not have adjudicated him as a habitual criminal because his prior convictions were stale and nonviolent. Lewis also contended his sentence was too harsh because he did not actually try to kill the victims in this matter and asserted his counsel failed to present mitigating evidence at the sentencing hearing. Lewis's claims fell outside the narrow scope of claims permissible in a motion to correct an illegal sentence. See *Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). Therefore, without considering the merits of any of the claims raised in the motion, we conclude the district court did not err by denying the motion.

*Motion for the Appointment of Counsel*

Lewis claims the district court erred by denying his motion to appoint counsel. The appointment of counsel in this matter was discretionary. See NRS 34.750(1). When deciding whether to appoint counsel, the district court may consider factors, including whether the issues presented are difficult, whether the petitioner is unable to comprehend the proceedings, or whether counsel is necessary to proceed with discovery. *Id.* Because Lewis's petition was a first petition not subject to summary dismissal, see NRS 34.745(1), (4), Lewis met the threshold requirements for the appointment of counsel. See NRS 34.750(1); *Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 760-761 (2017). However,

the district court found that the issues in this matter were not difficult, Lewis was able to comprehend the proceedings, and discovery with the aid of counsel was not necessary. See NRS 34.750(1); *Renteria-Novoa*, 133 Nev. at 76, 391 P.3d at 761. Therefore, the district court denied the motion to appoint counsel. The record supports the decision of the district court, and we conclude the district court did not abuse its discretion by denying the motion for the appointment of counsel. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Jerry A. Wiese, District Judge  
Torrence Lewis  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk