

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

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

No. 80560-COA

FILED

JAN 22 2021

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

ORDER OF AFFIRMANCE

Isaac Lewis appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

Lewis argues the district court erred by denying the claims of ineffective assistance of trial counsel raised in his November 6, 2019, petition without conducting an evidentiary hearing. 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 687. To warrant an evidentiary hearing, a petitioner must raise claims supported by specific 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 claimed his trial counsel was ineffective because he did not prepare for trial by investigating witnesses or retaining experts. Lewis did not specify what witnesses counsel should have investigated or that counsel would have uncovered favorable information from them. In addition, Lewis did not identify the type of expert witness counsel should have retained or what information they would have offered. Therefore, Lewis failed to allege specific facts that demonstrated his counsel's performance fell below an objective standard of reasonableness or a reasonable probability of a different outcome had counsel performed differently. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) (explaining that a petitioner claiming counsel should have conducted investigation must identify what the investigation would have revealed). Accordingly, the district court did not err by denying this claim without conducting an evidentiary hearing.

Second, Lewis claimed his trial counsel was ineffective for failing to obtain a numbered copy of the discovery. Lewis did not explain why it was objectively unreasonable not to request a numbered copy of discovery or how the failure affected the outcome of the trial proceedings. Therefore, Lewis failed to allege specific facts that demonstrated his counsel's performance fell below an objective standard of reasonableness or a reasonable probability of a different outcome had counsel performed differently. Accordingly, the district court did not err by denying this claim without conducting an evidentiary hearing.

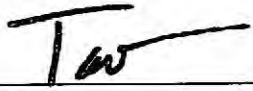
Next, Lewis argues on appeal that his trial counsel was ineffective because counsel did not file the pretrial motions that Lewis wanted to be filed. However, Lewis did not raise this claim in his petition,

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

Finally, Lewis argues on appeal that the district court erred by declining to appoint postconviction 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.* 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 v. State*, 133 Nev. 75, 76, 391 P.3d 760, 761 (2017). Therefore, the district court declined to appoint postconviction counsel. The record supports the decision of the district court, and we conclude the district court did not abuse its discretion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Dept. 5
Isaac Lewis
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk