


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ADAM MONTRELL GOBER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 82027-COA

FILED

APR 12 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Adam Montrell Gober appeals from orders of the district court denying a postconviction petition for a writ of habeas corpus and a motion to hold his trial counsel in contempt of court. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Gober argues the district court erred by denying the claims of ineffective assistance of counsel raised in his February 25, 2019, petition. 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. 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).

First, Gober argued his trial counsel was ineffective for failing to file a motion to suppress evidence regarding the weapon. Gober contended that evidence should have been suppressed because he was not in possession of the weapon when it was discovered and there were not any surveillance video recordings depicting him in possession of the weapon. Gober did not allege that the evidence was obtained in violation of his rights and did not identify any legal bases upon which counsel should have sought suppression of evidence regarding the weapon. *Cf. State v. Kincade*, 129 Nev. 953, 957, 317 P.3d 206, 208 (2013) (stating that the exclusion of evidence obtained in violation of the Constitution is a judicial remedy designed to deter law enforcement from committing such violations). Accordingly, Gober failed to demonstrate his counsel's performance fell below an objective standard of reasonableness or a reasonable probability of a different outcome had counsel filed a motion to suppress the evidence concerning the weapon. Therefore, we conclude the district court did not err by denying this claim.

Second, Gober argued his trial counsel was ineffective for failing to conduct an investigation. Gober did not identify any information counsel should have attempted to investigate. Gober 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. Therefore, we conclude the district court did not err by denying this claim. *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).

Third, Gober argued his trial counsel was ineffective for failing to communicate with him. Gober did not identify any issues counsel failed to discuss with him and did not specify why he believed additional discussions with counsel were necessary. Accordingly, Gober 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. Therefore, we conclude the district court did not err by denying this claim. *See Rippo v. State*, 134 Nev. 411, 426, 423 P.3d 1084, 1100 (2018).

Fourth, Gober appeared to argue his trial counsel was ineffective for failing to provide him with his case file. Gober did not explain why he needed a copy of his case file during the trial proceedings or how the failure to provide him with a copy of the file affected the outcome of the trial proceedings. Therefore, Gober 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. *See id.*

Next, Gober argued his appellate counsel was ineffective. To demonstrate ineffective assistance of appellate counsel, a petitioner must show that counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in 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*, 466 U.S. at 687. 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).

Gober argued his appellate counsel was ineffective because counsel did not timely file the opening brief and appellate appendix. Appellate counsel did not file the opening brief and appendix in a timely manner, but the Nevada Supreme Court granted appellate counsel's motion for an extension of time to file those documents. *Gober v. State*, Docket No. 71264 (Order, July 31, 2017). Counsel subsequently filed the brief and appendix, and this court considered his argument on its merits. *Gober v. State*, Docket No. 71264-COA (Order of Affirmance, February 13, 2018). In light of the record regarding Gober's direct appeal, Gober did not demonstrate a reasonable likelihood of success had counsel timely filed the opening brief and appendix. Therefore, we conclude the district court did not err by denying this claim.

Next, Gober argues the district court erred by denying the petition before he was able to obtain his trial counsel's case file. An inability to review the case file did not prevent Gober from pursuing postconviction relief. *See Hood v. State*, 111 Nev. 335, 338, 890 P.2d 797, 798 (1995) (explaining a counsel's failure to send a petitioner the case file did not prevent the petitioner from filing a timely petition). Gober did not explain why access to his case file was necessary and did not explain why he was unable to raise any particular claim without the case file. Because Gober did not support this claim with specific allegations, he did not demonstrate



he was entitled to relief. Therefore, we conclude Gober fails to demonstrate the district court erred by denying the petition.

Next, Gober argues that the district court erred by adopting the State's arguments from its opposition when it denied his petition and contended the State improperly had a copy of the order in advance of a hearing concerning the petition. In addition, Gober appears to argue the district court improperly entered an initial order denying the petition that failed to contain specific findings of fact as required by NRS 34.830(1).

As stated previously, Gober's claims of ineffective assistance of counsel lacked merit and Gober does not identify any legal reason why the district court should not have adopted the State's arguments when it denied the petition. Moreover, the record demonstrates the district court directed the State to prepare a proposed order denying the petition, and Gober does not demonstrate directing the State to prepare a proposed order denying the petition adversely affected the outcome of the proceedings or his ability to seek full appellate review. Moreover, the district court's final order denying the petition contains findings with sufficient specificity to permit this court to appropriately review its decision on appeal. Therefore, Gober is not entitled to relief based upon these issues.

Finally, Gober argues the district court erred by denying his motion to hold his trial counsel in contempt of court. This court reviews orders of contempt for abuse of discretion. *In re Water Rights of the Humboldt River*, 118 Nev. 901, 907, 59 P.3d 1226, 1230 (2002). "An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). The district court concluded that an

order of contempt was not appropriate in this case. Gober does not demonstrate that the decision was arbitrary or capricious, or that it exceeded the bounds of law or reason. Therefore, we conclude Gober is not entitled to relief based on this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>1</sup>

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

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

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

cc: Hon. Michael Villani, District Judge  
Adam Montrell Gober  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>1</sup>We have reviewed all documents Gober has filed in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Gober attempts to present claims or facts in those submissions which were not previously presented in the proceedings below, we decline to consider them in the first instance. See *McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).