

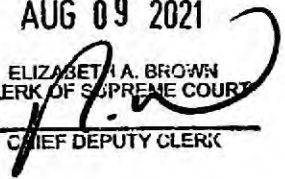
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CARLOS MAX GONZALEZ-ROJAS,
A/K/A CARLOS MAZ GONZALEZ
ROJAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 81861-COA

FILED

AUG 09 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Carlos Max Gonzalez-Rojas appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on April 13, 2020, and a supplemental petition filed on June 15, 2020. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Gonzalez-Rojas claims the district court erred by denying his claims of ineffective assistance of trial counsel without first conducting an evidentiary hearing. 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). To warrant an

21-23044

evidentiary hearing, a 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, Gonzalez-Rojas claimed trial counsel was ineffective for failing to argue in a motion in limine for the admission at trial of the parties' history of consensual make-up sex after an argument. Although counsel did not reduce the request to writing, the trial court nevertheless considered Gonzalez-Rojas' oral argument on the merits before rejecting it. Gonzalez-Rojas thus failed to demonstrate that counsel was objectively unreasonable for failing to reduce the request to writing.

Moreover, significant evidence of Gonzalez-Rojas' guilt was presented at trial. The victim testified that he stabbed her, restrained her, and forced her to engage in sexual acts against her will. Employees at the motel where the incident occurred testified that, when the victim approached them for help, she was crying, scared, and shaking. She had a stab wound, two black eyes, and a gash on her nose. She repeatedly told an employee not to let Gonzalez-Rojas into the room she was in and explained that he had stabbed her, tied her up, and sexually assaulted her. The nurse that examined the victim testified that the victim suffered significant injuries, including lacerations to the bridge of her nose, lacerations to her right thigh and left arm, and swelling in her lips. She explained that the victim was distressed to the point of crying and told her she thought she was going to die during the event. Finally, Gonzalez-Rojas did not allege what additional argument counsel should have made in a written brief that was not made orally. For the foregoing reasons, Gonzalez-Rojas failed to demonstrate a reasonable probability of a different result at either the

motion-in-limine hearing or trial. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Second, Gonzalez-Rojas claimed trial counsel was ineffective for failing to move to exclude his statements allegedly obtained in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966). Gonzalez-Rojas argued that he twice invoked his right to remain silent but his invocations were ignored by the arresting officer and interviewing detective. The invocation of the right to remain silent must be unambiguous. *Berghuis v. Thompkins*, 560 U.S. 370, 381-82 (2010). Where *Miranda* warnings are given and “understood by the accused, an accused’s uncoerced statement establishes an implied waiver of the right to remain silent.” *Id.* at 384. The relinquishment of a *Miranda* right “must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion or deception.” *Moran v. Burbine*, 475 U.S. 412, 421 (1986).

The arresting officer testified at trial that he administered *Miranda* warnings to Gonzalez-Rojas, who indicated he understood his rights and would speak with officers if he could first speak to the victim. This was not an unambiguous invocation of his right to remain silent as it was conditioned on his ability to first speak with the victim. Therefore, Gonzalez-Rojas did not demonstrate that counsel’s failure to move to exclude his statements to the arresting officer was objectively unreasonable.

The interviewing detective testified that, after Gonzalez-Rojas was transported to an interview room, he was again administered *Miranda* warnings and Gonzalez-Rojas indicated he understood his rights and agreed to be interviewed. At some point during the interview, Gonzalez-Rojas stated he did not want to “say nothin’.” The detective took the statement to

mean Gonzalez-Rojas no longer wanted to be interviewed. The officer ceased questioning, and there was an approximately 30-second silence before Gonzalez-Rojas broke the silence and started speaking again.

The record reflects that Gonzalez-Rojas understood the *Miranda* warnings administered to him by the detective prior to his interview. And while Gonzalez-Rojas alleges the detective was required to cease interrogation in the face of Gonzalez-Rojas' alleged invocation, the mere fact that the detective remained in silence in the interrogation room for up to 30 seconds before Gonzalez-Rojas reinitiated the conversation does not amount to intimidation, coercion, or deception that would render Gonzalez-Rojas' statements involuntary. Accordingly, to the extent Gonzalez-Rojas unambiguously invoked his right to remain silent during this interview, we conclude he implicitly waived his *Miranda* rights by making unsolicited and uncoerced statements. Therefore, Gonzalez-Rojas did not demonstrate that counsel's failure to move to exclude his statements to the detective was objectively unreasonable.

Moreover, in light of the significant evidence of his guilt presented at trial, Gonzalez-Rojas did not demonstrate a reasonable probability of a different outcome had counsel moved to exclude his statements. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Third, Gonzalez-Rojas claimed trial counsel was ineffective for failing to investigate or present expert testimony regarding how a conviction in the instant case would positively affect the victim's path to citizenship. Counsel filed a motion in the trial court to allow him to elicit evidence at trial regarding the victim's subjective belief as to the effect a conviction in this case would have on her immigration status. This would

have allowed counsel to argue that this belief constituted a motive for the victim to lie about the events. During a midtrial evidentiary hearing on the motion, counsel and the trial judge engaged in a discussion regarding whether there would be an *actual* effect on the victim's immigration status. The trial court concluded there would not be. In his petition, Gonzalez-Rojas argued that, had counsel done a more thorough investigation or consulted with an expert, he could have successfully rebutted the trial court's conclusion as to the actual effect of a conviction. Gonzalez-Rojas failed to demonstrate counsel was objectively unreasonable for not anticipating that the trial court would discuss the actual effect of a conviction rather than focusing exclusively on the victim's subjective belief.

Moreover, the district court stated that the relevant inquiry was the victim's subjective belief and did not rely on the actual effect on the victim's immigration benefits in denying counsel's motion in limine. Additionally, Gonzalez-Rojas did not specify what an expert would have said about, or how a conviction would have impacted, the victim's actual immigration status. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) (providing a defendant alleging a failure to investigate must demonstrate that additional investigation would have altered the outcome of the trial). He thus failed to demonstrate a reasonable probability of a different outcome at the hearing and, in turn, at trial. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Fourth, Gonzalez-Rojas claimed trial counsel was ineffective during his cross-examination of the State's domestic violence expert by opening the door to testimony that victims of sexual assault feign consent as a survival mechanism. Gonzalez-Rojas' defense at trial was that the

victim acted like she consented to at least part of the sexual acts and he thus reasonably believed she was consenting. To support that theory, counsel cross-examined the State's expert on whether a victim of sexual assault would pretend to consent. The expert testified that it is typical for sexual assault victims to consent to survive. In light of the context, Gonzalez-Rojas failed to demonstrate this line of questioning was objectively unreasonable. Additionally, given the significant evidence of Gonzalez-Rojas' guilt, he failed to demonstrate prejudice stemming from counsel's line of questioning. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Gonzalez-Rojas next claimed the district court erred by denying his claims of ineffective assistance of appellate counsel without first conducting an evidentiary hearing. Gonzalez-Rojas claimed appellate counsel was ineffective for failing to raise additional meritorious issues on direct appeal. 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).


Gonzalez-Rojas' bare list of potential issues for appeal failed to allege specific facts that would indicate he was entitled to relief, nor did his

list engage in any argument specific to his appellate counsel claims. Therefore, we conclude the district court did not err by denying these claims without first conducting an evidentiary hearing. *See Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225.

Finally, Gonzalez-Rojas claimed cumulative errors committed by counsel warrant relief. However, even assuming multiple deficiencies in counsel's performance may be cumulated to find prejudice under the *Strickland* test, *see McConnell v. State*, 125 Nev. 243, 259 n.17, 212 P.3d 307, 318 n.17 (2009), there was nothing to cumulate because Gonzalez-Rojas did not demonstrate any deficiencies. *See Morgan v. State*, 134 Nev. 200, 201 n.1, 416 P.3d 212, 217 n.1 (2018). Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

For the foregoing reasons, 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. 21
Nevada Defense Group
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk