

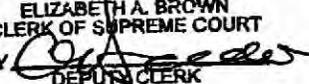
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GARY LAMAR CHAMBERS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83247-COA

FILED

FEB 03 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Gary Lamar Chambers appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Carli Lynn Kierny, Judge.

Chambers argues the district court erred by denying his March 24, 2021, petition and later-filed supplement without first conducting an evidentiary hearing. In his petition, Chambers claimed his trial counsel was ineffective. 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, 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, Chambers claimed that his trial counsel was ineffective for failing to properly communicate and consult with him. Chambers did not specify why he believed additional discussions with counsel were necessary or explain how additional discussions with counsel could have altered the outcome of the trial. Accordingly, Chambers failed to allege specific facts that demonstrated his counsel's performance fell below an objective standard of reasonableness or a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial had counsel performed differently. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Second, Chambers claimed that his trial counsel was ineffective for failing to investigate the victims because counsel could have potentially shown that they had a propensity for violence. A petitioner claiming that counsel should have conducted an investigation must identify what the investigation would have revealed. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Chambers failed to identify what an investigation into whether the victims had a propensity for violence would have revealed.

In addition, Chambers did not allege that he was aware of any acts of violence committed by the victims, and therefore, he did not demonstrate that any violent incidents involving them would have been admissible at trial. *See Burgeon v. State*, 102 Nev. 43, 45-46, 714 P.2d 576, 578 (1986) ("When it is necessary to show the state of mind of the accused at the time of the commission of the offense for the purpose of establishing self-defense, specific acts which tend to show that the deceased was a violent and dangerous person may be admitted, provided that the specific acts of violence of the deceased were known to the accused or had been

communicated to him.”). Accordingly, Chambers did not demonstrate a reasonable probability of a different outcome at trial had counsel attempted to investigate whether the victims had violent pasts. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Third, Chambers claimed that his trial counsel was ineffective for failing to interview witnesses in order to discover persons who were willing to testify that the victims were drug dealers. Testimony and evidence were presented at trial indicating that the victims sold illegal drugs, and counsel questioned the surviving victim concerning illegal drug sales. Thus, Chambers did not demonstrate a reasonable probability of a different outcome at trial had counsel performed different actions. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Fourth, Chambers claimed that his trial counsel was ineffective for failing to present testimony at trial from Dr. Levy concerning behavioral effects of the victims’ drug use. Chambers’ claim was belied by the record because counsel called Dr. Levy to testify at trial and questioned Dr. Levy concerning those issues. Accordingly, Chambers did not demonstrate that counsel’s performance fell below an objective standard of reasonableness. Chambers also failed to demonstrate a reasonable probability of a different outcome at trial had counsel performed different actions concerning the underlying issue. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Fifth, Chambers claimed that his trial counsel was ineffective for failing to request a cautionary instruction concerning the surviving victim’s testimony because of her status as a drug addict. The district court

instructed the jury concerning the credibility or believability of witnesses generally, and Chambers did not demonstrate any failure by counsel to request an additional instruction concerning the credibility of the surviving victim fell below an objective standard of reasonableness. Chambers also did not demonstrate a reasonable probability of a different outcome at trial had counsel requested an instruction concerning the surviving victim's testimony. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Next, Chambers claimed 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.

Chambers claimed that his appellate counsel was ineffective, but he did not provide an explanation for this claim or support it with specific facts. Accordingly, Chambers failed to allege specific facts that demonstrated his counsel's performance fell below an objective standard of reasonableness or a reasonable probability of success on appeal had counsel performed different actions. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Next, Chambers argues on appeal that he was not able to cross-examine a witness that testified at trial via videoconference, trial counsel was ineffective for failing to investigate whether the victim's fingerprints were on the firearm, trial counsel was ineffective for permitting him to enter a guilty plea without ensuring that he would receive a lenient sentence, and

the district court erred by sentencing him to serve terms totaling life in prison without the possibility of parole. Chambers did not raise these claims in his petition, and we decline to consider them on appeal in the first instance. *See McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).

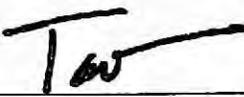
Next, Chambers argues the district court erred by declining to appoint postconviction counsel. The appointment of counsel in this matter was discretionary. *See* NRS 34.750(1). When deciding whether to appoint counsel, the district court may consider factors, including whether the issues presented are difficult, whether the petitioner is unable to comprehend the proceedings, or whether counsel is necessary to proceed with discovery. *Id.*; *Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 761 (2017). Because Chambers' petition was a first petition not subject to summary dismissal, *see* NRS 34.745(1), (4), he met the threshold requirements for the appointment of counsel. *See* NRS 34.750(1); *Renteria-Novoa*, 133 Nev. at 76, 391 P.3d at 761. However, the district court found that the issues in this matter were not difficult, Chambers was able to comprehend the proceedings, and discovery with the aid of counsel was not necessary. For these reasons, the district court declined to appoint counsel. The record supports the decision of the district court, and we conclude the district court did not abuse its discretion by declining to appoint postconviction counsel.

Finally, Chambers argues the district court erred by conducting a hearing outside his presence concerning his postconviction petition. A criminal defendant does not have an unlimited right to be present at every proceeding. *See Gallego v. State*, 117 Nev. 348, 367-68, 23 P.3d 227, 240 (2001), *abrogated on other grounds by Nunnery v. State*, 127 Nev. 749, 776

n.12, 263 P.3d 235, 253 n.12 (2011). A “defendant must show that he was prejudiced by the absence.” *Kirksey*, 112 Nev. at 1000, 923 P.2d at 1115. The record indicates the hearing at issue was not an evidentiary hearing, no testimony was presented, and the district court merely directed the State to prepare an order denying the petition. *Cf. Gebers v. State*, 118 Nev. 500, 504, 50 P.3d 1092, 1094-95 (2002) (concluding a petitioner’s statutory rights were violated when she was not present at hearing where testimony and evidence were presented). Chambers does not demonstrate he was prejudiced by his absence from the relevant hearing. Accordingly, Chambers fails to demonstrate he is entitled to relief, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Carli Lynn Kierny, District Judge
Gary Lamar Chambers
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk