

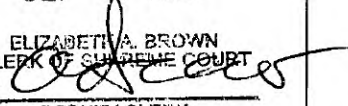
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CALVIN THOMAS ELAM,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 85421-COA

FILED

SEP 13 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

Calvin Thomas Elam appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on May 27, 2020,<sup>1</sup> and a supplemental petition filed on June 8, 2022. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Elam argues the district court erred by denying his claims of ineffective assistance of trial and appellate counsel. 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*); *see also Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996) (applying

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<sup>1</sup>The State argues that Elam's petition was procedurally time-barred because it was filed more than one year after issuance of the remittitur on direct appeal on May 7, 2019. However, the clerk of the district court received the petition on April 20, 2020, which was well within the one-year timely filing deadline, and it is the clerk's duty, not the parties', to file submitted documents. *See Sullivan v. Eighth Judicial Dist. Court*, 111 Nev. 1367, 1372, 904 P.2d 1039, 1042 (1995).

*Strickland* to claims of ineffective assistance of appellate counsel). Both components of the inquiry—deficiency and prejudice—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).

Elam argues the district court erred by denying his claim that trial counsel was ineffective for failing to object to a misstatement of law the State made during closing arguments. In closing argument, the State did not provide a complete description of an unarmed offender’s criminal liability for a co-offender’s use of a deadly weapon. However, Elam concedes the jury was properly instructed. The State did not urge the jury to disregard the instruction, and jurors are presumed to follow the trial court’s instructions, *McConnell v. State*, 120 Nev. 1043, 1062, 102 P.3d 606, 619 (2004). Accordingly, Elam failed to demonstrate a reasonable probability of a different outcome had counsel objected to the State’s argument. Therefore, we conclude the district court did not err by denying this claim.

Second, Elam argues the district court erred by denying without an evidentiary hearing his claims that trial counsel was ineffective for failing to investigate. A petitioner claiming that counsel did not conduct an adequate investigation must allege what the results of a better investigation would have been and how it would have affected the outcome of the proceedings. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Elam’s bare claims failed to allege what the results of any investigation would have been. Therefore, we conclude the district court did not err by denying these claims without conducting an evidentiary hearing. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984) (providing that, 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 them to relief).

Third, Elam argues the district court erred by denying his claim that appellate counsel was ineffective for failing to challenge Elam's first-degree-kidnapping conviction on the grounds that it arose out of the same course of conduct as an associated offense in violation of *Mendoza v. State*, 122 Nev. 267, 130 P.3d 176 (2006). Elam did not raise this claim below. Therefore, we decline to consider it on appeal in the first instance. See *McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).

Finally, Elam argues the district court erred by denying without an evidentiary hearing his claim that appellate counsel was ineffective for failing to challenge the sufficiency of the evidence for Elam's kidnapping conviction. Elam's bare claim failed to specify which elements he believes the State did not prove beyond a reasonable doubt or what argument counsel should have offered. Accordingly, he was unable to demonstrate that counsel was deficient or resulting prejudice, and we conclude the district court did not err by denying this claim without conducting an evidentiary hearing. See *Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225.

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.

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

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

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Joseph Hardy, Jr., District Judge  
Monique A. McNeill  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk