


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TIMOTHY RANDELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85866-COA

FILED

OCT 06 2023

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

ORDER OF AFFIRMANCE

Timothy Randell appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on October 4, 2018, and a supplemental petition filed on November 9, 2020. Second Judicial District Court, Washoe County; Egan K. Walker, Judge.

Randell argues the district court erred by denying, without conducting an evidentiary hearing, his claims that counsel was ineffective for failing to present mitigation evidence at sentencing. 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.

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 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).

Randell first claimed counsel should have called Randell's siblings to testify about difficulties in Randell's upbringing, including the fact that he was raised in an extremely abusive environment. Randell did not further elaborate on the content of what his siblings' testimony would have been. The district court found that the sentencing court had heard extensive information about Randell's childhood prior to the imposition of Randell's sentence, it was unlikely that Randell's siblings would have testified to some new information, and it was unlikely that their testimony would have altered the sentencing outcome. The record supports the district court's findings.

The sentencing court heard argument from counsel wherein she stated that Randell grew up in a "horrible and sad situation" and had "extreme trauma" inflicted against him up to the age of nine when he was removed from his parents' care due to their abuse. The sentencing court also received the presentence investigation report wherein Randell indicated that he had been abused as a child. The sentencing court, which had previously sentenced Randell to regimental discipline instead of prison in a different case, stated prior to the imposition of Randell's sentence that it had considered Randell's background, including his "tragic childhood," his criminal history, his mental health history, the victims, and crimes, which

the court described as “heinous, barbaric, and inhumane.” In light of these circumstances, Randell failed to demonstrate counsel was deficient or a reasonable probability of a different outcome had counsel called Randell’s siblings to testify in mitigation during sentencing. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Randell also claimed counsel should have called Dr. Piasecki to testify. Randell argued that despite the fact that the sentencing court reviewed Dr. Piasecki’s psychological evaluation report on Randell, her live testimony would have provided a greater understanding of Randell’s abusive childhood and background as well as his mental health and substance abuse history. Randell also argued that Dr. Piasecki could have been asked about Randell’s rehabilitation prospects.

The district court found that Dr. Piasecki’s report was transparent about the significant challenges Randell faced as well as his rehabilitation prospects. Because Randell failed to include Dr. Piasecki’s report in his appendix, we presume the report supports the district court’s finding. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007); *see also* NRAP 30(b)(3) (requiring an appellant to include in the appendix “any . . . portions of the record essential to determination of issues raised in [the] appeal”). In light of these circumstances, Randell failed to demonstrate counsel was deficient or a reasonable probability of a different outcome had counsel called Dr. Piasecki to testify in mitigation during sentencing. Therefore, we conclude the

district court did not err by denying this claim without conducting an evidentiary hearing. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Egan K. Walker, District Judge
Edward T. Reed
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk