

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WILLIAM RONALD CLARK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87185-COA

FILED

FEB 28 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

William Ronald Clark appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on January 17, 2023. Eighth Judicial District Court, Clark County; Danielle K. Pieper, Judge.

In his petition, Clark contended that 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. 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). A petitioner must raise claims supported by specific factual allegations that are not belied by

the record and, if true, would entitle the petitioner to relief. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Clark contended that counsel should have filed a motion to dismiss because the State surreptitiously recorded him admitting to the crime and these recorded statements were admitted at trial in violation of NRS 179.500.¹ The Nevada Supreme Court has held that Clark's recorded statements did not violate NRS 179.500. *See Clark v. State*, No. 82996, 2022 WL 2196854 (Nev. June 17, 2022) (Order of Affirmance and Remand to Correct Clerical Error). Therefore, Clark failed to allege specific facts indicating counsel was deficient or that there was a reasonable probability of a different outcome had counsel filed such a motion.

Second, Clark contended that counsel should have filed a motion to dismiss the indictment because his constitutional and statutory speedy trial rights were violated. Clark invoked his speedy trial rights at his initial arraignment on July 1, 2020, and his trial began approximately eight months later on March 8, 2021. Clark acknowledged that the trial was delayed due to the COVID-19 pandemic, and Clark did not allege that he was prejudiced by the delay. Therefore, Clark failed to allege specific facts indicating counsel was deficient or that there was a reasonable probability of a different outcome had counsel filed a motion to dismiss the indictment. *See State v. Inzunza*, 135 Nev. 513, 516, 454 P.3d 727, 731 (2019) (discussing the four factor test for determining whether a defendant's Sixth Amendment speedy trial right was violated); *see also Anderson v. State*, 86 Nev. 829, 834, 477 P.2d 595, 598 (1970) (stating a defendant's statutory right to be brought to trial within 60 days after arraignment is

¹NRS 179.500 prohibits the admission of intercepted oral communications obtained without a court order.

“only mandatory if there is not good cause shown for the delay”); *see also United States v. Smith*, 460 F. Supp. 3d 981, 984 (E.D. Cal. 2020) (“Almost every court faced with the question of whether general COVID-19 considerations justify an ends-of-justice continuance and exclusion of time [from speedy-trial considerations] has arrived at the same answer: yes.”).


Third, Clark contended that counsel should have challenged several videos of him. In particular, Clark contended that (1) video from casino cameras was edited or altered, and (2) video from street cameras was used in violation of his Fourth Amendment rights. Clark did not explain how the casino video was edited or altered or why this video was inaccurate. Moreover, the videotaping of suspects in public places does not violate the Fourth Amendment. *See United States v. Gonzalez*, 328 F.3d 543, 548 (9th Cir. 2003); *see also Young v. State*, 109 Nev. 205, 213, 849 P.2d 336, 342 (1993) (stating “clandestine surveillance undertaken by police officers in order to observe criminal activity does not violate the Fourth Amendment where the activity can be observed by the public”). Clark also did not allege that the results of the trial would have been different had counsel objected to any of the above video.

Therefore, Clark failed to allege specific facts indicating counsel was deficient or that there was a reasonable probability of a different outcome had counsel challenged video of him. *See Kirksey v. State*, 112 Nev. 980, 990, 923 P.2d 1102, 1109 (1996) (providing that a petitioner claiming ineffective assistance of counsel for failure to file a motion to suppress must demonstrate that the motion would have been meritorious and that there was a reasonable likelihood that the exclusion of the evidence would have changed the result of a trial).

On appeal, Clark argues the district court erred by denying several of his claims as outside the scope of a postconviction habeas petition. In his petition, Clark contended that (1) his speedy trial rights were violated, (2) his due process rights were violated due to errors in the grand jury proceedings, (3) his Fourth Amendment rights were violated, and (4) the trial court erroneously allowed certain evidence to be admitted. Each of these claims could have been raised on direct appeal, and Clark did not allege cause for failing to do so or that actual prejudice would result if his claims were not heard on the merits.² Therefore, Clark's claims are waived, and we conclude the district court did not err by denying these claims. *See* NRS 34.810(1)(b). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

²Clark contends that he raised his claims in pro se pleadings on direct appeal. However, Clark was not permitted to represent himself on direct appeal, and any claims raised in Clark's pro se pleadings were not properly before the court. *See* NRAP 46A(b)(1) ("A defendant who is appealing from a judgment of conviction may not appear without counsel."). To the extent Clark contends that appellate counsel was ineffective for failing to raise these claims on direct appeal, Clark did not raise this argument in his petition below, and we decline to consider it for the first time on appeal. *See McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).

cc: Hon. Danielle K. Pieper, District Judge
William Ronald Clark
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk