IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JACQUES LANIER,
Appellant,
vs.
JEREMY BEAN, WARDEN,
Respondent.

No. 89132-COA

FILED

JUL 24 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jacques Lanier appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on March 12, 2024. Eighth Judicial District Court, Clark County; Nadia Krall, Judge.[1]

Lanier argues the district court erred by denying his claims of ineffective assistance of trial-level counsel without conducting an evidentiary hearing. 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*). To demonstrate prejudice regarding the decision to enter a guilty plea, a petitioner must show a reasonable probability that, but for counsel's errors, they would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985);

[1]The Honorable Deborah L. Westbrook did not participate in the decision in this matter.

Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). 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). 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 the petitioner to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Lanier claimed counsel was ineffective for failing to investigate his case. He contended counsel did not investigate the facts, did not interview his family members, did not interview the victim or her family, and did not employ an investigator or an expert psychologist. He appeared to contend that such an investigation would have revealed he acted in a heat of passion because the victim had cheated on him and he had post-traumatic stress disorder (PTSD) and suicidal thoughts.

Lanier's motive for the shooting and his mental illnesses concern facts that were known to Lanier at the time he entered his guilty plea. Moreover, these facts do not, in themselves, indicate Lanier acted in a heat of passion, particularly when Lanier drove to the victim's apartment and shot her after she exited the apartment. *See Collins v. State*, 133 Nev. 717, 727, 405 P.3d 657, 666 (2017) (stating voluntary manslaughter requires that "[t]he killing . . . be the result of that sudden, violent impulse of passion supposed to be irresistible" (quotation marks omitted)); *see also Allen v. State*, 98 Nev. 354, 356, 647 P.2d 389, 391 (1982) ("If there is an interval between the provocation and the killing sufficient for the passion

to cool and the voice of reason to be heard, the killing will be punished as murder."). Therefore, Lanier failed to allege specific facts indicating counsel was deficient or a reasonable probability he would not have pleaded guilty but for counsel's errors. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) (stating a petitioner alleging that an attorney should have conducted a better investigation must demonstrate what the results of a better investigation would have been and how it would have affected the outcome of the proceedings). Accordingly, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Second, Lanier claimed counsel was ineffective for failing to provide him with discovery. Lanier's bare claim failed to specify what discovery counsel failed to provide or how any such discovery would have affected his guilty plea.[2] Therefore, Lanier failed to allege specific facts indicating counsel was deficient or a reasonable probability he would not have pleaded guilty but for counsel's errors. Accordingly, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Third, Lanier claimed counsel was ineffective for failing to inform him of his constitutional rights. Lanier's claim is belied by the record. In the amended guilty plea agreement, Lanier affirmed that he understood he was waiving several constitutional rights by entering his guilty plea, including but not limited to his right against self-incrimination,

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[2]Lanier's general claim that he would have assisted counsel in preparing pretrial motions or a trial defense is insufficient to demonstrate deficiency or prejudice. *See Chappell v. State*, 137 Nev. 780, 788, 501 P.3d 935, 950 (2021) (stating a petitioner "must *specifically explain* how his attorney's performance was objectively unreasonable" (quotation marks omitted)).

his right to a speedy and public trial by an impartial jury, his right to confront and cross-examine any witnesses who would testify against him, and his right to subpoena witnesses and to testify in his own defense. Lanier also informed the trial-level court at the plea canvass that he understood the constitutional rights he was giving up by entering his guilty plea. Therefore, Lanier failed to allege specific facts that were not belied by the record and, if true, would indicate counsel was deficient or a reasonable probability he would not have pleaded guilty but for counsel's errors. *See Molina*, 120 Nev. at 191, 87 P.3d at 537-38 ("A thorough plea canvass coupled with a detailed, consistent, written plea agreement supports a finding that the defendant entered the plea voluntarily, knowingly, and intelligently." (quotation marks omitted)). Accordingly, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Fourth, Lanier claimed counsel was ineffective for coercing him into pleading guilty by telling him he would lose if he went to trial. Lanier's claim of coercion is belied by the record. In the amended guilty plea agreement, Lanier affirmed he was entering his guilty plea voluntarily, he was not acting under duress or coercion, and he was satisfied with counsel's services. Likewise, Lanier informed the trial-level court that he was entering his plea freely and voluntarily, that no one had forced or threatened him to enter his guilty plea, and that he was satisfied with counsel's representation and advice. Moreover, counsel's candid advice about the likely outcome at trial does not constitute coercion. *Cf. Dezzani v. Kern & Assocs., Ltd.*, 134 Nev. 61, 69, 412 P.3d 56, 62 (2018) (noting that one of the roles of an attorney is to provide candid advice to his or her client); *see also Whitman v. Warden*, 90 Nev. 434, 436, 529 P.2d 792, 793 (1974) ("A

guilty plea is not coerced merely because motivated by a desire to avoid the possibility of a higher penalty."). Therefore, Lanier failed to allege specific facts that were not belied by the record and, if true, would indicate counsel was deficient or a reasonable probability he would not have pleaded guilty but for counsel's errors. Accordingly, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Fifth, Lanier claimed counsel was ineffective for failing to research, or object to, the deadly weapon enhancement. Lanier contended that NRS 193.165 did not apply to him because the use of a deadly weapon was a necessary element of the crime and that imposition of an additional penalty for the use of a deadly weapon violated double jeopardy.

NRS 193.165(4) states a district court may not impose an additional penalty for the use of a deadly weapon where the use of a deadly weapon is a necessary element of the crime charged. Lanier was convicted of attempted murder, and the use of a deadly weapon is not a necessary element of the crime of attempted murder. *See Keys v. State*, 104 Nev. 736, 740-41, 766 P.2d 270, 273 (1988) ("Attempted murder is the performance of an act or acts which tend, but fail, to kill a human being, when such acts are done with express malice, namely, with the deliberate intention unlawfully to kill."). Moreover, the supreme court has held that NRS 193.165 does not violate double jeopardy. *See Nev. Dep't of Prisons v. Bowen*, 103 Nev. 477, 479, 745 P.2d 697, 698 (1987). Therefore, Lanier failed to allege specific facts indicating counsel was deficient or a reasonable probability of a different outcome but for counsel's errors. Accordingly, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Sixth, Lanier claimed counsel was ineffective for failing to advise him about the significance of the Division of Parole and Probation's (P&P) presentence interview or the fact that he could have counsel present during the interview. Lanier's bare claim failed to specify how any lack of advice affected his interview with P&P or why such advice would have resulted in a different outcome at sentencing. Therefore, Lanier failed to allege specific facts indicating counsel was deficient or a reasonable probability of a different outcome but for counsel's errors. Accordingly, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Seventh, Lanier claimed counsel was ineffective for failing to object to a factual error contained in the presentence investigation report (PSI) and presented at sentencing. In particular, Lanier contended the victim's mother inaccurately stated he shot the victim 18 times when he only shot the victim 10 times. The PSI does not state the victim was shot 18 times; rather, the PSI states the victim's mother relayed to police officers that she heard "what she thought was 15 gunshots." Moreover, the victim's mother did not testify at the sentencing hearing that Lanier shot the victim 15 or 18 times; she testified that she heard Lanier shoot her daughter "multiple times." Similarly, the State did not argue Lanier shot the victim 15 or 18 times; it argued Lanier shot the victim 10 times, leaving her with 18 entry and exit wounds. Therefore, Lanier failed to allege specific facts indicating counsel was deficient or a reasonable probability of a different outcome but for counsel's errors. Accordingly, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Eighth, Lanier claimed counsel was ineffective for failing to explain his right of allocution. Lanier exercised his right of allocution at sentencing, and his bare claim failed to specify what he would have stated had counsel explained his right of allocution to him beforehand.[3] Therefore, Lanier failed to allege specific facts indicating counsel was deficient or a reasonable probability of a different outcome but for counsel's errors. Accordingly, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Ninth, Lanier claimed counsel was ineffective for failing to object to the State's failure to notify him that the victim's mother was going to provide a victim impact statement. On direct appeal, this court concluded that the victim's mother's testimony did not exceed the scope of NRS 176.015(3) and, thus, that Lanier was not entitled to prior notice of the mother's testimony. *See Lanier v. State*, No. 86243-COA, 2023 WL 8533327, at *1-2 (Nev. Ct. App. Dec. 8, 2023) (Order of Affirmance). In light of this determination, Lanier failed to demonstrate such an objection would not have been futile. *See Ennis v. State*, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006) (holding counsel is not deficient for failing to make futile objections); *see also Hall v. State*, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975) ("The law of a first appeal is the law of the case on all subsequent appeals in which the facts are substantially the same." (quotation marks omitted)). Therefore, Lanier failed to allege specific facts indicating counsel was deficient or a reasonable probability of a different outcome but for counsel's

[3]Lanier's general claim that he would have prepared and put more effort into pleading for leniency is insufficient to demonstrate deficiency or prejudice. *See Chappell*, 137 Nev. at 788, 501 P.3d at 950 (2021).

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

Tenth, Lanier claimed counsel was ineffective for failing to object to the State's argument at sentencing that he unreasonably continued the proceedings and changed attorneys without legal cause. At sentencing, the State argued in part that Lanier had repeatedly continued the proceedings, and the State indicated Lanier had obtained new counsel multiple times.[4] The district court minutes indicate the State's argument was correct; thus, Lanier failed to demonstrate such an objection would not have been futile. *See Ennis*, 122 Nev. at 706, 137 P.3d at 1103. Moreover, Lanier did not contend that this argument influenced the sentence imposed, and the sentencing court indicated its sentencing decision was based upon the facts of the crime and the injuries sustained by the victim. Therefore, Lanier failed to allege specific facts indicating counsel was deficient or a reasonable probability of a different outcome but for counsel's errors. Accordingly, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Eleventh, Lanier claimed counsel was ineffective for failing to object to the State's argument that he attempted to murder the victim 10 times because she was struck by 10 bullets. The State did not argue that Lanier could have been charged with 10 counts of attempted murder. Instead, the State conceded that the 10 shots could only support one count of attempted murder but contended that the court should "not overlook that

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[4]The State did not argue that Lanier had no legal cause for obtaining new counsel. Rather, the State argued that Lanier "was still controlling the outcome of this case and was still controlling" the victim by seeking several continuances.

these were ten attempts at trying to kill this woman," and that "with each shot . . . he [was] doubling down on his decision that he wants her dead." Lanier conceded he shot the victim 10 times, and he did not dispute that he intended to kill the victim with each shot. Thus, Lanier failed to demonstrate this argument was improper or that any objection would not have been futile. *See id.* Therefore, Lanier failed to allege specific facts indicating counsel was deficient or a reasonable probability of a different outcome but for counsel's errors. Accordingly, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Twelfth, Lanier claimed counsel was ineffective for failing to object to the prosecution's bias in crimes against law enforcement workers. Although unclear, Lanier's claim appears to have been based on the fact that the victim was an Army Reservist. Lanier's bare claim failed to specify what counsel should have argued, and the mere fact that the victim was an Army Reservist does not indicate the Clark County District Attorney's Office should have been disqualified from prosecuting the case. Therefore, Lanier failed to allege specific facts indicating counsel was deficient or a reasonable probability of a different outcome but for counsel's errors. Accordingly, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Thirteenth, Lanier claimed counsel was ineffective for failing to object when the victim falsely stated that Lanier had sexually abused her. At sentencing, the victim stated she had endured months of "psychological, sexual, and emotional abuse." Even assuming objectively reasonable counsel would have objected to this testimony, Lanier failed to allege specific facts indicating a reasonable probability of a different outcome at

sentencing had counsel objected. Accordingly, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Fourteenth, Lanier claimed counsel was ineffective for failing to explain the purpose of the sentence clarification hearing and for assuming he did not want to be present at that hearing. At the sentencing hearing, the court pronounced a sentence of 10 to 24 years in prison. Subsequently, the court held a hearing in which it clarified that it had intended to pronounce a sentence of 10 to 40 years in prison. Believing it could no longer impose such a sentence, the court announced it would be imposing a sentence of 10 to 25 years in prison to bring the sentence in compliance with the 40% rule. *See* NRS 193.130(1) ("The minimum term of imprisonment that may be imposed must not exceed 40 percent of the maximum term imposed.").

Lanier's claim that counsel assumed he did not want to be present at the hearing is belied by the record. Before defense counsel arrived at the hearing, the State conveyed its understanding that Lanier had refused to come to the hearing. The matter was trailed, and after defense counsel arrived, the court stated that Lanier "decided he did not want to come to court today." Lanier also failed to allege specific facts indicating counsel's purported failure to explain the purpose of the clarification hearing was objectively unreasonable, *see Chappell*, 137 Nev. at 788, 501 P.3d at 950, or a reasonable probability of a different outcome had counsel explained the purpose of the hearing or ensured his presence at the hearing. Accordingly, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Fifteenth, Lanier claimed he was entitled to relief due to the cumulative effect of the aforementioned errors. Even if multiple instances of deficient performance could be cumulated for purposes of demonstrating prejudice, *see McConnell v. State*, 125 Nev. 243, 259 & n.17, 212 P.3d 307, 318 & n.17 (2009), Lanier failed to demonstrate multiple errors to cumulate, *see Burnside v. State*, 131 Nev. 371, 407, 352 P.3d 627, 651 (2015) (stating a claim of cumulative error requires multiple errors to cumulate). Accordingly, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.[5]

Lanier also argues the district court erred by denying his claims of ineffective assistance of appellate counsel. 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 v. Washington*, 466 U.S. 668, 687 (1984). 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).

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[5]Because Lanier failed to demonstrate trial-level counsel was ineffective, we further conclude that Lanier failed to demonstrate his plea was invalid due to the ineffective assistance of trial-level counsel. *See Rubio v. State*, 124 Nev. 1032, 1039, 194 P.3d 1224, 1228 (2008) ("A guilty plea entered on advice of counsel may be rendered invalid by showing a manifest injustice through ineffective assistance of counsel.").

First, Lanier claimed counsel was ineffective for failing to explain the risks and advantages of filing a direct appeal. As previously mentioned, Lanier filed a direct appeal, and this court affirmed the judgment of conviction. *See Lanier*, No. 86243-COA, 2023 WL 8533327. Moreover, Lanier's bare claim failed to specify what risks and advantages counsel failed to explain. Therefore, Lanier failed to allege specific facts indicating counsel was deficient or a reasonable probability of a different outcome but for counsel's errors. Accordingly, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Second, Lanier claimed counsel was ineffective for failing to seek his input regarding potential issues to be raised and for failing to research and investigate his case. Lanier's bare claim did not specify what issues he would have raised on appeal had counsel sought his input or researched and investigated his case. To the extent Lanier claimed counsel should have raised the aforementioned claims of ineffective assistance of trial counsel, Lanier failed to allege specific facts indicating such claims would have been properly raised on direct appeal or that such claims would have had a reasonable probability of success. *See Archanian v. State*, 122 Nev. 1019, 1036, 145 P.3d 1008, 1020-21 (2006) ("This court has repeatedly declined to consider ineffective-assistance-of-counsel claims on direct appeal unless the district court has held an evidentiary hearing on the matter or an evidentiary hearing would be needless."). Accordingly, we

conclude the district court did not err by denying this claim without conducting an evidentiary hearing.[6]

Lanier also argues the district court erred by denying his motion for the appointment of 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. *See id.*; *see also Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 761 (2017). Because it appears the district court granted Lanier leave to proceed in forma pauperis and his petition was a first petition not subject to summary dismissal, *see* NRS 34.745(3), Lanier met the threshold requirements for the appointment of counsel, *see* NRS 34.750(1); *Renteria-Novoa*, 133 Nev. at 76, 391 P.3d at 760-61. However, Lanier did not contend he was unable to comprehend the proceedings, and the district court found that the issues presented were not difficult and that counsel was not necessary to proceed with discovery. The record supports the decision of the district court, and we conclude the district court did not abuse its discretion by denying the motion for the appointment of counsel.

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[6]Having concluded the district court did not err by denying Lanier's claims of ineffective assistance of counsel without conducting an evidentiary hearing, we further conclude Lanier's statutory right to be present at an evidentiary hearing was not violated. *See* NRS 34.770(2) ("If the judge or justice determines that the petitioner is not entitled to relief and an evidentiary hearing is not required, the judge or justice shall dismiss the petition without a hearing."); *see also Gebers v. State*, 118 Nev. 500, 504, 50 P.3d 1092, 1094 (2002) (holding a petitioner is entitled to be present "at any evidentiary hearing conducted on the merits of the claims asserted in a post-conviction petition for a writ of habeas corpus").

Lanier also argues the district court erred by not allowing him to amend his petition. The record does not indicate Lanier attempted to amend his petition. Moreover, the district court was not required to sua sponte grant Lanier an opportunity to amend his petition so he could more specifically plead his claims before ruling on the petition. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984) (holding a district court properly denied a postconviction motion to withdraw guilty plea where the appellant raised bare and naked claims for relief). Accordingly, we conclude Lanier is not entitled to relief on this claim.[7]

Lanier also argues the district court failed to identify a pleading standard or applied the wrong legal standard in reviewing his petition. Lanier contends the standards applicable to a motion to dismiss filed pursuant to NRCP 12(b)(5) (failure to state a claim) applied in adjudicating his petition. The State did not file a motion to dismiss pursuant to NRCP 12(b)(5). Moreover, the district court identified and applied the correct legal standards in adjudicating Lanier's petition. *See Strickland*, 466 U.S. at 687-88 (discussing the applicable standards in determining whether counsel was ineffective); *see also Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225 (discussing the applicable standard in determining whether an evidentiary hearing is warranted). Therefore, we conclude Lanier is not entitled to relief on this claim.

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[7]To the extent Lanier contends that his pro se petition should be held to a less stringent standard pursuant to *Hughes v. Rowe*, 449 U.S. 5 (1980), that case concerned a civil rights action and does not relieve a postconviction habeas petitioner of their burden to allege specific facts that were not belied by the record and, if true, would entitle them to relief, *see Hargrove*, 100 Nev. at 502, 686 P.2d at 225.

Finally, Lanier argues that trial-level counsel failed to perform his duties consistent with an order filed in ADKT 411.[8] Lanier did not raise this claim below; therefore, we decline to consider it for the first time on appeal. *See Wade v. State*, 105 Nev. 206, 209 n.3, 772 P.2d 1291, 1293 n.3 (1989). Nonetheless, we note that a failure to adhere to the performance standards adopted through ADKT 411 "does not, in and of itself, constitute ineffective assistance of counsel." *In re Rev. of Issues Concerning Representation of Indigent Defendants in Crim. & Juv. Delinq. Cases*, ADKT 411 (Order, Oct. 16, 2008) (Exhibit A, Standard 1(d)). Accordingly, we conclude Lanier is not entitled to relief on this claim.

For the foregoing reasons,[9] we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Bulla

_____, J.
Gibbons

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[8]In ADKT 411, the supreme court entered several orders adopting the recommendations of the Indigent Defense Commission, which included the adoption of performance standards for criminal defense attorneys to promote effective representation by both appointed and retained counsel.

[9]To the extent Lanier raised claims that did not challenge the validity of his guilty plea or allege counsel was ineffective, we conclude the district court properly denied these claims as outside the scope of a postconviction habeas petition stemming from a guilty plea. *See* NRS 34.810(1)(a) (stating such a petition must allege "that the plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel").

cc: Hon. Nadia Krall, District Judge
Jacques Lanier, II
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk