

SUPREME COURT OF NEVADA

Rahim Muhammad v. Isidro Baca, Warden, and State of Nevada

No. 81367 (Nev. Dec. 11, 2021) · No. 81367 · Decided December 17, 2021

SUMMARY

The Nevada Supreme Court affirmed the denial of Rahim Muhammad’s postconviction habeas petition. Although the court held that the district court incorrectly treated Muhammad’s ineffective-assistance claim concerning sentencing mitigation as procedurally barred under NRS 34.810(1)(a), it concluded that the omitted evidence was cumulative and that Muhammad failed to establish prejudice under Strickland. The court also declined to consider additional claims raised for the first time on appeal.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	C.J. Hardesty; Herndon; Mark Gibbons, Senior Justice
JURISDICTION	Nevada
DECIDED	December 17, 2021
DOCKET	81367
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order of the Second Judicial District Court denying a postconviction petition for a writ of habeas corpus.
STANDARD OF REVIEW	The court defers to district-court factual findings supported by substantial evidence and not clearly wrong, while reviewing the application of law to those facts de novo.
PRECEDENTIAL VALUE	Published Nevada Supreme Court opinion
PARTIES	Rahim Muhammad v. Isidro Baca, Warden, State of Nevada

TOPICS

state post-conviction relief ineffective assistance sentencing habeas corpus appellate procedure

PRACTICE AREAS

Nevada postconviction habeas criminal procedure ineffective assistance of counsel sentencing

QUESTIONS PRESENTED

1. Whether NRS 34.810(1)(a) procedurally barred a postconviction ineffective-assistance claim concerning counsel's performance at sentencing after a guilty plea.
2. Whether Muhammad established prejudice from counsel's failure to present additional mitigation evidence that was cumulative of evidence already presented.
3. Whether the district court properly denied the petition without an evidentiary hearing.

HOLDINGS

1. A defendant who pleaded guilty may bring a postconviction ineffective-assistance claim based on counsel's performance at sentencing because the claim could not have been raised before entry of the plea; therefore, NRS 34.810(1)(a) did not bar Muhammad's claim.
2. Muhammad failed to establish prejudice because the additional mitigation evidence was cumulative of the sentencing statement and exhibits already presented, and he did not show a reasonable probability of a different outcome.
3. The district court properly denied the petition without an evidentiary hearing because Muhammad's factual allegations were belied or repelled by the record and did not establish entitlement to relief.

KEY QUOTATIONS

"a petitioner who pleaded guilty may allege that he or she received ineffective assistance of counsel at sentencing because that claim could not have been raised before entering the plea and barring such a claim would "violate the spirit of our habeas statute and the public policy of this state."" (at 1)

"If a judgment or order of a trial court reaches the right result, although it is based on an incorrect ground, the judgment or order will be affirmed on appeal."" (at 2)

FACTUAL BACKGROUND

Muhammad was convicted pursuant to a guilty plea. In a postconviction habeas petition, he alleged ineffective assistance of counsel during sentencing based on counsel's failure to present letters of community support and evidence of his college attendance and public service. The district court found that the omitted evidence conveyed the same information as the sentencing statement and exhibits counsel had presented, making the evidence cumulative and insufficient to show prejudice.

PROCEDURAL HISTORY

Muhammad pleaded guilty and later filed a state postconviction habeas petition alleging that counsel was ineffective at sentencing for failing to present additional letters of community support and evidence of his college attendance and public service. The district court denied the petition as procedurally barred under NRS 34.810(1)(a), and also found that the omitted evidence was cumulative of evidence already presented and therefore did not establish prejudice. The Nevada Supreme Court held that the procedural-bar ruling was erroneous under *Gonzales v. State* but affirmed because the district court correctly denied relief on the merits without an evidentiary hearing.

DISPOSITION

affirmed

CASES CITED

- Gonzales v. State, 137 Nev., Adv. Op. 40, 492 P.3d 556, 562 (2021)
- Lader v. Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005)
- Strickland v. Washington, 466 U.S. 668, 687-88, 696-97 (1984)
- Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984)
- Nika v. State, 124 Nev. 1272, 1300-01, 198 P.3d 839, 858 (2008)
- Wyatt v. State, 86 Nev. 294, 298, 468 P.2d 338, 340 (1970)
- Davis v. State, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991)
- Means v. State, 120 Nev. 1001, 1012-13, 103 P.3d 25, 33 (2004)

OPINION

Muhammad (Rahim) Vs. Warden

PER CURIAM.

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAHIM MUHAMMAD, No 81367

Appellant, vs. FILE

ISIDRO BACA, WARDEN; AND THE

STATE OF NEVADA, DEC 1 1 2021

Res s ondents. ELIZABE A. BROWN

CLERK OF jPREPECOURT

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ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge. Appellant Rahim Muhammad argues that the district court erred in denying his petition as procedurally barred. Muhammad was convicted pursuant to a guilty plea. In his petition for postconviction habeas relief, Muhammad alleged that counsel provided ineffective assistance during the sentencing hearing. Muhammad specifically argued that counsel should have provided letters of community support and evidence showing his college attendance and public service. The district court concluded that the petition was barred under NRS 34.810(1)(a) because Muhammad pleaded guilty and the petition was "not based upon an allegation that the plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel." In rejecting Muhammad's petition, the district court did not have the benefit of this court's recent decision in *Gonzales v. State*, 137 Nev., Adv. Op. 40, 492 P.3d 556, 562 (2021). In *Gonzales*, we

clarified that a petitioner who pleaded guilty may allege that he or she received ineffective assistance of counsel at sentencing because that claim could not have been raised before entering the plea and barring such a claim would "violate the spirit of our

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(lb 1447A 4%. • -",;w.-154:a04.;—z habeas statute and the public policy of this state." Id. at 562. Accordingly, the district court erred in concluding that NRS 34.810(1)(a) barred Muhammad's petition. Nevertheless, the district court found that the specific pieces of evidence that Muhammad asserted had not been presented conveyed the same information as the sentencing statement and exhibits that counsel had presented to the sentencing court. Substantial evidence supports this finding, which is not clearly wrong. See *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005) (deferring to the district court's factual findings that are supported by substantial evidence and not clearly wrong, but reviewing its application of the law to those facts de novo). In each of Muhammad's claims, he alleges that the omission of the additional evidence prejudiced him. As that mitigation evidence was cumulative, however, Muhammad has not shown that its presentation would have led to a reasonable probability of a different outcome and thus has not shown prejudice. *Strickland v. Washington*, 466 U.S. 668, 687-88, 696-97 (1984) (stating showings required for ineffective assistance of counsel and for its prejudice component and providing that the claim fails if both components are not shown); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505

(1984) (adopting the test in *Strickland*). Therefore, the district court reached the correct outcome in denying Muhammad's petition without an evidentiary hearing. See *Nika v. State*, 124 Nev. 1272, 1300-01, 198 P.3d 839, 858 (2008) (providing that an evidentiary hearing is not warranted where a postconviction habeas petition's factual allegations are "belied or repelled by the record"); *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 340

(1970) ("If a judgment or order of a trial court reaches the right result,

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OF Nevada 2 101 19.17A although it is based on an incorrect ground, the judgment or order will be affirmed on appeal.").¹ Having concluded that relief is not warranted, we ORDER the judgment of the district court AFFIRMED.² C.J. Hardesty Herndon cc: Hon. Kathleen M. Drakulich, District Judge Karla K. Butko Attorney General/Carson City Washoe County District Attorney Washoe District Court Clerk 'Insofar as Muhammad argues that counsel should have sought to correct the PSI report to reflect that the gun used was a toy gun and should have challenged systemic racial bias in the judicial system, and that appellate counsel was ineffective for advising him to dismiss his direct appeal, these claims were not raised in the pro se or supplemental habeas petitions filed below. We decline to address them for the first time on appeal. See *Davis v. State*, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991), overruled on other grounds by

Means v. State, 120 Nev. 1001, 1012-13, 103 P.3d 25, 33 (2004). 2The Honorable Mark Gibbons, Senior Justice, participated in the decision of this matter under a general order of assignment.

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