

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN ANDRE BAZILE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43389

FILED

MAR 22 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is an appeal from an order of the district court denying appellant John Andre Bazile's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Peter I. Breen, Judge.

On April 27, 1999, the district court convicted Bazile, pursuant to a jury verdict, of murder in the first degree with the use of a deadly weapon. The district court sentenced Bazile to serve a life term in the Nevada State Prison with the possibility of parole, plus an equal and consecutive term for the deadly weapon enhancement. This court dismissed Bazile's direct appeal.¹ The remittitur issued on August 8, 2000.

On April 16, 2001, Bazile filed a post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. After conducting an evidentiary hearing, the district court dismissed

¹Bazile v. State, Docket No. 34278 (Order Dismissing Appeal, July 13, 2000).

Bazile's petition on May 24, 2004. Bazile had counsel at the evidentiary hearing and has counsel in this appeal.

Bazile claims that the district court erred in requiring him to provide "strong and convincing" evidence to substantiate the factual allegations underlying his ineffective assistance of counsel claims, rather than the less stringent preponderance of the evidence standard. Recently, in Means v. State, we held that a habeas petitioner must prove any disputed factual allegations underlying an ineffective assistance of counsel claim by a preponderance of the evidence, overruling a line of cases signaling a "strong and convincing" standard.²

Here, the district court stated that Bazile bore the burden of demonstrating by strong and convincing evidence that his counsel's performance fell below an objective standard of reasonableness. Means was decided after Bazile's conviction was final. However, even assuming Means applies to Bazile's case, we conclude that Bazile failed to demonstrate that applying this lesser burden of proof would have entitled him to relief. In rejecting Bazile's claims that his counsel was ineffective for failing to investigate and present evidence exonerating him and for advising him not to testify at trial, the district court found: that Bazile failed to present any evidence additional investigation would have uncovered; that Bazile had confessed to the police, the news media, and at least two other people; and that Bazile failed to identify any flaw in his counsel's advice that he not testify at trial. The district court's findings of

²120 Nev. ___, ___, 103 P.2d 25, 33 (2004).

fact regarding claims of ineffective assistance of counsel are entitled to deference upon appellate review.³ Bazile produced no evidence on appeal casting doubt on the district court's findings.⁴ Accordingly, we conclude that no relief is warranted in this regard.

Bazile also claims that the district court improperly applied NRCP 41(b) in dismissing his habeas petition. "[R]eference to the rules of civil procedure is only appropriate when the statutes governing post-conviction practice do not address the issue presented."⁵ As NRS Chapter 34 clearly sets forth procedures for disposing of post-conviction habeas petitions, we conclude that the district court erred in dismissing Bazile's petition pursuant to NRCP 41(b). However, considering the district court's order in its entirety, we further conclude that the district court adequately considered Bazile's claims and did not abuse its discretion in rejecting those claims based on his failure to substantiate them.

³See Hill v. State, 114 Nev. 169, 175, 953 P.2d 1077, 1082 (1998); Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

⁴See Lee v. Sheriff, 85 Nev. 379, 380-81, 455 P.2d 623, 624 (1969) (stating that an appellant has the burden to provide this court with an adequate record from which to review a lower court's finding and observing that there is a presumption that the lower court did not commit an error in its ruling).

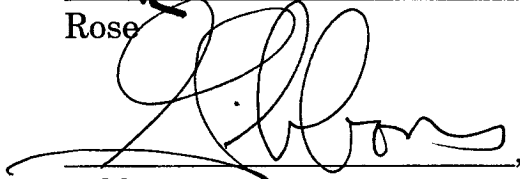
⁵Means, 120 Nev. at ___, 103 P.3d at 37; see Beets v. State, 110 Nev. 339, 341, 871 P.2d 357, 358 (1994).


Therefore, we conclude that Bazile is not entitled to relief on this basis.⁶

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Peter I. Breen, District Judge
Scott W. Edwards
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Clark County Clerk-
Washoe County Clerk

QCR

⁶See Franco v. State, 109 Nev. 1229, 1241, 866 P.2d 247, 255 (1993); Rosenstein v. Steele, 103 Nev. 571, 575, 747 P.2d 230, 233 (1987) (stating that this court will affirm a district court order if it reached the right result, albeit for a different reason).