

IN THE SUPREME COURT OF THE STATE OF NEVADA

LANCE BASSETT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43451

FILED

NOV 03 2004

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court dismissing appellant Lance Bassett's post-conviction petition for a writ of habeas corpus. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

On August 23, 2001, the district court convicted Bassett, pursuant to a jury verdict, of one count each of offering, attempting, or committing an unauthorized act relating to a controlled substance; trafficking in a schedule I controlled substance (28 grams or more); conspiracy; and possession of a controlled substance. The district court sentenced Bassett to serve multiple concurrent and consecutive terms totaling 144 to 360 months in the Nevada State Prison. This court affirmed Bassett's judgment of conviction and sentence on appeal.¹ The remittitur issued on October 14, 2003.

On April 22, 2004, Bassett filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint

¹Bassett v. State, Docket No. 38513 (Order of Affirmance, August 22, 2003).

counsel to represent Bassett or to conduct an evidentiary hearing. On May 6, 2004, the district court dismissed Bassett's petition. This appeal followed.

In his petition, Bassett raised several claims of ineffective assistance of trial counsel. To state a claim of ineffective assistance of trial counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness.² A petitioner must further establish a reasonable probability that, in the absence of counsel's errors, the results of the proceedings would have been different.³ The court can dispose of a claim if the petitioner makes an insufficient showing on either prong.⁴

First, Bassett contended that his trial counsel was ineffective for failing to conduct a thorough investigation of his co-defendants, Nannette Graham and Tony Donn. Bassett further argued that his counsel was deficient for failing to investigate the exact amount of methamphetamine discovered by police at the residence. We conclude that Bassett did not establish that the outcome of his trial would have been different if his counsel had not committed these alleged errors. Bassett did not specify what additional information his counsel could have obtained if he had conducted a more thorough investigation of Donn and Graham.⁵ Further, Bassett's argument that the lab report was erroneous

²See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

³Id.

⁴Strickland, 466 U.S. at 697.

⁵See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

with respect to the amount of methamphetamine recovered is not convincing. Consequently, Bassett failed to demonstrate that his counsel was ineffective in this regard.

Second, Bassett claimed that his trial counsel was ineffective for failing to file a pre-trial motion to dismiss his charges of conspiracy and trafficking in a controlled substance because probable cause was lacking. However, the jury determined that Bassett was guilty of conspiracy and trafficking in a controlled substance beyond a reasonable doubt. Bassett therefore failed to demonstrate that he was prejudiced by his trial counsel's failure to file a motion to dismiss these charges.⁶

Third, Bassett alleged that his trial counsel was ineffective for failing to communicate with him regularly. Bassett contended that he attempted to speak with his trial counsel numerous times, but was generally unsuccessful. Bassett claimed that if his trial counsel had contacted him regularly, he would have discovered that Bassett had "valuable information" that was helpful to his defense. However, Bassett failed to adequately demonstrate that the outcome of his trial would have been altered if his trial counsel had communicated with him regularly. Consequently, the district court did not err in denying this claim.

Fourth, Bassett contended that his trial counsel was ineffective for failing to interview his co-defendants prior to trial. Bassett argued that his counsel would have been more prepared at trial if he had done so. However, Bassett failed to establish that his trial counsel was

⁶See generally United States v. Mechanik, 475 U.S. 66, 70 (1986) (holding that a jury's verdict of guilty beyond a reasonable doubt demonstrated that there was probable cause to charge the defendants with the offenses for which they were convicted).

not sufficiently prepared at trial. Consequently, Bassett did not demonstrate that he was prejudiced by his counsel's failure to interview his co-defendants prior to trial, and we affirm the order of the district court with respect to this claim.

Fifth, Bassett claimed that his trial counsel was ineffective for failing to thoroughly examine co-defendant Graham when she testified. Specifically, Bassett contended that his counsel should have questioned Graham about Bassett's involvement in methamphetamine production. Bassett further argued that his counsel should have questioned Graham about the men's clothing discovered in her bedroom. A review of the record reveals that Graham testified that Bassett was not involved in the production of methamphetamine. Graham additionally stated that all of the clothing found in her bedroom belonged to her. Consequently, Bassett failed to demonstrate that the outcome of his trial would have been different if his counsel had posed these questions, and the district court therefore did not err in denying this claim.

Sixth, Bassett contended that his counsel was ineffective for failing to move for a mistrial or request a curative jury instruction when one of the State's witnesses made an improper comment. Specifically, Detective Empey testified that he knew Bassett "by sight from previous occasions." We conclude that this claim is without merit. The district court admitted evidence of Bassett's previous conviction for possession of a controlled substance as proof of knowledge in the instant case.⁷ Further, jury instruction 39 provided that evidence of Bassett's previous conviction

⁷See NRS 48.045(2).

was to be used only for certain purposes.⁸ Therefore, Bassett failed to demonstrate that he was prejudiced by his counsel's actions with respect to Detective Empey's statement.

Seventh, Bassett alleged that his trial counsel was ineffective for failing to call character witnesses at his sentencing hearing. Bassett contended that his family members were present and wanted to testify as to his good character and to show family support. First, we note that Bassett failed to provide specific information concerning his family members' expected testimony.⁹ Further, the record reveals that prior to sentencing, Bassett's trial counsel submitted several letters to the district court written by Bassett's friends and family. Therefore, Bassett did not establish that the outcome of his sentencing hearing would have been different if his trial counsel had procured live testimony from Bassett's family members. Thus, we affirm the order of the district court with respect to this claim.

Next, Bassett claimed that his appellate counsel was ineffective. To establish ineffective assistance of appellate counsel, a petitioner must demonstrate that counsel's performance fell below an

⁸Jury instruction 39 was as follows:

You heard testimony that the defendant previously committed other acts not charged here. I instruct you that the testimony is being admitted only for the limited purpose of being considered by you on the question of defendant's intent, motive, opportunity, preparation, plan, knowledge, identity, absence of mistake, or absence of accident and for no other purpose.

⁹See Hargrove, 100 Nev. at 502, 686 P.2d at 225.

objective standard of reasonableness, and the deficient performance prejudiced the defense.¹⁰ "To establish prejudice based on the deficient assistance of appellate counsel, the defendant must show that the omitted issue would have a reasonable probability of success on appeal."¹¹ Appellate counsel is not required to raise every non-frivolous issue on appeal.¹²

First, Bassett argued that his appellate counsel was ineffective for failing to raise the issues of "mere presence" and "constructive possession" on appeal. Bassett contended that he was merely present at the scene of the crime, and there was insufficient evidence adduced at trial to show that he had constructive possession of the drugs discovered at the residence. These contentions amount to a challenge to the sufficiency of the evidence. We note that on direct appeal, Bassett's counsel argued that there was insufficient evidence to uphold his convictions, but this court concluded that sufficient evidence was presented at trial. The doctrine of the law of the case prevents further litigation of this issue and "cannot be avoided by a more detailed and precisely focused argument."¹³ Therefore, Bassett did not establish that his appellate counsel was deficient, and the district court did not err in denying Bassett relief on this claim.

¹⁰See Strickland, 466 U.S. 668; Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

¹¹Kirksey, 112 Nev. at 998, 923 P.2d at 1114.


¹²Jones v. Barnes, 463 U.S. 745, 751 (1983).

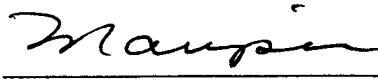
¹³Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975).

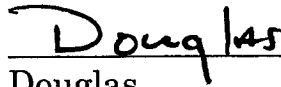
Lastly, Bassett argued that his appellate counsel was ineffective for failing to raise his direct appeal claims as violations of the federal constitution. Bassett claimed that this prejudiced his ability to raise these claims in federal court. However, Bassett did not demonstrate that the result of his direct appeal would have been different if his counsel had raised each of the issues as a violation of the United States Constitution. Thus, he failed to establish that his appellate counsel was ineffective on this issue.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Bassett is not entitled to relief and that briefing and oral argument are unwarranted.¹⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Robert W. Lane, District Judge
Lance Bassett
Attorney General Brian Sandoval/Carson City
Nye County District Attorney/Tonopah
Nye County Clerk

¹⁴See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).