

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMIE Y. MAESHIRO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43464

FILED

NOV 15 2004

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying Jamie Y. Maeshiro's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

On June 16, 2003, the district court convicted Maeshiro, pursuant to a jury verdict, of grand larceny auto. The district court sentenced Maeshiro to serve a term of 48 to 120 months in the Nevada State Prison. This court affirmed the judgment of conviction and sentence on appeal.¹ The remittitur issued on March 9, 2004.

On March 17, 2004, Maeshiro filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Maeshiro or to conduct an evidentiary hearing. On July 27, 2004, the district court denied Maeshiro's petition. This appeal followed.

¹Maeshiro v. State, Docket No. 41752 (Order of Affirmance, February 12, 2004).

In his petition, Maeshiro asserted 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, Maeshiro must demonstrate that his counsel's performance fell below an objective standard of reasonableness, and there is a reasonable probability that in the absence of counsel's errors, the results of the proceedings would have been different.² The district court may dispose of a claim if the petitioner makes an insufficient showing on either prong.³ Further, the district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal.⁴

First, Maeshiro claimed that his counsel was ineffective because, although his counsel was aware that he was taking medication for a mental illness, his counsel failed to request a competency hearing. "The test to be applied in determining competency is whether the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding, and whether he has a rational and factual understanding of the proceedings against him."⁵ Our review of the record on appeal reveals that, although Maeshiro was taking medication for mental illness at the time of his trial, Maeshiro was able to assist his counsel and understand the nature of the charges against him. The record indicates that Maeshiro informed his counsel prior to trial of

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

³Strickland, 466 U.S. at 697.

⁴Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

⁵Jones v. State, 107 Nev. 632, 637, 817 P.2d 1179, 1182 (1991).

his mental illness and requested his counsel to investigate his mental illness for use as a possible defense to the element of intent. Maeshiro has failed to demonstrate that requesting a competency hearing would have altered the outcome of his trial. Accordingly, we conclude that the district court did not err in denying this claim.

Second, Maeshiro claimed that his counsel was ineffective for failing to obtain expert testimony, investigate witnesses and present a defense based upon his mental illness. Maeshiro alleged that his counsel should have used his history of mental illness to challenge the element of intent. "On appeal, this court will not second-guess an attorney's tactical decisions where they relate to trial strategy and are within the attorney's discretion."⁶ Maeshiro has failed to demonstrate that taking any of these actions would have altered the outcome of his trial. Accordingly, we conclude that the district court did not err in denying these claims.

Third, Maeshiro claimed that his counsel was ineffective for not permitting him to take the stand at trial. This claim is belied by the record.⁷ At trial, the district court judge informed Maeshiro of his right to testify on his own behalf. After asking the district court judge several questions to clarify the explanation of those rights, Maeshiro informed the district court that he did not wish to testify. Accordingly, the district court did not err in denying this claim.

Finally, Maeshiro claimed that his counsel was ineffective for failing to protect him from erroneous reports. Maeshiro provided no

⁶Davis v. State, 107 Nev. 600, 603, 817 P.2d 1169, 1171 (1991).

⁷See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

information whatsoever to support this claim.⁸ Accordingly, the district court did not err in denying this claim.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Maeshiro is not entitled to relief and that briefing and oral argument are unwarranted.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

cc: Hon. Michelle Leavitt, District Judge
Jamie Y. Maeshiro
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁸See id. at 502, 686 P.2d at 225.

⁹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).