IN THE SUPREME COURT OF THE STATE OF NEVADA

DEAN A. ANDERSON,
Appellant,
vs.
WARDEN, NORTHERN NEVADA CORRECTIONAL CENTER, DON HELLING,
Respondent.

No. 43466

FILED

OCT 20 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court dismissing appellant Dean Anderson's post-conviction petition for a writ of habeas corpus. Fourth Judicial District Court, Elko County; Andrew J. Puccinelli, Judge.

On February 6, 2003, the district court convicted Anderson, pursuant to a jury verdict, of felony driving under the influence of intoxicating liquor. The district court sentenced Anderson to serve a term of 24 to 72 months in the Nevada State Prison. This court affirmed Anderson's judgment of conviction and sentence on appeal.[1] The remittitur issued on September 9, 2003.

On December 8, 2003, Anderson 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 Anderson or to

[1]Anderson v. State, Docket No. 41008 (Order of Affirmance, August 13, 2003).

conduct an evidentiary hearing. On March 24, 2004, the district court dismissed Anderson's petition. This appeal followed.

In his petition, Anderson raised several claims of ineffective assistance of trial counsel.[2] 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.[3] 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.[4] The court can dispose of a claim if the petitioner makes an insufficient showing on either prong.[5]

First, Anderson contended that his trial counsel was ineffective for failing to enter into plea negotiations with the State. Anderson failed to support this claim with any specific facts, however, or articulate how his counsel's performance was deficient.[6] Further, Anderson did not demonstrate that the State was willing to negotiate the case. Consequently, the district court did not err in denying Anderson relief on this claim.

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[2]To the extent that Anderson raised any of the following issues independently from his ineffective assistance of counsel claims, we conclude that they are waived. See Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

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

[4]Id.

[5]Strickland, 466 U.S. at 697.

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

Second, Anderson claimed that his trial counsel was ineffective for failing to request exculpatory and impeachment evidence from the State. Anderson neglected to support this contention with any specific facts, such as a description of the exculpatory or impeachment evidence that his counsel failed to request.[7] As such, Anderson did not demonstrate that his counsel was ineffective in this regard.

Third, Anderson argued that his trial counsel was ineffective for failing to file a motion to suppress statements he made to police prior to receiving his Miranda warning.[8] Anderson made several statements to police officers while they were administering a roadside sobriety test. A Miranda warning is not required before questioning and administration of field sobriety tests at a normal traffic stop, however.[9] To the extent that Anderson is arguing that his counsel should have moved to suppress the post-arrest statements he made on the drive to the hospital,[10] we conclude that he did not establish that exclusion of these statements would have altered the outcome of his trial.[11] Consequently, we affirm the order of the district court with respect to this claim.

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[7]See id.

[8]See Miranda v. Arizona, 384 U.S. 436 (1966).

[9]Dixon v. State, 103 Nev. 272, 274, 737 P.2d 1162, 1164 (1987).

[10]Anderson stated that it was against his religion to take a blood or breath test to ascertain his blood alcohol level, and generally resisted going to the hospital.

[11]See Kirksey v. State, 112 Nev. 980, 990, 923 P.2d 1102, 1109 (1996).

Anderson next contended that his appellate counsel was ineffective. To establish ineffective assistance of appellate counsel, a petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness, and the deficient performance prejudiced the defense.[12] "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."[13] Appellate counsel is not required to raise every non-frivolous issue on appeal.[14]

First, Anderson alleged that his appellate counsel was ineffective for raising a frivolous issue on direct appeal. However, Anderson neglected to specify what issues his appellate counsel should have raised on direct appeal instead.[15] Thus, he did not demonstrate that his appellate counsel was ineffective in this regard.

Second, Anderson claimed that his appellate counsel was ineffective for citing Anderson's statements to police in the direct appeal brief. However, as discussed previously, the statements Anderson made to police officers during the roadside sobriety test were admissible despite the absence of a Miranda warning.[16] As such, Anderson did not establish that his appellate counsel was deficient.

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[12]See Strickland, 466 U.S. 668; Kirksey, 112 Nev. 980, 923 P.2d 1102.

[13]Kirksey, 112 Nev. at 998, 923 P.2d at 1114.

[14]Jones v. Barnes, 463 U.S. 745, 751 (1983).

[15]See Hargrove, 100 Nev. at 502, 686 P.2d at 225.

[16]See Dixon, 103 Nev. at 274, 737 P.2d at 1164.

Finally, Anderson included numerous statements of law in his petition that were seemingly unrelated to his claims. To the extent that Anderson was attempting to argue that his counsel was ineffective with respect to these areas of law, we note that he failed to provide any specific facts whatsoever to support these allegations.[17] Thus, the district court did not err in denying him relief.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Anderson is not entitled to relief and that briefing and oral argument are unwarranted.[18] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

cc: Hon. Andrew J. Puccinelli, District Judge
Dean A. Anderson
Attorney General Brian Sandoval/Carson City
Elko County District Attorney
Elko County Clerk

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[17]See Hargrove, 100 Nev. at 502, 686 P.2d at 225.

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