

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARCUS ANDRE DIXON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43647

FILED

MAR 04 2005

ORDER OF AFFIRMANCE

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

This is an appeal from a district court order denying appellant Marcus Andre Dixon's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge.

On January 28, 2000, the district court convicted Dixon, pursuant to a jury verdict, of murder with the use of a deadly weapon and attempted murder with the use of a deadly weapon. The district court sentenced Dixon to a life term in the Nevada State Prison with the possibility of parole after 20 years, plus an equal and consecutive term for the deadly weapon enhancement, for the murder conviction. The district court further sentenced Dixon concurrently to two consecutive terms of 43 to 192 months for the attempted murder conviction and its deadly weapon enhancement. This court affirmed the judgment of conviction.¹ The remittitur issued on June 12, 2001.

On January 17, 2002, Dixon filed a petition for a writ of habeas corpus. The State opposed the petition. After conducting an evidentiary hearing, the district court denied Dixon's petition on July 1,

¹Dixon v. State, Docket No. 35657 (Order of Affirmance, May 16, 2001).

2004. This appeal followed. Dixon had counsel at the evidentiary hearing and has counsel in this appeal.

Dixon claims that his trial counsel was ineffective for failing to file a motion to suppress the pretrial show-up identification. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, Dixon must demonstrate that his counsel's performance fell below an objective standard of reasonableness and that counsel's errors were so severe that they rendered the jury's verdict unreliable.² Thus, Dixon must demonstrate that his motion to suppress was meritorious and there was a reasonable likelihood that the suppression of the evidence would have changed the trial result.³

The applicable standard for pretrial identifications is whether, considering the totality of the circumstances, "the confrontation conducted in this case was so unnecessarily suggestive and conducive to irreparable mistaken identification that [appellant] was denied due process of law."⁴ This court analyzes this issue in a two-step inquiry: (1) whether the procedure was unnecessarily suggestive; and (2) whether, under all the circumstances, the identification is reliable despite an unnecessarily suggestive identification procedure.⁵

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

³See Doyle v. State, 116 Nev. 148, 154, 995 P.2d 465, 469 (2000).

⁴Jones v. State, 95 Nev. 613, 617, 600 P.2d 247, 250 (1979) (quoting Stovall v. Denno, 388 U.S. 293, 301-02 (1967)).

⁵Wright v. State, 106 Nev. 647, 650, 799 P.2d 548, 550 (1990).

Here, shortly after a shooting resulting in the death of Daryl Crittenden and attempted murder of Stephen Austin, a police officer transported three witnesses individually to a location where Dixon and his codefendant were detained. Dixon and his codefendant stood in front a police car, spotlighted by headlights and apparently handcuffed. Each witness was asked whether he or she recognized the suspects as having been involved in the shooting.

We conclude that Dixon's claim is without merit. Austin knew Dixon's codefendant and steadfastly identified Dixon as the shooter at the show-up and at trial. Thus, even assuming the show-up procedure was unduly suggestive, we conclude that his identification of Dixon was reliable. Further, Jacqueline Heeter made no pretrial or trial identification of Dixon, and therefore Dixon failed to demonstrate any prejudice with respect to Heeter's testimony. Finally, although Samuel Dorsey's identifications were inconsistent, we conclude that Dixon failed to establish that he was prejudiced by the admission of Dorsey's testimony on this matter. His counsel vigorously cross-examined Dorsey on his inconsistent statements. Based on the limited record presented, we conclude Dixon failed to demonstrate that a motion to suppress had a reasonable likelihood of success or that he was otherwise prejudiced by counsel's omission. Accordingly, we conclude that the district court did not err in denying Dixon's claim.

Dixon also asserts that his counsel was ineffective for failing to call an eyewitness identification expert to assist the jury in understanding the suggestive nature of a show-up identification procedure. We conclude that Dixon failed to demonstrate a reasonable probability that calling such an expert would have altered the outcome of

his trial.⁶ Accordingly, Dixon did not establish that his counsel was ineffective in this regard.

Having reviewed the record on appeal and Dixon's assignments of error, we conclude that the district court did not err in denying Dixon's post-conviction petition for a writ of habeas corpus, and we

ORDER the judgment of the district court AFFIRMED.

Becker, C.J.
Becker

Rose, J.
Rose

Hardesty, J.
Hardesty

cc: Hon. Nancy M. Saitta, District Judge
Longabaugh Law Offices
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁶See White v. State, 112 Nev. 1261, 926 P.2d 291 (1996); Echavarría v. State, 108 Nev. 734, 839 P.2d 589 (1992).