

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDRE SHERMAN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 44116

FILED

FEB 16 2005

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying appellant Andre Sherman's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

On January 11, 2001, the district court convicted Sherman, pursuant to a jury verdict, of two counts of robbery. The district court sentenced Sherman to serve two consecutive terms of 48 to 150 months in the Nevada State Prison. This court affirmed Sherman's judgment of conviction on appeal.<sup>1</sup> The remittitur issued on July 2, 2002.

On April 8, 2003, Sherman 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 Sherman or to conduct an evidentiary hearing. On July 24, 2003, the district court denied Sherman's petition.

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<sup>1</sup>Sherman v. State, Docket No. 37352 (Order of Affirmance, June 5, 2002).

On appeal, we concluded that the district court erred in denying one of Sherman's claims without first conducting an evidentiary hearing.<sup>2</sup> Accordingly, we remanded the proceedings to the district court to conduct an evidentiary hearing on the sole issue of whether Sherman's counsel was ineffective for failing to file a motion seeking disclosure of exculpatory evidence. Specifically, Sherman claimed that the State possessed a surveillance videotape that proved his innocence.

On October 6, 2004, the district court conducted an evidentiary hearing. At Sherman's request, Detective Clifford Mogg appeared at the hearing and testified that there never existed a surveillance videotape of Alexis Park, where the robbery occurred. Mogg further testified that he never showed Sherman a videotape or told him that such a recording existed. No other evidence was presented on this matter. Subsequently, the district court denied Sherman's habeas petition.

Based on our review of the record, we conclude that Sherman failed to demonstrate that his counsel was ineffective for failing to file a motion seeking apparently non-existent exculpatory evidence.<sup>3</sup> Accordingly, we conclude that the district court did not err in denying Sherman's habeas petition.

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<sup>2</sup>Sherman v. State, Docket No. 41726 (Order of Affirmance in Part and Reversal and Remand in Part, August 13, 2004).

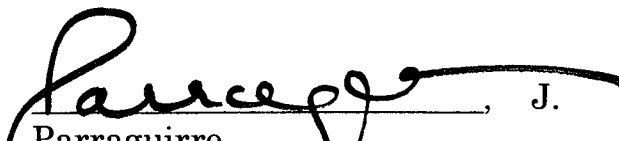
<sup>3</sup>See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Sherman is not entitled to relief and that briefing and oral argument are unwarranted.<sup>4</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>5</sup>

  
Maupin

  
Douglas

  
Parraguirre

cc: Hon. Joseph T. Bonaventure, District Judge  
Andre Sherman  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>4</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>5</sup>We have reviewed all documents that Sherman has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that Sherman has attempted to present claims or facts in those submissions that were not previously presented in the proceedings below, we have declined to consider them in the first instance.