

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDDIE DEAN SANDERS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44505

FILED

APR 22 2005

ORDER OF AFFIRMANCE

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

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

On September 18, 2001, the district court convicted appellant, pursuant to a jury verdict, of one count each of first-degree kidnapping (count I), sexual assault with the use of a deadly weapon (count II), attempted sexual assault with the use of a deadly weapon (count III), battery with the intent to commit a crime (count IV), and battery with the use of a deadly weapon with substantial bodily harm (count V). The district court sentenced appellant to serve the following terms in the Nevada State Prison: for count I, life with the possibility of parole after 5 years; for count II, two consecutive terms of life with the possibility of parole after 10 years; for count III, two consecutive terms of 43 to 192 months; for count IV, a term of 35 to 156 months; and for count V, a term of 35 to 156 months. The terms for counts I-III were imposed to run consecutively to each other and the terms for counts IV and V were imposed to run concurrently with counts I-III. This court affirmed the

judgment of conviction and sentence on appeal.¹ The remittitur issued on May 18, 2004.

On September 23, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Appellant filed a reply. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On December 22, 2004, the district court denied appellant's petition. This appeal followed.

In his petition, appellant claimed that his trial counsel was ineffective. To state a claim of ineffective assistance of trial counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that his counsel's performance fell below an objective standard of reasonableness, and that his counsel's errors were so severe that they rendered the jury's verdict unreliable.² The district court may dispose of a claim if the petitioner makes an insufficient showing on either prong.³

Appellant claimed that his counsel was ineffective for failing to object to his having an all white jury. Appellant argued that an all white jury may not have been impartial. This claim lacks merit. During the jury voir dire all impaneled jurors indicated that they could and would

¹Sanders v. State, Docket No. 38542 (Order of Affirmance, April 22, 2004).

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.

be impartial. Appellant failed to demonstrate that his counsel was deficient in this regard. Accordingly, the district court did not err in denying this claim.

Appellant further claimed that his counsel was ineffective for failing to raise the objection that an all white jury did not represent a fair cross-section of the community. Appellant failed to demonstrate that such an objection would have succeeded or altered that outcome of his trial.

The defendant bears the burden of demonstrating a prima facie violation of the fair-cross-section requirement. To demonstrate a prima facie violation, the defendant must show: "(1) that the group alleged to be excluded is a '*distinctive*' group in the community; (2) that the *representation of this group in venires* from which juries are selected is *not fair and reasonable* in relation to the number of such persons in the community; and (3) that this underrepresentation is *due to systematic exclusion* of the group *in the jury-selection process*."⁴

Appellant failed to allege sufficient facts to support his claim that his counsel was ineffective for failing to demonstrate a prima facie violation of the fair-cross-section requirement.⁵ Accordingly, we conclude that the district court did not err in denying this claim.

Appellant also claimed that the jury selection process is unfair and unconstitutional because it lacks racial neutrality and does not result in a fair cross-section of the community. This claim fell outside of the


⁴Evans v. State, 112 Nev. 1172, 1186, 926 P.2d 265, 275 (1996) (quoting Duren v. Missouri, 439 U.S. 357, 364 (1979)) (emphasis in original).


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

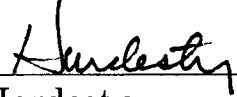
scope of permissible claims that may be raised in a post-conviction habeas corpus petition.⁶ Accordingly, the district court did not err in denying this claim.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁸


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

⁶See NRS 34.810(1)(b)(2).

⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁸We have reviewed all documents that appellant 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 appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Jennifer Togliatti, District Judge
Eddie Dean Sanders
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk