

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRENT HOWARD SHERIDAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44650 **FILED**

MAY 27 2005

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

ORDER OF AFFIRMANCE AND LIMITED REMAND TO CORRECT
THE JUDGMENT OF CONVICTION

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

On November 16, 2001, the district court convicted Sheridan, pursuant to a jury verdict, of second-degree murder with the use of a deadly weapon. The district court sentenced Sheridan to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole after ten years. This court affirmed Sheridan's judgment of conviction and sentence on appeal.¹ The remittitur issued on September 16, 2003.

On September 3, 2004, Sheridan 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

¹Sheridan v. State, Docket No. 38953 (Order of Affirmance, August 19, 2003).

district court declined to appoint counsel to represent Sheridan or to conduct an evidentiary hearing. On January 10, 2005, the district court denied Sheridan's petition. This appeal followed.

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

First, Sheridan contended that his trial counsel was ineffective for failing to interview and procure testimony from "a girl that was known by the name of Monique." Sheridan claimed that Monique would have testified that the victim was a drug-addicted prostitute who frequently stole money from her customers. Sheridan asserted that this testimony would have demonstrated that one of the victim's customers likely murdered her.

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

³Id.

⁴Strickland, 466 U.S. at 697.

We conclude that Sheridan is not entitled to relief on this claim. Even assuming Sheridan's counsel had been able to locate Monique based on her first name alone, Sheridan did not establish that the outcome of his trial would have been different. Defense witness Gina Gillis testified that the victim was involved in narcotics and prostitution, and that she frequently stole money from her customers. Therefore, Sheridan failed to demonstrate that his counsel was ineffective, and the district court did not err in denying this claim.

Second, Sheridan claimed that his trial counsel was ineffective for failing to locate, interview, and subpoena other witnesses who worked or lived with the victim. Sheridan alleged that these witnesses would have testified that the victim's customers had motive to kill her. Sheridan failed to adequately support this claim with the specific names of these witnesses, however.⁵ Further, as discussed above, Sheridan did not demonstrate that the outcome of his trial would have been different if they had testified, in light of the fact that Gillis provided substantially the same testimony at trial. We therefore affirm the district court's denial of this claim.

Third, Sheridan alleged that his trial counsel was ineffective for failing to adequately object to the use of his prior trial testimony. Sheridan's testimony from his first trial, which ended in a mistrial, was read to the jury during the State's case-in-chief. Sheridan's trial counsel

⁵See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

objected to the use of his prior testimony as inadmissible hearsay;⁶ Sheridan asserted that his counsel should have objected on the basis of the best evidence rule,⁷ and that it would be misleading and confusing to the jury.⁸ We conclude that Sheridan did not establish that his counsel acted objectively unreasonable in failing to object on these alternative grounds. Sheridan further failed to demonstrate that he was prejudiced by his counsel's actions. Accordingly, the district court did not err in denying this claim.

Fourth, Sheridan asserted that his trial counsel was ineffective for failing to file a motion to suppress witness John Vogeles in-court identification of him. Sheridan contended that Vogeles identification was unnecessarily suggestive because Vogeles did not recognize Sheridan until his preliminary hearing.

We conclude that this claim is without merit. Sheridan did not allege, and there is nothing in the record to suggest, that Vogeles in-court identification of him was due to impermissibly suggestive action by the State.⁹ As such, a motion to suppress Vogeles in-court identification would not have been appropriate. Further, we note that Sheridan's trial

⁶See NRS 51.065.

⁷See NRS 52.235.

⁸See NRS 48.035.

⁹Cf. Barone v. State, 109 Nev. 1168, 866 P.2d 291 (1993); Edmonton v. State, 91 Nev. 501, 538 P.2d 582 (1975); Marquez v. State, 91 Nev. 471, 538 P.2d 156 (1975).

counsel extensively cross-examined Vogele concerning his identification of Sheridan, and several other witnesses testified that immediately after the incident, Vogele stated that he did not see the shooter's face. Consequently, Sheridan did not establish that his counsel was ineffective in this regard, and we affirm the district court's denial of this claim.

Lastly, Sheridan argued that he was entitled to the appointment of two defense attorneys to represent him. This claim is outside the scope of a post-conviction petition for a writ of habeas corpus and should have been raised on direct appeal.¹⁰ Because Sheridan did not demonstrate good cause for failing to do so, the district court did not err in denying the claim. As a separate and independent ground to deny relief, this contention is without merit; a defendant is entitled to the appointment of two defense attorneys only when the State is seeking the death penalty.¹¹ The State did not seek the death penalty in the instant case. We therefore affirm the district court's denial of this claim.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Sheridan is not entitled to relief and that briefing and oral argument are unwarranted.¹² However, our review of the judgment of conviction reveals an error. Sheridan's judgment of conviction states that he was convicted pursuant to a guilty plea when, in fact, he was convicted pursuant to a jury verdict. We therefore conclude


¹⁰See NRS 34.810(1)(b)(2).

¹¹See SCR 250(1)(f).

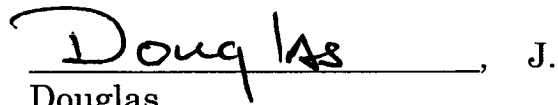
¹²See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

that this matter should be remanded to the district court for a correction of the error. Accordingly, we

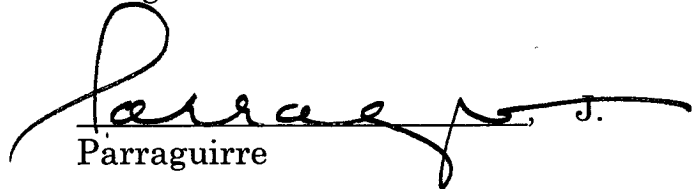
ORDER the judgment of the district court AFFIRMED and REMAND this matter to the district court for the limited purpose of correcting the judgment of conviction.¹³



Maupin



Douglas



Parraguirre

cc: Hon. Jennifer Togliatti, District Judge
Brent Howard Sheridan
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

¹³We have reviewed all documents that Sheridan 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 Sheridan 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.