

IN THE SUPREME COURT OF THE STATE OF NEVADA

TERRENCE GERRARD FORD,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 44746

**FILED**

JUN 07 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
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; Joseph T. Bonaventure, Judge.

On June 8, 2004, the district court convicted appellant, pursuant to a jury verdict, of conspiracy to commit robbery and robbery with the use of a deadly weapon. The district court sentenced appellant to serve a term of 24 to 60 months in the Nevada State Prison for conspiracy to commit robbery, and two consecutive terms of 48 to 180 months for robbery with a deadly weapon. This court affirmed appellant's judgment of conviction on appeal.<sup>1</sup>

On October 5, 2004, while his direct appeal was pending, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to

<sup>1</sup>Ford v. State, 122 Nev. \_\_\_, 132 P.3d 574 (2006).

NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On January 25, 2005, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that his trial counsel was ineffective.<sup>2</sup> To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and prejudice such that counsel's errors were so severe that they rendered the jury's verdict unreliable.<sup>3</sup> The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.<sup>4</sup>

First, appellant claimed that his counsel was ineffective for failing to impeach the State's witness, Eric Tanguma, with a prior inconsistent statement. Specifically, appellant claimed that counsel was ineffective for failing to impeach Tanguma with his prior statement that the robber had a dark complexion, whereas appellant's complexion was light. Appellant failed to demonstrate that counsel was ineffective.

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<sup>2</sup>To the extent that appellant raised any claims independently, we conclude that the district court properly refused to consider the claims as they should have been raised on direct appeal and appellant did not demonstrate good cause for his failure to do so. See NRS 34.810(1)(b).

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


<sup>4</sup>Strickland, 466 U.S. at 697.


Counsel cross-examined Tanguma on his earlier statements about the complexions of the suspects. Tanguma testified during trial that he never stated that both robbers had dark complexions. Las Vegas Metropolitan Police Department officer Brian Yant testified that he took statements from both Tanguma and another witness, and then completed the incident report. It is unclear from the incident report whether the description was based upon Tanguma's statement, the other witness's statement, Officer Yant's personal summary, or a combination of all three. Tanguma identified appellant based upon his past relationship with appellant. Appellant failed to demonstrate a reasonable probability of a different result had counsel more thoroughly cross-examined Tanguma based on Tanguma's positive identification. Thus, the district court did not err in denying this claim.

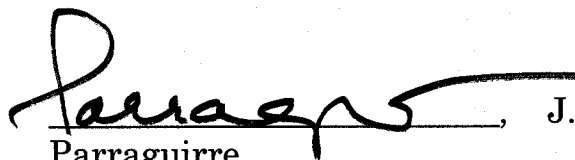
Second, appellant claimed that his counsel was ineffective for failing to procure an expert in eyewitness identification. Appellant failed to demonstrate that, had counsel procured an expert on eyewitness identification, the outcome of the trial would have been different. Appellant complained that the identification was based solely on a "droopy" pair of eyes obstructed by a hood. Tanguma was familiar with appellant, had attended school with him where he spent time daily with appellant, and had spoken with him in the weeks prior to the robbery. This familiarity increased Tanguma's reliability before the jury. Thus, 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.<sup>5</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 \_\_\_\_\_, J.  
Douglas

 \_\_\_\_\_, J.  
Becker

 \_\_\_\_\_, J.  
Parraguirre

cc: Hon. Joseph T. Bonaventure, District Judge  
Terrence Gerrard Ford  
Attorney General George Chanos/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>5</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).