

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAMON LAMAR CAMPBELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44799

FILED

JUL 06 2006

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court denying appellant Damon Lamar Campbell's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

The district court convicted Campbell, 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 Campbell to life imprisonment without the possibility of parole. This court affirmed the judgment of conviction on appeal,¹ and the remittitur issued on August 8, 2003.

Campbell filed the instant petition for a writ of habeas corpus on July 23, 2004. The State filed a response, the district court heard argument, and the district court denied Campbell's petition. This appeal follows.

¹Campbell v. State, Docket No. 39127 (Order of Affirmance, July 14, 2003).

First, Campbell contends that the district court erred in denying his motion for an evidentiary hearing. Campbell claims that his trial counsel was ineffective for failing to investigate the 911 tape that was admitted in evidence during his trial. He argues that an evidentiary hearing is necessary to determine trial counsel's reasons for not investigating and objecting to the admission of the tape, and to discern what was actually recorded on the tape. We disagree.

"A post-conviction habeas petitioner is entitled to an evidentiary hearing 'only if he supports his claims with specific factual allegations that if true would entitle him to relief.'"² To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness.³ A petitioner must further establish a reasonable probability that, in the absence of counsel's errors, the result of the proceedings would have been different.⁴ The court can dispose of a claim if the petitioner makes an insufficient showing on either prong.⁵

²Means v. State, 120 Nev. 1001, 1016, 103 P.3d 25, 35 (2004) (quoting Thomas v. State, 120 Nev. 37, 44, 83 P.3d 818, 823 (2004)).

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

⁴Id.

⁵Strickland, 466 U.S. at 697.

Here, even assuming that counsel was deficient for failing to review the 911 tape, Campbell failed to allege sufficient facts, which if true, would have demonstrated a reasonable probability that the trial result would have been different if counsel had more thoroughly investigated and objected to the admission of the tape. Further, an evidentiary hearing was not necessary to discern what was actually recorded on the tape because the tape was admitted into evidence, became part of the trial record, and therefore was available for post-conviction counsel's review. Thus, we conclude that the district court did not err in determining that an evidentiary hearing was unnecessary.

Second, Campbell contends that the district court erred in determining that the statements contained on the 911 tape did not trigger the Confrontation Clause.⁶ Campbell further contends that the Supreme Court's holding in Crawford v. Washington⁷ is retroactive and that it applies in this case. Even assuming without deciding that Crawford is retroactive, Campbell failed to include in the record of appeal the 911 tape which he claims gives rise to a Confrontation Clause violation. Without the tape we are unable to conclude that the district court erred. "It is the


⁶U.S. Const. amend. VI.


⁷541 U.S. 36, 68 (2004) (holding that out-of-court statements by witnesses that are testimonial in nature are barred under the Confrontation Clause unless the witnesses are unavailable and the defendant had a prior opportunity to cross-examine the witnesses).

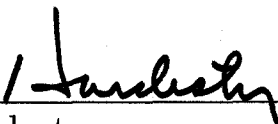
appellant's responsibility to provide the materials necessary for this court's review."⁸

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Sally L. Loehrer, District Judge
Christopher R. Oram
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁸Jacobs v. State, 91 Nev. 155, 158, 532 P.2d 1034, 1036 (1975); see also NRAP 30(b)(3).