

IN THE SUPREME COURT OF THE STATE OF NEVADA

RODNEY E. DAVIS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 45071

**FILED**

JUL 28 2005

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; Stewart L. Bell, Judge.

On April 21, 2003, the district court convicted appellant, pursuant to a jury verdict, of one count each of attempted murder with the use of a deadly weapon and first-degree kidnapping with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison, with the possibility of parole, for the first-degree kidnapping conviction, and two consecutive terms of 72 to 240 months for the attempted murder conviction. The sentence for the first-degree kidnapping conviction was imposed to run concurrently with the sentence for the attempted murder conviction. This court affirmed the judgment of conviction and sentence on appeal.<sup>1</sup> The remittitur issued on July 21, 2004.

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<sup>1</sup>Davis v. State, Docket No. 41430 (Order of Affirmance, June 25, 2004).

On December 30, 2004, 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 NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On April 6, 2005, the district court denied appellant's petition. This appeal followed.

In his petition, appellant raised several claims of ineffective assistance of trial counsel. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that his counsel's performance fell below an objective standard of reasonableness.<sup>2</sup> Further, a petitioner must demonstrate that, but for his counsel's errors, the results of the proceedings would have been different.<sup>3</sup> The court need not consider both prongs of this test if the petitioner makes an insufficient showing on either prong.<sup>4</sup>

First, appellant claimed that his trial counsel was ineffective for failing to interview or call several witnesses to testify on his behalf. Appellant specifically alleged that these witnesses would have testified that: (1) he never forced the victim into his car; (2) he was at work at the time the incident occurred; and (3) he was never at the alleged crime scene. Appellant failed to demonstrate that his trial counsel was deficient or that such testimony would have altered the outcome of his trial. The record on appeal reveals that this information was presented to the jury

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

<sup>3</sup>See Strickland, 466 U.S. at 687.

<sup>4</sup>See id. at 697.

through the testimony of both the defendant and a defense witness. Accordingly, we conclude that the district court did not err in denying this claim.

Second, appellant claimed that his trial counsel was ineffective for failing to object to the introduction of evidence. Appellant failed to identify what evidence his counsel should have objected to that would have altered the outcome of his trial.<sup>5</sup> Accordingly, we conclude that the district court did not err in denying this claim.

Third, appellant claimed that his trial counsel was ineffective for failing to get a written statement from an alibi witness, Deborah Simpson. Appellant failed to demonstrate that Simpson's written statement would have been admissible, or that, if admissible, the statement would have altered the outcome of his trial. Accordingly, we conclude that the district court did not err in denying this claim.

Fourth, appellant claimed that his trial counsel was ineffective for failing to object to two remarks by the prosecution. Appellant failed to demonstrate that his counsel was deficient, or that such an objection would have altered the outcome of his trial. Accordingly, we conclude that the district court did not err in denying this claim.

Appellant also claimed that his trial was unfair because he did not have a jury of his peers. Appellant failed to raise this claim in his direct appeal and failed to demonstrate good cause for doing so. Accordingly, we conclude that appellant waived this claim and the district court did not err in denying this claim.<sup>6</sup>

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


<sup>6</sup>See NRS 34.810(1)(b).

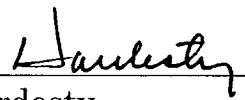
Finally, appellant claimed that his convictions were not supported by sufficient evidence. This court rejected this claim in appellant's direct appeal. The doctrine of law of the case prevents further litigation of this issue and cannot be avoided by a more detailed and precisely focused argument.<sup>7</sup> Accordingly, we conclude that 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>8</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Hardesty

cc: Hon. Stewart L. Bell, District Judge  
Rodney E. Davis  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>7</sup>See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

<sup>8</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).