

IN THE SUPREME COURT OF THE STATE OF NEVADA

JERMAINE D. TROTTER A/K/A
JERMINE TROTTER A/K/A JERMAINE
DESHAWN JACKSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45078

FILED

JAN 10 2006

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

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

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

On December 11, 2003, the district court convicted appellant, pursuant to a jury verdict, of one count of conspiracy to commit burglary (gross misdemeanor) and one count of burglary (felony). The district court sentenced appellant to serve a term of twelve to thirty-two months in the Nevada State Prison for burglary and a concurrent term of twelve months for the conspiracy count. This court dismissed appellant's attempt to file an untimely direct appeal for lack of jurisdiction.¹

On July 6, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The

¹Trotter v. State, Docket No. 42928 (Order Dismissing Appeal, March 24, 2004).

State opposed the petition. On September 7, 2004, appellant filed a supplement to the petition. Pursuant to NRS 34.750, the district court declined to appoint counsel to represent appellant. On March 31, 2005, after conducting an evidentiary hearing, the district court entered a written order summarily denying appellant's petition.² This appeal followed.³

In his petition, appellant raised eight claims of ineffective assistance of 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, and that his counsel's errors were so severe that they rendered the jury's verdict unreliable.⁴ The district court may dispose of a claim if the petitioner makes an insufficient showing on either prong.⁵ A petitioner must demonstrate the factual allegation underlying his ineffective assistance of counsel claim by a preponderance of the

²On September 27, 2005, the district court entered an "Amended Order Denying Defendant's Writ of Habeas Corpus," which included specific findings of fact and conclusions of law in support of the district court's decision.

³To the extent that appellant is challenging the denial of his motion to appoint counsel, we conclude that the district court did not err in denying this motion. See NRS 34.750.

⁴See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

⁵Strickland, 466 U.S. at 697.

evidence.⁶ The district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal.⁷

First, appellant claimed that his counsel was ineffective for allowing the State to delay the trial. Appellant failed to demonstrate that his counsel was deficient in this regard. Our review of the record reveals that appellant waived his right to a speedy trial at his arraignment. Further, appellant failed to demonstrate that he was prejudiced by any delay because he failed to demonstrate that the outcome of his trial would have been different had no delay occurred. Accordingly, we conclude the district court did not err in denying this claim.

Second, appellant claimed that his trial counsel was ineffective for failing to make objections at trial. Appellant failed to demonstrate that his counsel was deficient in this regard. Appellant failed to articulate what objections appellant should have made that would have altered the outcome of his trial.⁸ Accordingly, we conclude the district court did not err in denying this claim.

Third, appellant claimed his counsel was ineffective for failing to investigate. Specifically, appellant alleged that this counsel should

⁶Means v. State, 120 Nev. ___, ___, 103 P.3d 25, 33 (2004).

⁷Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

⁸See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984) (holding that a petitioner is not entitled to relief on claims unsupported by any specific factual allegations).

have researched and investigated his claim that his co-defendant and the victim were involved in an insurance fraud scheme. Appellant asserted that had counsel investigated and presented this claim, the jury might have convicted him of fraud, but would not have convicted him of burglary.

Appellant failed to demonstrate that his counsel was deficient in this regard. At the evidentiary hearing, appellant's counsel and the investigator appointed to assist counsel testified that appellant failed to cooperate in the investigation of his case. Appellant's counsel also testified that without appellant's cooperation he was unable to mount a stronger defense. Further, the record reveals that appellant's counsel argued to the jury that appellant was not guilty of burglary, and, on cross-examination, attempted to illicit testimony that would support a defense claim that appellant's acts were part of an insurance fraud scheme.⁹ Accordingly, we conclude that the district court did not err in denying this claim.

Fourth, appellant claimed his counsel was ineffective for failing to call witnesses to testify on his behalf. Specifically appellant asserted that his counsel should have had a dealership representative, his co-defendant and an insurance investigator testify for the defense.

Appellant asserted that a dealership representative could have testified regarding the anti-theft system installed in the truck, which would have supported his claim that the truck owner had him take the truck as part of an insurance fraud scheme. Appellant failed to

⁹Appellant did not testify on his own behalf at trial.

demonstrate that such testimony would have altered the outcome of his trial. The record reveals that the truck was stolen from the valet parking at the Crazy Horse Too, and there was no testimony presented to support whether the anti-theft system was engaged at the time the truck was stolen. Further, the truck owner testified at trial that he did not know appellant, had never given appellant permission to drive his truck and had never given appellant keys to his truck.

Appellant alleged his co-defendant would have testified that the taking of the truck was part of an insurance fraud scheme. Appellant failed to demonstrate that his counsel was deficient in this regard. Appellant failed to demonstrate that his co-defendant would have admitted his guilt to the crime of insurance fraud while under oath.

Appellant alleged that an insurance investigator would have testified regarding the insurance company's suspicions about the second stolen vehicle claim for the same truck. Appellant failed to demonstrate that such testimony from an insurance investigator would have altered the outcome of the trial. The record reveals that the truck owner testified at trial that after the truck had been repaired and returned to him it had been stolen a second time and involved in a hit and run accident. The truck owner further testified that the insurance company was refusing to honor the second claim because the insurance company believed he was involved in the hit and run accident.

Appellant failed to demonstrate that his counsel was ineffective for failing to call the above witnesses. Accordingly, we conclude that the district court did not err in denying this claim.

Fifth, appellant claimed his counsel was ineffective for only charging him three to five thousand dollars for his representation, after initially informing him that the attorney fees for representation at trial could run as high as ten thousand dollars. Appellant failed to demonstrate that his counsel was deficient or that the outcome of his trial would have been different had his counsel charged more for his representation. Accordingly, we conclude the district court did not err in denying this claim.

Sixth, appellant claimed his counsel was ineffective and tricked him into believing what counsel thought was in his best interest. Appellant made no cogent argument with respect to this claim and the claim is not supported by any facts.¹⁰ Accordingly, we conclude the district court did not err in denying this claim.

Seventh, appellant claimed his counsel was ineffective for failing to prepare for trial. Appellant asserted that his counsel only spent twenty minutes preparing for trial. Appellant failed to demonstrate that his counsel was deficient in this regard. At the evidentiary hearing, appellant's counsel stated that he had two detailed discussions with appellant regarding this case and spent additional time preparing for trial. Appellant's counsel further stated that appellant's failure to cooperate with the investigator hampered his ability to prepare the defense. Accordingly, we conclude that the district court did not err in denying this claim.

¹⁰See Hargrove, 100 Nev. at 502; 686 P.2d at 225.

Eighth, appellant claimed his counsel was ineffective for failing to file a direct appeal after being requested to do so. "[A]n attorney has a duty to perfect an appeal when a convicted defendant expresses a desire to appeal or indicates dissatisfaction with a conviction."¹¹ Prejudice is presumed where a defendant expresses a desire to appeal and counsel fails to do so.¹²

At the evidentiary hearing, appellant's counsel acknowledged that appellant requested he file an appeal. Counsel testified that he did not file an appeal on appellant's behalf because he was not retained for an appeal and counsel did not believe there was a legal basis for appeal. Because the record reveals that counsel failed to file a direct appeal after being requested to do so by appellant, we conclude that the district court erred in denying this claim. We therefore reverse the denial of this claim and remand this appeal for the appointment of counsel to assist appellant in the filing of a post-conviction petition raising direct appeal issues pursuant to Lozada.¹³

In the petition, appellant also raised two direct appeal claims. These claims fell outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus.¹⁴ In light of this order, we

¹¹Lozada v. State, 110 Nev. 349, 354, 871 P.2d 944, 947 (1994).

¹²Mann v. State, 118 Nev. 351, 353-54, 46 P.3d 1228, 1229-30 (2002).

¹³Lozada, 110 Nev. 349, 871 P.2d 944.

¹⁴NRS 34.724.

elect not to address these claims at this time. Appellant may raise these claims in his petition filed pursuant to Lozada.¹⁵

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is entitled only to the relief granted herein, and that briefing and oral argument are unwarranted.¹⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.¹⁷

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

¹⁵Lozada, 110 Nev. 349, 871 P.2d 944.

¹⁶See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹⁷We have considered all proper person documents filed or received in this matter. We conclude that appellant is only entitled to the relief described herein. This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.

cc: Honorable Jackie Glass, District Judge
Jermaine D. Trotter
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk