

IN THE SUPREME COURT OF THE STATE OF NEVADA

DELBERT M. GREENE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 45127

**FILED**

SEP 16 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. R. [Signature]*  
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant Delbert Greene's post-conviction petitions for writs of habeas corpus. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

On October 3, 2003, the district court convicted Greene, pursuant to a jury verdict, of one count each of burglary while in possession of a deadly weapon (Count I), conspiracy to commit robbery (Count II), and robbery with the use of a deadly weapon (Count III). The district court sentenced Greene to serve a term of 36 to 156 months in the Nevada State Prison for Count I, a term of 18 to 60 months for Count II, and a term of 48 to 180 months for count III. The sentence for Count II was imposed to run consecutive to the sentence for Count I, and the sentence for Count III was imposed to run concurrently with Count I and consecutive to Count II. On direct appeal, this court affirmed the judgment of conviction, but remanded for a new sentencing hearing because the judgment of conviction did not reference the equal and consecutive sentence imposed verbally for the deadly weapon enhancement and because the sentence for Count III could not be carried

out as instructed.<sup>1</sup> An amended judgment of conviction was entered on July 15, 2004. The district court sentenced Greene to 36 to 156 months in the Nevada State Prison for Count I, 18 to 60 months for Count II and two terms of 48 to 180 months for Count III. All terms were imposed to run consecutively. This court affirmed the amended judgment of conviction on appeal.<sup>2</sup>

On February 4, and February 7, 2004, Greene filed proper person post-conviction petitions for writs of habeas corpus in the district court. The State opposed the petitions. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Greene or to conduct an evidentiary hearing. On April 20, 2005, the district court denied Greene's petitions. This appeal followed.

In his petitions, Greene raised claims 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, and there is a reasonable probability that but for counsel's performance the results of the proceedings would have been different.<sup>3</sup> The court need not consider both prongs of the test if the petitioner makes an insufficient showing on either prong.<sup>4</sup>

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<sup>1</sup>Greene v. State, Docket No. 42110 (Order Affirming in Part and Remanding, May 18, 2004).

<sup>2</sup>Greene v. State, Docket No. 43628 (Order of Affirmance, August 24, 2005).

<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.

First, Greene claimed that his trial counsel was ineffective for failing to provide him with adequate resources for his defense, including access to research materials and a competent, experienced and adequately funded investigator. Greene alleged that such an investigator would have been able to challenge the Ely State Prison Official's mailroom procedures for unauthorized mail. Our review of the record on appeal reveals that the issue regarding mail received at Ely State Prison did not arise until after the defense had rested its case in chief. Greene failed to demonstrate that his counsel acted unreasonably by failing to hire an investigator to research Ely State Prison's mailroom policies. Accordingly, we conclude that the district court did not err in denying this claim.

Second, Greene claimed that his trial counsel was ineffective for failing to challenge the sufficiency of the criminal complaint. Greene specifically claimed that the criminal complaint did not provide him with adequate notice of the acts charged. Greene failed to demonstrate that his counsel was ineffective in this regard. The record on appeal reveals that the information complied with the statutory requirements and provided Greene with adequate notice of the acts charged.<sup>5</sup> Accordingly, we conclude the district court did not err in denying this claim.

Third, Greene claimed that his trial counsel was ineffective for failing to have an affidavit by his co-defendant entered into evidence and for failing to have his co-defendant testify on Greene's behalf. Greene failed to demonstrate that his co-defendant's affidavit would have been admissible.<sup>6</sup> Further, this court has held that "the trial lawyer alone is

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<sup>5</sup>See NRS 173.075; NRS 205.060; NRS 199.480; NRS 200.380; NRS 193.165.

<sup>6</sup>See NRS 53.010; NRS 53.045.

entrusted with decisions regarding legal tactics such as deciding what witnesses to call."<sup>7</sup> "Tactical decisions are virtually unchallengeable absent extraordinary circumstances."<sup>8</sup> The record on appeal reveals that Greene's counsel made a tactical decision not to call Greene's co-defendant as a witness and Greene did not demonstrate any extraordinary circumstance for challenging that decision. Accordingly, we conclude Greene failed to demonstrate that his counsel was ineffective in this regard, and the district court did not err in denying this claim.

Fourth, Greene claimed that his counsel was ineffective for failing to object to the admission of a letter he wrote to his co-defendant. This claim is belied by the record.<sup>9</sup> The record reveals that Greene's counsel objected to the admission of the letter, but counsel's objection was overruled. Greene failed to demonstrate that his counsel was ineffective in this regard. Accordingly, we conclude the district court did not err in denying this claim.

Fifth, Greene claimed that his counsel was ineffective for failing to investigate Greene's claim of innocence or investigate the knife taken out of Greene's kitchen. Greene failed to articulate what additional investigation his counsel should have conducted.<sup>10</sup> To the extent that Greene claimed his counsel was ineffective for failing to object to the

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<sup>7</sup>Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002).

<sup>8</sup>Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990) (citing Strickland, 466 U.S. at 691).

<sup>9</sup>See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

<sup>10</sup>See id. at 502, 686 P.2d at 225.

admission of the knife into evidence, this claim is belied by the record.<sup>11</sup> Accordingly, we conclude that Greene failed to demonstrate his counsel was ineffective in this regard, and the district court did not err in denying this claim.

Greene also raised claims relating to the admission of a letter he wrote to his co-defendant. Specifically, Greene claimed the district court judge abused her discretion by redacting portions of the letter prior to admitting the letter into evidence and the State introduced false evidence by admitting a redacted copy of the letter into evidence. These claims fell outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus.<sup>12</sup> Further, on direct appeal, this court concluded that the letter was properly admitted into evidence and that by redacting the letter as it did, the district court properly balanced the prejudicial effect of the letter versus its probative value.<sup>13</sup> The doctrine of the law of the case prevented further litigation of these issues and "cannot be avoided by a more detailed and precisely focused argument."<sup>14</sup> Accordingly, the district court did not err in denying these claims.

Greene also claimed: (1) there was insufficient evidence adduced at trial to sustain his conviction; (2) the judge denied him adequate counsel by denying his motion for a continuance to allow

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<sup>11</sup>See id. at 503, 686 P.2d at 225.

<sup>12</sup>See NRS 34.810(1)(b); Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

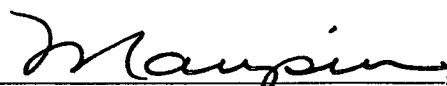
<sup>13</sup>Greene v. State, Docket No. 42110 (Order Affirming in Part and Remanding, May 18, 2004).

<sup>14</sup>See Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975).


retained counsel to prepare for trial; and (3) entry of his knife into evidence was improper because it was obtained without a search warrant. These claims fell outside the scope of claims permissible in a post-conviction habeas corpus petition.<sup>15</sup> Accordingly, we conclude the district court did not err in denying these claims.

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>16</sup> Accordingly, we

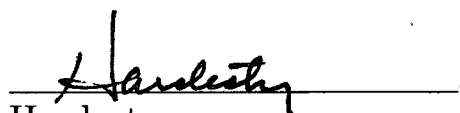
ORDER the judgment of the district court AFFIRMED.<sup>17</sup>

 J.

Maupin

 J.

Gibbons

 J.  
Hardesty

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<sup>15</sup>See NRS 34.810(1)(b); Franklin, 110 Nev. at 752, 877 P.2d at 1059, overruled on other grounds by Thomas, 115 Nev. 148, 979 P.2d 222.

<sup>16</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>17</sup>We have reviewed all documents that Greene 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 Greene has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Valerie Adair, District Judge  
Delbert M. Greene  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk