

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD LEROY MORGAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45134

FILED

OCT 05 2005

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court dismissing appellant Richard Leroy Morgan's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

On May 14, 2003, Morgan was convicted, pursuant to a jury verdict, of one count of level-three trafficking in a controlled substance. The district court sentenced Morgan to serve a prison term of 10-25 years. On direct appeal, this court affirmed the judgment of conviction and sentence.¹ The remittitur issued on June 2, 2004.

On July 16, 2004, Morgan filed a proper person post-conviction petition for a writ of habeas corpus in the district court. In response, the State filed a motion to dismiss Morgan's petition. The district court appointed counsel to represent Morgan, and counsel filed an opposition to the State's motion to dismiss. The district court did not conduct an evidentiary hearing, and on April 13, 2005, entered an order dismissing Morgan's petition. This timely appeal followed.

Morgan's sole contention is that the district court erred in determining that he did not receive ineffective assistance of appellate

¹See Morgan v. State, 120 Nev. 219, 88 P.3d 837 (2004).

counsel. In his direct appeal, Morgan claimed that the district court erred in denying his pretrial motion to suppress because the evidence seized was the result of an unlawful arrest. This court rejected that claim.² In his post-conviction petition, Morgan argues that appellate counsel should have also challenged the propriety of the traffic stop and the district court's finding that Reno Police Officer Jason Stallcop had reasonable suspicion to stop and detain him.³ We disagree with Morgan's contention.

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, and that counsel's errors prejudiced the defense.⁴ "To establish prejudice based on the deficient assistance of appellate counsel, the defendant must show that the omitted issue would have a reasonable probability of success on appeal."⁵ The district court's factual findings respecting a claim of ineffective assistance of counsel are entitled to deference upon appellate review.⁶

²See id.

³See State v. Sonnenfeld, 114 Nev. 631, 633-35, 958 P.2d 1215, 1216-17 (1998) (holding that a police officer may initiate an investigatory stop based only upon a reasonable articulable suspicion that the person or vehicle may be engaged in criminal activity); see also NRS 171.123(1) ("Any peace officer may detain any person whom the officer encounters under circumstances which reasonably indicate that the person has committed, is committing or is about to commit a crime.").

⁴See Strickland v. Washington, 466 U.S. 668 (1984).

⁵Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996).

⁶See Lara v. State, 120 Nev. 177, 179, 87 P.3d 528, 530 (2004).

At the pretrial suppression hearing, Officer Stallcop testified that he initiated the traffic stop after observing Morgan driving a vehicle at night with its lights off. When Officer Stallcop approached Morgan on foot after the stop, he testified that –

I told him that I was pulling him over for no headlights, and he reached down in front of me and turned the headlights on and asked me, ‘Are the headlights on now?’ I told him I would let him know after the stop.

...

I physically saw him turn down and grab the switch and turn it on.

Morgan contradicted the testimony of Officer Stallcop at the suppression hearing. Morgan stated that the vehicle’s lights were illuminated when he was stopped. Morgan also stated that the jeep was “equipped with daytime running lamps where even if I didn’t turn the lights on, the headlights illuminate as soon as you turn the car on.” Morgan argued that if the vehicle’s lights were on, then Officer Stallcop did not have the requisite “probable cause” to initiate a traffic stop. The district court, however, stated that it could not “place any credence on [Morgan’s] testimony. I don’t think he’s a credible witness.” On October 22, 2002, the district court entered an order denying Morgan’s motion to suppress.

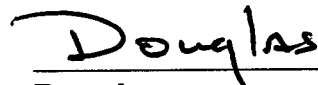
We conclude that the district court did not err in rejecting Morgan’s claim of ineffective assistance of appellate counsel. “On matters of credibility, this court will not reverse a trial court’s finding absent clear error.”⁷ Morgan has failed to demonstrate that the district court clearly erred in determining that Officer Stallcop’s testimony was more credible


⁷Williams v. State, 113 Nev. 1008, 1014, 945 P.2d 438, 442 (1997) (citation omitted), receded from on other grounds by Byford v. State, 116 Nev. 215, 994 P.2d 700 (2000).

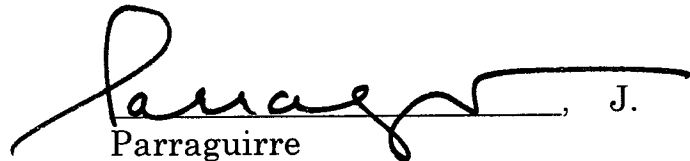
than his, or that the district court's finding was not supported by substantial evidence. Further, Morgan has failed to demonstrate that the district court erred in finding that his claim did not have a reasonable probability of success on appeal.

Accordingly, having considered Morgan's contention and concluded that it is without merit, we

ORDER the judgment of the district court AFFIRMED.⁸


_____, J.
Douglas


_____, J.
Rose


_____, J.
Parraguirre

cc: Hon. Brent T. Adams, District Judge
Scott W. Edwards
Richard Leroy Morgan
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁸Because Morgan is represented by counsel in this matter, we decline to grant him permission to file documents in proper person in this court. See NRAP 46(b). Accordingly, the clerk of this court shall return to Morgan unfiled all proper person documents he has submitted to this court in this matter.