

IN THE SUPREME COURT OF THE STATE OF NEVADA

DENISE DIANNA BUCHANAN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 45174

**FILED**

MAY 05 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 dismissing appellant Denise Dianna Buchanan's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Peter I. Breen, Judge.

On August 20, 1999, the district court convicted Buchanan, pursuant to a jury verdict, of two counts of first-degree murder in the deaths of her infant sons, John and Jacob. The district court sentenced Buchanan to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole. This court affirmed Buchanan's conviction on direct appeal.<sup>1</sup> The remittitur issued June 24, 2003.

On May 25, 2004, Buchanan filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Subsequently, Buchanan retained counsel, who filed a supplemental petition. The State filed a motion to dismiss the petition. Pursuant to

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<sup>1</sup>Buchanan v. State, 119 Nev. 201, 69 P.3d 694 (2003).

NRS 34.770, the district court declined to conduct an evidentiary hearing. On April 21, 2005, the district court dismissed Buchanan's petition. This appeal followed.

Buchanan raises three arguments on appeal. First, Buchanan argues the district court erred in denying her petition without holding an evidentiary hearing. Specifically, Buchanan argues the district court erred in determining her counsel was not ineffective. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and prejudice such that counsel's errors were so severe that they rendered the jury's verdict unreliable.<sup>2</sup> The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.<sup>3</sup>

Buchanan claimed trial counsel was ineffective for failing to request the court to "[order] the Leal family to undergo any genetic or metabolic testing necessary that could have proven [Buchanan's] theory of defense." Buchanan failed to state what testing was available at the time of her trial, what such testing would have shown, and how such testing

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

<sup>3</sup>Strickland, 466 U.S. at 697.

would have altered the jury's verdict.<sup>4</sup> Buchanan failed to demonstrate that the district court erred by dismissing this claim. Accordingly, we affirm the dismissal of this claim.

Second, Buchanan argues the district court erred by failing to apply the holding of Regina v. Angela Cannings,<sup>5</sup> a case from the United Kingdom, which stated that

where a full investigation into two or more sudden unexplained infant deaths in the same family is followed by a serious disagreement between reputable experts about the cause of death, and a body of such expert opinion concludes that natural causes, whether explained or unexplained, cannot be excluded as a reasonable (and not a fanciful) possibility, the prosecution of a parent or parents for murder should not be started, or continued, unless there is additional cogent evidence, extraneous to the expert evidence . . . which tends to support the conclusion that the infant, or where there is more than one death, one of the infants, was deliberately harmed.

However, the Cannings case is not helpful to Buchanan. In Buchanan's case, unlike in Cannings, there was substantial evidence that

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<sup>4</sup>See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984) (holding that a petitioner is not entitled to an evidentiary hearing on "bare" or "naked" claims for relief that are unsupported by any specific factual allegations).

<sup>5</sup>Regina v. Angela Cannings [2004] EWCA Crim 1 (appeal taken from Eng.).

the deaths of John and Jacob were caused by asphyxiation.<sup>6</sup> Further, there was a significant amount of non-expert testimony in the case that tended to suggest Buchanan's guilt.<sup>7</sup> Buchanan failed to demonstrate the district court erred in dismissing this claim. Accordingly, we affirm the dismissal of this claim.

Third, Buchanan argues the district court erred in denying her post-conviction motion for genetic testing of John's and Jacob's father and family by Dr. Dietrich A. Stephan.<sup>8</sup> In that motion, Buchanan claimed such testing "might be able to provide a cause" for the deaths of John and Jacob. Dr. Stephan apparently claims to have discovered a genetic cause of Sudden Infant Death Syndrome, which Buchanan claimed may have been the cause of John's and Jacob's deaths. Parentage or identity are not at issue in this case, and Buchanan failed to cite any authority for the proposition that a district court may order a non-party to undergo genetic testing when such testing is not relevant to determining the parentage or identity of any person or corpse.<sup>9</sup> Buchanan failed to demonstrate the

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<sup>6</sup>See Buchanan, 119 Nev. at 223, 69 P.3d at 709 (Rose, J. concurring).

<sup>7</sup>See id. at 216-18, 69 P.3d at 704-06.

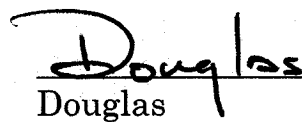
<sup>8</sup>See NRS 177.045 (allowing for the review on appeal of any intermediate orders).


<sup>9</sup>See NRS 56.020 (allowing a district court to order DNA testing of "the person involved in the controversy" when relevant in a civil or  
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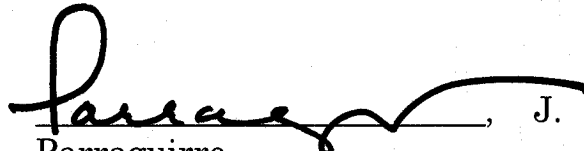
district court erred in denying her motion. Accordingly, we affirm the denial of the motion.

Having considered Buchanan's contentions and concluded they are without merit, we

ORDER the judgment of the district court AFFIRMED.

 \_\_\_\_\_, J.  
Douglas

 \_\_\_\_\_, J.  
Becker

 \_\_\_\_\_, J.  
Parraguirre

cc: Second Judicial District Court Dept. 7, District Judge  
Scott W. Edwards  
Attorney General George Chanos/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

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criminal action to determine the parentage or identity of any person or corpse).