

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHNNY EDWARD HAMILTON,
Appellant,
vs.
WARDEN, ELY STATE PRISON, E.K.
MCDANIEL,
Respondent.

No. 45178

FILED

APR 20 2006

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

Appellant Johnny Edward Hamilton was convicted, pursuant to a jury verdict, of possession of a controlled substance. The district court adjudicated Hamilton a habitual criminal and sentenced him to serve a prison term of life with parole eligibility in 10 years. Hamilton did not file a direct appeal.

Hamilton filed a timely proper person post-conviction petition for a writ of habeas corpus. The State opposed the petition. The district court appointed counsel, and counsel filed a supplement to the petition. The State filed a motion for partial dismissal of the petitions, and counsel filed an opposition to the motion to dismiss. The district court granted the motion, dismissing eight of the ten claims raised by Hamilton. Counsel for Hamilton then filed a second supplement to the petition, and a motion for appointment of expert witness on DNA testing. The district court denied the motion for an expert witness. After conducting an evidentiary

hearing, the district court denied Hamilton's remaining claims. Hamilton filed this timely appeal.

Hamilton first contends that the district court erred in denying his claims of ineffective assistance of counsel without conducting an evidentiary hearing. In particular, Hamilton contends that defense counsel was ineffective for failing to (1) challenge the admission of evidence indicating that the substance at issue was cocaine; (2) call three witnesses to testify in support of the defense theory; and (3) file a pretrial writ of habeas corpus to dismiss the criminal charge based on sufficiency of the evidence. We conclude that Hamilton's contentions lack merit. The district court found that defense counsel was not ineffective under the standard set forth in Strickland v. Washington.¹ Hamilton has failed to show that the district court's findings are not supported by substantial evidence or are clearly wrong.² Moreover, Hamilton has failed to show the district court erred as a matter of law.³

Hamilton next contends that the district court erred in denying his motion to retain an expert witness on DNA because he needed an expert to conduct a "complete review" of the DNA testing procedures in order to determine whether counsel was ineffective. We conclude that the

¹466 U.S. 668 (1984).

²See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994); Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984) (a petitioner is entitled to an evidentiary hearing if he makes allegations not belied by the record, which, if true would entitle him to relief).

³See Riley, 110 Nev. at 647, 878 P.2d at 278.

district court did not err in denying the motion. NRS 34.780(2) provides that discovery may be permitted in a post-conviction proceeding only for good cause and by leave of the court. A petitioner has shown "good cause" where he alleges specific allegations that give the court reason to believe that, "if the facts are fully developed," petitioner may be entitled to relief.⁴ We conclude that Hamilton failed to demonstrate good cause for an expert witness on DNA because he did not articulate sufficient facts that if fully developed would entitle him to relief.

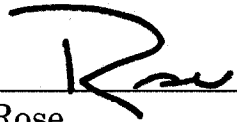
Finally, Hamilton contends that the district court erred in rejecting his claim that defense counsel was ineffective for failing to perfect an appeal on his behalf.⁵ After conducting an evidentiary hearing on the issue, the district court found that Hamilton was not deprived of his appellate rights. The district court's finding is supported by substantial evidence. In particular, defense counsel testified that Hamilton had informed him that he intended to pursue post-conviction remedies but did not express an interest in pursuing a direct appeal. Although Hamilton testified that he requested an appeal, the district court acted within its discretion in finding defense counsel's testimony to the contrary more credible. Accordingly, we conclude that the district court did not err in rejecting Hamilton's claim that counsel was ineffective for failing to file a direct appeal.


⁴Bracy v. Gramley, 520 U.S. 899, 908-09 (1997) (quoting Harris v. Nelson, 394 U.S. 286, 300 (1969)).

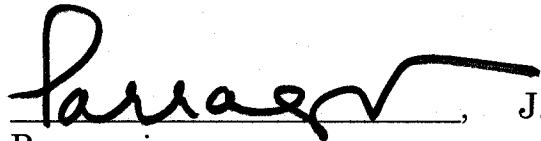
⁵See Lozada v. State, 110 Nev. 349, 354, 871 P.2d 944, 947 (1994).

Having considered Hamilton's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.⁶


_____, C.J.
Rose


_____, J.
Douglas


_____, J.
Parraguirre

cc: Hon. Steven P. Elliott, District Judge
Hardy & Associates
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁶On April 3, 2006, this court received a proper person motion and supplemental brief. Although Hamilton has not been granted permission to file documents in proper person, we have considered the supplemental brief and conclude that the brief fails to raise any meritorious claims.