

IN THE SUPREME COURT OF THE STATE OF NEVADA

JIMMIE ANDREWS,
Appellant,
vs.
WARDEN, HIGH DESERT STATE
PRISON, DWIGHT NEVEN,
Respondent.

No. 45359

FILED

JAN 12 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 Jimmie Andrews's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Robert H. Perry, Judge.

The district court convicted Andrews, pursuant to a jury verdict, of one count of unlawful sale of a controlled substance, one count of conspiracy to possess a control substance, and one count of opening and/or maintaining a place for the purpose of selling a controlled substance. The district court sentenced Andrews to serve a prison term of 18 to 72 months for the unlawful sale count, an equal and consecutive prison term for conducting the sale within 1,000 feet of an arcade, and concurrent prison terms for the two remaining counts. This court affirmed the judgment of conviction on direct appeal.¹

Andrews filed a timely proper person post-conviction petition for a writ of habeas corpus. The district court appointed counsel to represent Andrews, and counsel supplemented Andrews's petition. The

¹Andrews v. State, Docket No. 42336 (Order of Affirmance, April 13, 2004).

State moved to dismiss the petition and supplement, and Andrews filed an opposition. The district court found that Andrews's claims lacked specificity and granted the State's motion. This appeal follows.

Andrews claims that the district court erred in dismissing his petition without first conducting an evidentiary hearing. He contends that the district court should have conducted an evidentiary hearing on his claim that trial counsel was ineffective for failing to call mitigating witnesses at sentencing. And he asserts that his "grandfather and grandmother would have testified in support of him and confirmed his drug addiction."

"A petitioner for post-conviction relief is entitled to an evidentiary hearing only if he supports his claims with specific factual allegations that if true would entitle him to relief."² 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.³ A petitioner must further establish a reasonable probability that, in the absence of counsel's errors, the results of the proceedings would have been different.⁴ The court can dispose of a claim if the petitioner makes an insufficient showing on either prong.⁵

²Thomas v. State, 120 Nev. 37, 44, 83 P.3d 818, 823 (2004).

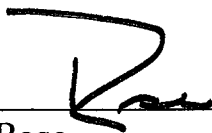
³See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).


⁴Id.

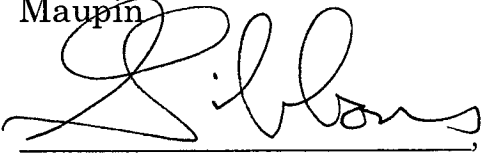
⁵Strickland, 466 U.S. at 697.

Andrews failed to present specific factual allegations which, if true, would have established a reasonable probability that his sentence would have been different had trial counsel presented the testimony of mitigating witnesses at sentencing. Accordingly, we conclude that Andrews has failed to demonstrate that the district court erred in denying his post-conviction petition for a writ of habeas corpus, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

cc: Hon. Robert H. Perry, District Judge
Mary Lou Wilson
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk