

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARRIS TREMEL TAYLOR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45911

FILED

NOV 22 2006

DARRIS TREMEL TAYLOR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46190

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

ORDER OF AFFIRMANCE

These are consolidated appeals from the denials of post-conviction petitions for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge; Nancy M. Saitta, Judge.

On March 30, 1998, the district court convicted appellant Darris Tremel Taylor, pursuant to a jury verdict, of conspiracy to commit robbery, burglary while in possession of a firearm, and robbery with the use of a deadly weapon. The victim was Alanna Franklin. Taylor was adjudicated a habitual criminal and sentenced to three consecutive prison terms of ten years to life. This court affirmed the judgment of conviction

and sentence on direct appeal.¹ Taylor filed a timely proper person post-conviction petition for a writ of habeas corpus in the district court. The district court appointed counsel to represent Taylor but declined to conduct an evidentiary hearing. On August 29, 2005, the district court denied the petition. This appeal, docketed as No. 45911, followed.

In a second case, on July 19, 2000, the district court convicted Taylor, pursuant to a jury verdict, of robbery with the use of a deadly weapon and first-degree murder with the use of a deadly weapon. The victim was Melvin Charles Rayford. Taylor was sentenced to terms totaling life in prison without the possibility of parole. This court affirmed the judgment of conviction and sentence on direct appeal.² Taylor filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The district court appointed counsel to represent Taylor but declined to conduct an evidentiary hearing. On October 19, 2005, the district court denied the petition. This appeal, docketed as No. 46190, followed.

First, Taylor argues that he is entitled to new trials pursuant to Giglio v. United States³ because the State failed to disclose a benefit conveyed to Akilah City, who testified against Taylor in both trials.

¹Taylor v. State, Docket No. 32179 (Order of Affirmance, February 4, 2003).

²Taylor v. State, Docket No. 36653 (Order of Affirmance, August 21, 2002).

³405 U.S. 150 (1972).

Specifically, Taylor claims the State failed to disclose that after Akilah City testified in the Franklin trial, the prosecutor wrote a letter to the Parole Board noting that City had accepted responsibility for her role in the Franklin crimes and that the prosecutor appreciated City's cooperation. Despite having written this letter, the prosecutor argued in closing that City received no benefit for her testimony.

These claims were waived by Taylor's failure to raise them in his direct appeals, and Taylor fails to articulate good cause for his failure.⁴ Taylor alleges no specific factual support for the assertion in his opening brief that his appellate counsel in the Franklin case was unaware of the letter. Taylor does not claim that his appellate counsel in the Rayford case was unaware of the letter, and counsel should have been aware of it because trial counsel showed it to City during cross-examination and questioned her about it.

Second, Taylor argues his appellate counsel in both cases were ineffective for failing to argue violations of his right to confront witnesses under Crawford v. Washington.⁵ During the Franklin trial, the State played a tape of Taylor's interrogation in which he said that his friend Don Price told him they should rob Franklin. During the Rayford trial, J.B. Starks testified that Rayford called him several times just before his

⁴See NRS 34.810(1)(b)(2), (3)(a).

⁵541 U.S. 36 (2004).

murder and said he was with Taylor. Taylor claims that Price's and Rayford's statements were admitted in violation of Crawford.

To state a claim of ineffective assistance of appellate counsel, a petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness and that the omitted issue had a reasonable probability of success on appeal.⁶ We conclude that Taylor fails to demonstrate that either claim had a reasonable probability of success on appeal. Crawford was not decided until after Taylor's convictions were final. Taylor fails to demonstrate that Crawford should be applied retroactively to him. Further, Taylor fails to demonstrate that any of the challenged statements were testimonial and therefore subject to Crawford.⁷

Finally, Taylor argues his trial counsel in the Rayford case was ineffective for failing to have the prosecutor's letter to the Parole Board about City admitted into evidence so the jury could see it. 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

⁶Strickland v. Washington, 466 U.S. 668, 687 (1984); Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996).

⁷See Crawford, 541 U.S. at 51.

counsel's errors were so severe that they rendered the jury's verdict unreliable.⁸

Taylor fails to explain how counsel's performance was deficient or prejudiced him. Trial counsel showed the letter to City and cross-examined her about it, eliciting from her that the State had tried to help her by writing the letter. Counsel also elicited that City had told people she was cooperating with the State because she thought it could help her before the Parole Board. Taylor fails to demonstrate that the jury's seeing the actual letter might have changed the outcome of his trial.

Having reviewed Taylor's claims and concluded that no relief is warranted, we

ORDER the judgments of the district court AFFIRMED.

Becker, J.
Becker

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

⁸Strickland, 466 U.S. at 687; Kirksey, 112 Nev. at 987-88, 923 P.2d at 1107.

cc: Hon. Joseph T. Bonaventure, District Judge
Hon. Nancy M. Saitta, District Judge
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Christopher R. Oram
Clark County Clerk