

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL HARTLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46127

FILED

MAR 22 2006

ORDER OF AFFIRMANCE

BY *J. Blum*
JANETTE M. BLUM
CLERK OF SUPREME COURT
DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

On December 30, 2003, the district court convicted appellant, pursuant to a jury verdict, of battery constituting domestic violence (third offense) and coercion. The district court sentenced appellant to serve two consecutive terms of 12 to 48 months in the Nevada State Prison. This court affirmed appellant's judgment of conviction.¹ The remittitur issued on July 21, 2004.

On June 28, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Appellant filed a reply. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On September

¹Hartley v. State, Docket No. 42666 (Order of Affirmance, June 25, 2004).

28, 2005, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that counsel was ineffective.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 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.³ The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.⁴

First, appellant claimed that counsel was ineffective for failing to call a defense witness. Specifically, appellant claimed that counsel failed to call his earlier public defender, who had stepped down to be a witness in his case. Appellant failed to demonstrate that counsel's performance was deficient or how this testimony would have changed the outcome of the proceedings. Appellant failed to support his claim with specific supporting factual allegations, nor did appellant state what the attorney would have testified to or how this would have changed the

²To the extent that appellant raised any of the following issues independently from his ineffective assistance of counsel claims, we conclude that they are waived; they should have been raised on direct appeal and appellant did not demonstrate good cause for his failure to do so. See NRS 34.810(1)(b).

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

⁴Strickland, 466 U.S. at 697.

outcome of his trial.⁵ Thus, the district court did not err in denying this claim.

Second, appellant claimed that counsel was ineffective for failing to impeach the victim with her prior drug history, and specifically, with being under the influence of drugs while on the stand. Appellant's claim is not supported by the record. Both the State and counsel questioned the victim on whether she was under the influence of drugs, and she testified that she was not. Appellant failed to demonstrate that counsel's performance was deficient and, thus, the district court did not err in denying this claim.

Third, appellant claimed that counsel was ineffective for failing to impeach the victim with her prior inconsistent statements. Appellant failed to demonstrate that counsel's performance was deficient. It is for the jury to determine the degree of weight and credibility to give testimony, and their decision will not be disturbed on appeal where there is substantial evidence to support the verdict.⁶ The victim testified in court that appellant did not abuse or strike her, which was inconsistent with her prior statements to the police. It would have been detrimental to appellant's case for counsel to attempt to impeach the victim's credibility, since the victim's testimony was favorable to appellant. Thus, the district court did not err in denying this claim.

Fourth, appellant claimed that counsel was ineffective for failing to move for admission of evidence. Specifically, appellant claimed

⁵See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

⁶See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

that counsel failed to move for admission of a letter written by the victim that denied the allegations. Appellant failed to demonstrate that counsel's performance was deficient, or that the admission of the letter would have changed the outcome of the proceedings. The victim testified at appellant's trial, and gave a statement prior to sentencing, in which she expressed a desire not to prosecute appellant. Nevertheless, the jury returned a verdict of guilty. The district court did not err in denying this claim.

Fifth, appellant claimed that counsel was ineffective for not objecting to prosecutorial misconduct. Specifically, appellant claimed that counsel should have objected to the State paying the victim for each day's testimony. Appellant failed to demonstrate that counsel's performance was deficient. Pursuant to NRS 50.225, witnesses are entitled to a witness fee. Thus, the district court did not err in denying this claim.

Appellant also claimed that appellate counsel was ineffective. To state a claim of ineffective assistance of appellate counsel, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that the omitted issue would have a reasonable probability of success on appeal.⁷ Appellate counsel is not required to raise every non-frivolous issue on appeal.⁸ This court has held that appellate counsel will be most effective when every conceivable issue is not raised on appeal.⁹

⁷Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996) (citing Strickland, 466 U.S. 668).


⁸Jones v. Barnes, 463 U.S. 745, 751 (1983).


⁹Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989).

Appellant claimed that appellate counsel was ineffective because counsel only raised one issue on direct appeal. Appellant failed to demonstrate that counsel's performance was deficient. Appellant failed to specify what issue counsel should have included on appeal, whether it had a reasonable probability of success, and whether there was resulting prejudice. Thus, the district court did not err in denying this claim.

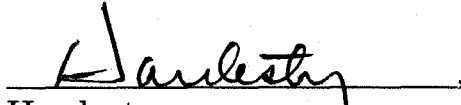
Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.¹⁰ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____ J.

Maupin

_____ J.

Gibbons


_____ J.
Hardesty

cc: Hon. Michelle Leavitt, District Judge
Daniel Hartley
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

¹⁰See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).