

IN THE SUPREME COURT OF THE STATE OF NEVADA

CARL L. WILLIAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46507

FILED

AUG 08 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF 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; John S. McGroarty, Judge.

On December 8, 2003, the district court convicted appellant, pursuant to a jury verdict, of one count of conspiracy to commit robbery, one count of possession of a stolen vehicle, one count of burglary while in possession of a firearm, four counts of second-degree kidnapping with the use of a deadly weapon, one count of robbery with the use of a deadly weapon and one count of failure to stop on the signal of a police officer. On February 25, 2004, the district court filed an amended judgment of conviction to include appellant's conviction and sentence for a second count of robbery with the use of a deadly weapon, to which appellant had pleaded guilty. The district court sentenced appellant to serve consecutive and concurrent terms totaling 144 to 360 months in the Nevada State Prison. This court affirmed appellant's judgment of conviction on direct appeal.¹ The remittitur issued on December 10, 2004.

¹Williams v. State, Docket No. 43044 (Order of Affirmance, November 15, 2004).

On October 25, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. 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 January 13, 2006, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that trial 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 To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate that his counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability that, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going

²To the extent that appellant raised any 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). Further, to the extent that these claims relate to his guilty plea, we conclude that they fell outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus challenging a judgment of conviction based upon a guilty plea. See NRS 34.810(1)(a).

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

to trial.⁴ The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.⁵

First, appellant claimed that trial counsel was ineffective for failing to adequately investigate, provide an adequate defense, adequately object and preserve grounds during trial, adequately cross-examine State witnesses, and file a pre-trial motion to dismiss the grand jury indictment. Appellant presented nothing more than bare or naked claims for relief that are not supported by specific factual allegations.⁶ Appellant did not explain what counsel should have investigated, how counsel failed to present an adequate defense, what grounds counsel should have objected to and preserved, how counsel could have better cross-examined the witnesses, or whether any of these actions would have resulted in a different outcome. Further, appellant failed to explain why counsel should have moved the court to dismiss the grand jury indictment, or how this would have rendered the jury's verdict unreliable. Appellant claimed that presenting specific facts to allegations was hampered by his inability to acquire transcripts at state expense. Appellant failed to make a threshold showing that his claims had merit.⁷ Appellant failed to demonstrate that

⁴Hill v. Lockhart, 474 U.S. 52 (1985); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

⁵Strickland, 466 U.S. at 697.

⁶See NRS 34.735; Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

⁷See Peterson v. Warden, 87 Nev. 134, 136, 483 P.2d 204, 205 (1971) (holding that an appellant must "satisfy the court that the points raised have merit and such merit will tend to be supported by a review of the record before he may have trial records supplied at state expense").

counsel's performance was ineffective, and we conclude that the district court did not err in denying these claims.

Second, appellant claimed that his trial counsel was ineffective for failing to move the district court for a Petrocelli⁸ hearing to restrict the admission of prior bad acts. This claim is not supported by the record. The district court conducted a Petrocelli hearing on November 25, 2003, upon the State's motion to admit evidence of other bad acts. Thus, appellant failed to demonstrate that counsel's performance was deficient, and the district court did not err in denying this claim.

Third, appellant claimed that his trial counsel was ineffective for failing to request DNA testing on alleged items of clothing collected as evidence. Appellant failed to demonstrate that counsel's performance was ineffective. Trial counsel argued in her closing argument that there was no proof that the clothing belonged to appellant. However, the case against appellant was strong. Appellant confessed to the crimes after his arrest. Even had the clothing been tested and found not to belong to appellant, appellant did not specify how this would have influenced the jury so that a different outcome would have resulted. Thus, the district court did not err in denying this claim.

Fourth, appellant claimed that his trial counsel was ineffective for failing to object to the imposition of his deadly weapon enhancements pursuant to NRS 193.165 as a double jeopardy violation. Appellant failed to demonstrate that counsel was ineffective. Under NRS 193.165(1), a person who uses a deadly weapon during the commission of a crime must be punished by imprisonment for "a term equal to and in addition to the term of imprisonment prescribed by statute." This statutory provision

⁸Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985).

"does not create any separate offense but provides an additional penalty for the primary offense."⁹ Thus, any weapon enhancement is to be served consecutively to the primary term.¹⁰ In Bowen, this court held that the imposition of separate penalties for a primary offense and for the use of a deadly weapon in the commission of the offense does not violate the Double Jeopardy Clause.¹¹ Appellant failed to demonstrate that counsel would have been successful if she objected on this ground. Thus, the district court did not err in denying this claim.

Appellant also claimed that his 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.¹² Appellate counsel is not required to raise every non-frivolous issue on appeal.¹³ This court has held that appellate counsel will be most effective when every conceivable issue is not raised on appeal.¹⁴

⁹NRS 193.165(2).

¹⁰See Id.; Nevada Dep't Prisons v. Bowen, 103 Nev. 477, 481, 745 P.2d 697, 699 (1987) (holding that the primary offense and the enhancement penalty under NRS 193.165 are "separate and distinct, and the consecutive sentences imposed must be treated as separate sentences for all purposes").

¹¹103 Nev. 477, 745 P.2d 697.

¹²Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996) (citing Strickland, 466 U.S. 668).

¹³Jones v. Barnes, 463 U.S. 745, 751 (1983).

¹⁴Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989).

Appellant claimed that his appellate counsel was ineffective for failing to raise "colorful" claims, preserve "colorable" grounds from the trial record on the first appeal, and challenge NRS 193.165. Appellant failed to demonstrate that his appellate counsel was ineffective. Appellant failed to specify what claims counsel should have raised, what claims counsel should have preserved, and whether those claims had a reasonable probability of success on appeal. Further, as discussed above, appellant's challenge to NRS 193.165 has no merit. Thus, the district court did not err in denying these claims.

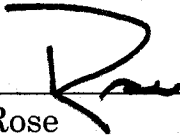
Finally, appellant claimed that his appellate counsel was ineffective for failing to file a motion for rehearing of his direct appeal because Justice Gibbons, who was on his direct appeal panel, was the presiding judge during his grand jury investigation and indictment. Appellant failed to demonstrate that such a motion for rehearing would have had a reasonable probability of success, or that his appellate counsel was deficient. Appellant failed to demonstrate that Justice Gibbons harbored an actual or implied bias.¹⁵ Knowledge acquired by a judge or justice in his or her official capacity are not grounds for disqualification.¹⁶ Justice Gibbons' role as chief judge during the grand jury investigation was limited, did not require any substantive rulings, and did not require disqualification. Thus, appellant failed to demonstrate that his appellate counsel was ineffective, and the district court did not err in denying this claim.


¹⁵NRS 1.225(1), (2).

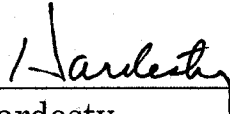
¹⁶See Goldman v. Bryan, 104 Nev. 644, 653, 764 P.2d 1296, 1301 (1988).

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.¹⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹⁸

 _____, C.J.
Rose

 _____, J.
Becker

 _____, J.
Hardesty

cc: Eighth Judicial District Court Dept. 16, District Judge
Carl Lamar Williams
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

¹⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹⁸We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance. Appellant's proper person motion to appoint counsel, filed in this court on July 3, 2006, is hereby denied.