

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALFRAIZER WRIGHT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46663

FILED

MAY 03 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
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 January 30, 2003, the district court convicted appellant, pursuant to a jury verdict, of conspiracy to commit robbery and two counts of robbery with the use of a deadly weapon. The district court sentenced appellant to serve terms totaling 72 to 180 months in the Nevada State Prison. This court affirmed appellant's conviction on direct appeal.¹ The remittitur issued on February 8, 2005.

On November 7, 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

¹Wright v. State, Docket No. 41004 (Order of Affirmance, January 12, 2005).

district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On February 13, 2006, the district court denied appellant's petition. This appeal followed.²

In his petition, appellant contended that he received ineffective assistance of trial counsel.³ 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.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 his trial counsel was ineffective for failing to discover an alibi witness before trial. Appellant failed to demonstrate counsel's performance prejudiced him. According to her

²To the extent that appellant challenged the denial of his motion for the appointment of counsel and motion for transportation, we conclude that the district court did not abuse its discretion in denying these motions. See NRS 34.750; NRS 34.440.

³Appellant also claimed the victims' identification of him shortly after the crime was unlawfully suggestive and should have been suppressed. This claim was barred by appellant's failure to raise it on direct appeal. See NRS 34.810(1)(b).

⁴Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

⁵Strickland, 466 U.S. at 697.

statement, which appellant included with his petition, the witness would not have given appellant an alibi for the time of the crime. She would only have testified that appellant had a reason to be in the neighborhood where the crime occurred shortly after the crime. This testimony would not necessarily have established that appellant could not have committed the crime. Accordingly, we conclude the district court did not err in denying this claim.

Second, appellant claimed his trial counsel was ineffective for failing to cross-examine two witnesses during trial. The first witness, Las Vegas Metropolitan Police Detective Vanek, testified that eleven years prior he had gone to appellant's apartment and found appellant's co-defendant in the present case there. The second witness, Las Vegas Metropolitan Police Officer Horn, testified that eleven years prior he had located Wright and his co-defendant in the current case hiding in a storage shed on a balcony. Appellant argued cross-examination by his counsel would have established that appellant's co-defendant was being investigated in both instances, not appellant. Appellant failed to demonstrate counsel's performance was objectively unreasonable. Detective Vanek did not testify as to why he was attempting to contact appellant, and Officer Horn did not testify as to why he was searching for someone when he discovered appellant and his co-defendant. Neither officer testified that any crime was being investigated. Appellant's counsel had previously moved the court to bar the officers from discussing the circumstances of the events in order to keep out evidence of appellant's

alleged prior bad acts. Counsel made a reasonable tactical decision not to cross-examine the officer to avoid prejudicing appellant with his alleged prior bad acts. Counsel's tactical decisions are "virtually unchallengeable absent extraordinary circumstances."⁶

Third, appellant claimed his trial counsel was ineffective for failing to investigate. Specifically, appellant claimed counsel failed to investigate whether three African-American males arrested for robbery several months after the robbery appellant was charged with were actually the perpetrators of the robbery appellant was charged with. Appellant failed to demonstrate counsel's performance in this regard was objectively unreasonable. Counsel is not required to scrutinize all arrest reports made in the Las Vegas area in search of facts similar to those of her client's case. Accordingly, we conclude the district court did not err in denying this claim.

Appellant also claimed he received ineffective assistance of appellate counsel. Specifically, appellant claimed his appellate counsel was ineffective for failing to argue that appellant's right to confront his accusers was violated by the admission of "radio tickets" from the Las Vegas Metropolitan Police Department. However, appellate counsel made this argument on direct appeal, and this court concluded the district court

⁶See Doleman v. State, 112 Nev. 843, 848, 921 P.2d 278, 280-81 (1996) (quoting Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990)).

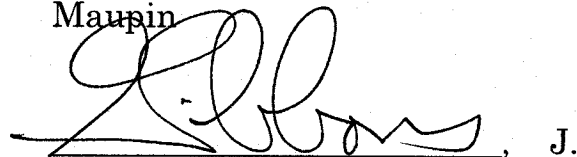
did not err in admitting the tickets and relevant testimony.⁷ Reconsideration of this issue is barred by the law of the case doctrine.⁸

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.⁹ Accordingly, we

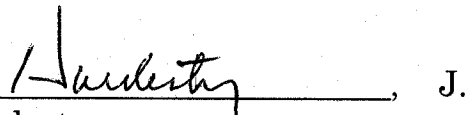
ORDER the judgment of the district court AFFIRMED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

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

⁷Wright v. State, Docket No. 41004 (Order of Affirmance, January 12, 2005).

⁸See Pellegrini v State, 117 Nev. 860, 879, 34 P.3d 519, 532 (2001).

⁹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).