

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARK BRIAN SHRECKENGAUST,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46702

FILED

MAY 10 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

This is an appeal from an order of the district court denying appellant Mark Brian Shreckengaust's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

The district court convicted Shreckengaust, pursuant to a jury verdict, of one count of felony driving under the influence. The district court sentenced Shreckengaust to serve a prison term of 28 to 72 months. This court affirmed the judgment of conviction on direct appeal.¹ Thereafter, Shreckengaust filed a proper person post-conviction petition for a writ of habeas corpus. The district court appointed counsel, and counsel supplemented the petition. The State moved to partially dismiss the petition, and Shreckengaust opposed the State's motion. The district court entered an order dismissing all but one claim, conducted an

¹Shreckengaust v. State, Docket No. 40960 (Order of Affirmance, July 2, 2003).

evidentiary hearing on the remaining claim, and subsequently denied the petition. This appeal follows.

First, Shreckengaust contends that the district court erred when it denied his petition without first conducting an evidentiary hearing to determine whether counsel was ineffective for failing to put forth his theory of the case. We disagree.

"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

Our review of the record reveals that Shreckengaust's attorney put forth a defense through his vigorous cross-examination of the

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).

⁴Strickland, 466 U.S. at 694.

⁵Id. at 697.

State's witnesses. To the extent Shreckengaust claims he was unable to present his theory of the case because counsel instructed him not to testify, we note that Shreckengaust decided not to testify after being canvassed by the district court and that Shreckengaust failed to demonstrate that the trial result would have been different had he testified. We conclude that the district court correctly determined that Shreckengaust was not entitled to relief on this claim.

Second, Shreckengaust contends that the district court erred by denying his petition on grounds that counsel was ineffective for failing to have blood evidence tested. We disagree.

The district court conducted an evidentiary hearing on the issue of whether counsel rendered ineffective assistance by failing to ensure, through a DNA test, that the State's blood evidence was in fact Shreckengaust's blood. Counsel testified that he investigated the chain of custody for the blood evidence and found that it was in place, and because the chain was unbroken there was no reason to test the blood. The district court found that counsel reasonably investigated Shreckengaust's claim that no one drew blood from him. The district court's factual findings are entitled to deference when reviewed on appeal.⁶ On appeal, Shreckengaust has not shown or alleged that the district court's findings of fact are not supported by substantial evidence or are clearly wrong. Therefore, he has not demonstrated that the district court erred in denying this claim.

⁶See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

Having considered Shreckengaust's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

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