

IN THE SUPREME COURT OF THE STATE OF NEVADA

LEON MCCOY, AKA LEON KENTRILL
MCCOY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46792

FILED

JUL 25 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
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 March 16, 2004, the district court convicted appellant, pursuant to a jury verdict, of attempted murder with the use of a deadly weapon and burglary while in possession of a firearm. The district court sentenced appellant to serve two consecutive terms of 96 to 240 months in the Nevada State Prison for attempted murder with the use of a deadly weapon and a consecutive term of 48 to 120 months for burglary while in possession of a firearm. This court affirmed appellant's conviction on direct appeal.¹ The remittitur issued on November 30, 2004.

On November 30, 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

¹McCoy v. State, Docket No. 43145 (Order of Affirmance, November 4, 2004).

conduct an evidentiary hearing. On February 8, 2006, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that he received ineffective assistance of counsel. 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.² The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.³

First, appellant claimed counsel was ineffective for failing to object to the reasonable doubt instruction. Our review of the record on appeal reveals that the reasonable doubt instruction given at appellant's trial matched the instruction required by NRS 175.211. Accordingly, we conclude the district court did not err in denying this claim.

Second, appellant claimed counsel was ineffective for failing to investigate whether there was gunshot residue on the victim's hands. Appellant failed to demonstrate counsel's performance was deficient or prejudiced him. At trial, the victim testified that after appellant shot him, he and appellant struggled for the gun and he was able to take the gun from appellant. A finding of gunshot residue on the victim's hands would be consistent with this testimony and would not necessarily establish that

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

³Strickland, 466 U.S. at 697.

appellant did not shoot the victim. Accordingly, we conclude the district court did not err in denying this claim.

Appellant also claimed counsel was ineffective for failing to call witnesses, to keep appellant informed, to investigate, to visit appellant before and during trial, to prepare for and cross-examine witnesses, to investigate the victim's and witnesses' credibility, and to provide resources for appellant's defense. Appellant failed to state any facts in support of these claims;⁴ he did not specify which witnesses counsel should have called, what additional investigation would have uncovered, what additional visits or communications with counsel would have accomplished, what further cross-examination of witnesses would have elicited, or what could have been accomplished with additional resources. Accordingly, we conclude the district court did not err in denying these claims.

Appellant's challenge to the sufficiency of the evidence is barred by the law of the case,⁵ as it was previously raised and rejected in appellant's direct appeal.⁶ Appellant's challenge to the trial court's admission of testimony based on an allegedly improper identification, the inclusion of minority community members in the jury venire, and the sentencing court's consideration of a pending murder charge, as well as

⁴See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984) (holding that a petitioner is not entitled to an evidentiary hearing on "bare" or "naked" claims for relief that are unsupported by any specific factual allegations).


⁵See Pellegrini v. State, 117 Nev. 860, 879, 34 P.3d 519, 532 (2001).


⁶See McCoy v. State, Docket No. 43145 (Order of Affirmance, November 4, 2004).


appellant's claims of prosecutorial misconduct, were waived by appellant's failure to present them to the trial court and/or raise them in his direct appeal.⁷ Appellant failed to demonstrate good cause for his failure to do so.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.
Douglas

 _____, J.
Becker

 _____, J.
Parraguirre

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

⁷See NRS 34.810(1)(b).

⁸See NRS 34.810(3).

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