

IN THE SUPREME COURT OF THE STATE OF NEVADA

PERRION PIPER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46841

FILED

AUG 01 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; Joseph T. Bonaventure, Judge.

On August 4, 2004, the district court convicted appellant, pursuant to a jury verdict, of grand larceny and burglary. The district court adjudicated appellant a small habitual criminal and sentenced appellant to serve two concurrent terms of 60 to 240 months in the Nevada State Prison. This court affirmed appellant's judgment of conviction on direct appeal but remanded the matter to the district court to specify that appellant was convicted pursuant to a jury verdict.¹ The remittitur issued on May 19, 2005.

On August 13, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court.

¹Piper v. State, Docket No. 43887 (Order of Affirmance and Limited Remand to Correct the Judgment of Conviction, April 22, 2005). Although the district court was ordered to correct the clerical error in appellant's judgment of conviction, no amended judgment of conviction is included in the record. We are confident that the district court will comply with this court's prior order as expeditiously as its calendar permits.

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 November 9, 2004, the district court dismissed appellant's petition without prejudice because his direct appeal was pending in this court. This court affirmed the dismissal of appellant's first petition without prejudice.²

On November 21, 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 March 14, 2006, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that his trial counsel was ineffective.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

²Piper v. State, Docket No. 44371 (Order of Affirmance, February 3, 2005).

³To the extent that appellant raised any issues independently from his ineffective assistance of counsel claims, we conclude that they are waived because appellant failed to demonstrate good cause for his failure to raise them on direct appeal. See NRS 34.810(1)(b), (3).

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

not address both components of the inquiry if the petitioner makes an insufficient showing on either one.⁵

First, appellant claimed that his trial counsel was ineffective for failing to investigate any theory of defense and for failing to cross-examine witnesses properly. Appellant failed to demonstrate that his counsel's performance was deficient. Appellant presented bare and naked claims for relief, unsupported by any specific factual allegations.⁶ Specifically, appellant failed to demonstrate what counsel should have investigated, which theories of defense his counsel could have successfully argued, or how his counsel could have properly cross-examined witnesses. The case against appellant was strong: three witnesses identified appellant and his crime was recorded by the casino's surveillance video camera. Thus, the district court did not err in denying this claim.

Second, appellant claimed that his trial counsel was ineffective for failing to object when the prosecutor failed to produce certified copies of his prior convictions in order for the district court to be able to adjudicate him as a habitual criminal. Appellant's claim is not supported by the record. On May 18, 2004, the State submitted a sentencing memorandum to the district court with certified judgments of convictions demonstrating seven felony convictions. Pursuant to NRS 207.010, the State need only prove two prior felony convictions in order for the district court to adjudicate appellant a small habitual criminal. Thus, appellant failed to demonstrate that counsel was deficient, and the district court did not err in denying this claim.

⁵Strickland, 466 U.S. at 697.

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

Next, appellant 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.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

Appellant claimed that appellate counsel was ineffective for failing to raise issues regarding whether the habitual criminal proceedings were properly carried out, of the State's failure to prove elements supporting grand larceny, and for failing to refer to any federal case law, and thus, prohibiting appellant from filing an appeal in federal court. Appellant failed to demonstrate that appellate counsel was ineffective. Appellant failed to demonstrate that there was a reasonable probability of success on appeal. As discussed above, the State produced certified judgments of conviction for seven felony convictions. The jury was presented with evidence as to the amount of money stolen and returned a verdict of guilt for grand larceny. Appellant failed to demonstrate that the failure to "federalize" his claims prejudiced him.

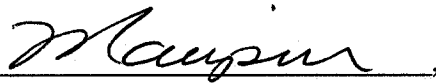
⁷Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996) (citing Strickland, 466 U.S. 668).

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


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

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

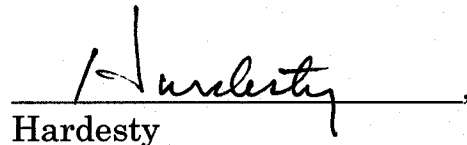
ORDER the judgment of the district court AFFIRMED.¹¹

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Hon. Joseph T. Bonaventure, District Judge
Perrion Piper
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).

¹¹We 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 "request for emergency or expedited relief," filed in this court on July 12, 2006, is hereby denied.