


IN THE SUPREME COURT OF THE STATE OF NEVADA

DENNIS K. KIEREN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47039

FILED

JUN 26 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

Appellant Dennis K. Kieren was convicted, pursuant to a jury verdict, of first-degree murder with the use of a deadly weapon. The district court sentenced him to serve two consecutive terms of life in prison without the possibility of parole. This court affirmed the judgment of conviction and sentence on direct appeal.¹ The remittitur issued on March 5, 2002. Kieren timely filed a proper person postconviction petition for a writ of habeas corpus. The district court appointed counsel to represent Kieren, and counsel filed a supplemental petition. After an evidentiary hearing, the district court denied the petition. This appeal followed.

Kieren argues that the district court erred in finding that his trial and appellate counsel were not ineffective. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of

¹Kieren v. State, Docket No. 36345 (Order of Affirmance, February 8, 2002).

conviction, Kieren must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness and resulting prejudice such that trial counsel's errors were so severe that they rendered the jury's verdict unreliable.² To show prejudice based on appellate counsel's performance, Kieren must show that the omitted issue had a reasonable probability of success on appeal.³

In his petition, Kieren claimed that his trial and appellate counsel were ineffective for failing to investigate the victim's involvement in a murder in California and in two barroom fights in Nevada. He claimed that sufficient investigation of these facts and their admission at trial would have bolstered his claim that he killed the victim in self-defense. We conclude that the district court did not err in denying this claim.

Even assuming counsel's performance was deficient, Kieren failed to demonstrate prejudice. The testimony established that the victim was the initial aggressor, that he bit off a portion of Kieren's ear, and that he threatened to stab a witness, Michael Woods, who tried to break up the incident. However, the jury also heard testimony that the victim gave Woods the knife he was holding and asked Woods to restrain Kieren while he left. Woods then took the knife and restrained Kieren; Kieren told Woods, "You don't understand, Mike, he bit my fucking ear off, I am going to kill him." Kieren got away from Woods, retrieved a pistol from his bag,

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

³Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996).

and went to the garage, where he found the victim and pointed the gun at him. The victim said "No, don't." Kieren shot the victim several times and then stood over him and shot him again. The victim had a total of seven gunshot wounds. Kieren testified that he was mad at the victim before the killing.⁴ Accordingly, we conclude the district court did not err in denying this claim.

Kieren further argues that trial counsel was ineffective for failing to call an expert to testify about the effect of the injuries that the victim inflicted on Kieren to Kieren's state of mind. At the evidentiary hearing, counsel testified that he decided such evidence would not be helpful because it could "compete with" the self-defense theory. Counsel's tactical decisions are "virtually unchallengeable absent extraordinary circumstances,"⁵ which we do not perceive here. Thus, the district court did not err in denying this claim.

Kieren also argues that the district court erred by denying his claim that the State violated Brady v. Maryland⁶ by losing, destroying, or concealing exculpatory evidence, specifically the final portion of the tape of Michael Woods's police interview. Woods allegedly told police in this interview that the victim had bragged to him about committing murders in California. Kieren argues that this evidence would have enabled him to impeach Woods's testimony that the victim was nonviolent. However,

⁴Kieren fails to state how appellate counsel was ineffective in this regard.

⁵Doleman 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)).

⁶373 U.S. 83 (1963).

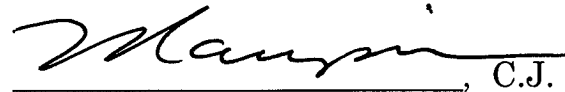
Kieren fails to cite to any part of the record where Woods so testified, and our review of the record does not reveal any such testimony. In fact, Woods testified that he saw the victim bite off part of Kieren's ear and that when he found Kieren and the victim in the bathroom he was afraid the victim would kill Kieren. Thus, the district court did not err in denying this claim.

Kieren also claims trial and appellate counsel were ineffective for: failing to fully investigate the State's loss, destruction, or concealment of Woods's statement; failing to call an expert witness to reconstruct the crime scene; failing to investigate Woods's bias; failing to interview Cheryl Ogletree, the mother of Kieren's child, about statements Woods' made to her indicating his bias; failing to investigate witness Andrew Rutberg's bias; failing to prevent the admission of hearsay evidence; failing to call character witnesses; failing to object to jury instructions; sending another attorney to represent Kieren at sentencing; and failing to sufficiently detail for the jury Kieren's injuries and the effect they might have had on his memory of the killing. Kieren provides no citations to the record, no legal support, and no cogent argument for any of these claims. "This court has consistently held that it will not consider assignments of error that are not supported by relevant legal authority."⁷ Further, Kieren failed to demonstrate that any of these actions by counsel had a reasonable probability of changing the outcome of the proceedings or of success on direct appeal. Accordingly, the district court did not err in denying these claims.

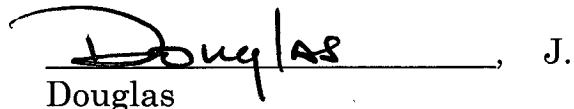
⁷Jones v. State, 111 Nev. 848, 855, 899 P.2d 544, 547-48 (1995).

Having reviewed Kieren's claims and determined he is not entitled to relief, we

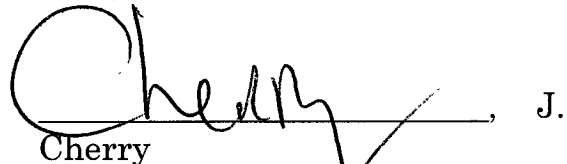
ORDER the judgment of the district court AFFIRMED.

 C.J.

Maupin

 J.

Douglas

 J.

Cherry

cc: Hon. Sally L. Loehrer, District Judge
Christopher R. Oram
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk