

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDRE RAMON WASHINGTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

ANDRE RAMON WASHINGTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47577

FILED

NOV 08 2006

No. 47578

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Rehaide*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

These are consolidated appeals from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

On March 20, 2003, appellant Andre Ramon Washington was convicted, pursuant to guilty pleas, in two separate district court cases. In district court case number CR02-1233B, Washington was convicted of one count each of robbery with the use of a deadly weapon and conspiracy to commit robbery, and sentenced to serve two consecutive prison terms of 72 to 180 months for the robbery and a concurrent prison term of 28 to 72 months for the conspiracy. In district court case number CR02-1487B, Washington was convicted of one count of robbery with the use of a deadly weapon, and sentenced to serve two consecutive prison terms of 72 to 180 months, to run concurrently with the sentence imposed in district court case number CR02-1233B. Washington filed a direct appeal in both cases;

this court consolidated the appeals for disposition and affirmed the judgments of conviction.¹ The remittitur issued on October 14, 2003.

On February 18, 2004, Washington filed a proper person post-conviction petition for a writ of habeas corpus in both cases. The State opposed the petition. The district court appointed counsel to represent Washington, and counsel filed a supplement to the petition. After conducting an evidentiary hearing, the district court denied the petition. These appeals followed.

In order to state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate that his counsel's performance fell below an objective standard of reasonableness.² Also, a petitioner must demonstrate "a reasonable probability that, but for counsel's errors, [the petitioner] would not have pleaded guilty and would have insisted on going to trial."³

First, Washington contends that that the district court erred by denying the petition because defense counsel was ineffective for failing to investigate alibi witnesses. Specifically, Washington contends that the district court erred by finding defense counsel's testimony more credible than Washington's because it "contain[ed] a plethora of contradictions." Additionally, Washington contends that defense counsel's investigation was deficient because he stopped his investigation after Washington

¹Washington v. State, Docket Nos. 41289 & 41290 (Order Dismissing Appeals, September 19, 2003).

²Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996); accord Hill v. Lockhart, 474 U.S. 52 (1985).

³Hill, 474 U.S. at 59.

expressed an interest in pleading guilty, even though the plea agreement was not actually signed until months later just before trial. The district court found that defense counsel conducted a reasonable investigation of the cases. We conclude that the district court's finding is supported by substantial evidence.⁴

At the post-conviction hearing, defense counsel testified about his investigation in the case. Specifically, defense counsel Robert Bruce Lindsay testified that he reviewed the preliminary hearing testimony and discussed the cases numerous times with Washington. Defense counsel explained that Washington provided him with the name and telephone number of an alibi witness for only one of the two robberies, and he spoke with her but she "was sort of vague about [the specifics of the alibi]."

Additionally, defense counsel testified that he stopped his investigation into Washington's alibis, even though it was not complete, after Washington told him he was going to accept a plea offer. Defense counsel explained that, despite Washington's significant criminal history, the State had agreed to recommend that the sentences imposed in the two cases run concurrently. Further, defense counsel summarized the State's evidence against Washington, noting that there was a solid eyewitness identification in the first robbery case, and Washington and his codefendants were caught, after a high-speed police pursuit, fleeing the scene of the second robbery with evidence of the crime inside the vehicle.

Although, at the post-conviction hearing, Washington presented testimony from his potential alibi witnesses and testified that he had provided defense counsel with their names before trial, the district

⁴See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

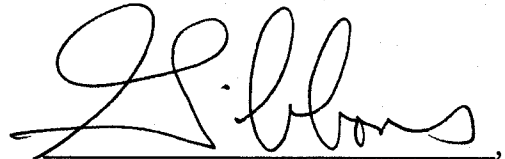
court found that Washington and his alibi witnesses were not credible. In rejecting Washington's claim, the district court noted that Washington had previously admitted to his involvement in the robberies at the plea canvass and in a written statement attached to the presentence investigation report. Additionally, the district court also noted that the testimony of the alibi witnesses was either equivocal on the issue of Washington's whereabouts during the times of the robberies or was inconsistent with prior statements and wholly incredible. Accordingly, the district court did not abuse its discretion by finding that defense counsel conducted an adequate investigation of the alibi witnesses.

Second, Washington contends that the district court erred by denying his petition because defense counsel was ineffective for failing to present mitigating evidence at sentencing. In particular, Washington argues that defense counsel should have presented testimony from Washington's family members describing his good moral character. After hearing testimony from the character witnesses, the district court found that the additional mitigating evidence would not have resulted in a lesser sentence. At the post-conviction hearing, the district court explained that it had previously ordered the sentences to run concurrently "with great reluctance," based in part on defense counsel's argument about mitigating factors, as well as the recommendation of the prosecutor made pursuant to the plea bargain. The district court commented that Washington's criminal history did not warrant a concurrent sentence, and that the Division of Parole and Probation had recommended consecutive sentences. Under the circumstances, Washington has failed to show that the district court abused its discretion by finding that testimony from family members

about his good moral character would not have resulted in a lesser sentence.

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

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Janet J. Berry, District Judge
Attorney General George Chanos/Carson City
Nathalie Huynh
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk