

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES ARCILLE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 47773

**FILED**

JAN 24 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richard*  
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; Stewart L. Bell, Judge.

On January 20, 2004, the district court convicted appellant, pursuant to a jury verdict, of robbery with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of 60 to 156 months in the Nevada State Prison. This court affirmed appellant's judgment of conviction and sentence on direct appeal.<sup>1</sup> The remittitur issued on September 20, 2005.

On May 2, 2006, 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 conduct an evidentiary hearing. On August 1, 2006, the district court denied appellant's petition. This appeal followed.

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<sup>1</sup>Arcille v. State, Docket No. 42794 (Order of Affirmance, August 24, 2005).

In his petition, appellant contended that his trial counsel was ineffective. 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.<sup>2</sup> The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.<sup>3</sup>

First, appellant claimed that his trial counsel was ineffective for inadequately reviewing discovery. Specifically, appellant claimed that if his counsel had properly examined evidence, counsel would have been able to prove to the jury that appellant did not use a deadly weapon. Appellant failed to demonstrate that his counsel's performance was deficient and that he was prejudiced. Counsel specifically cross-examined witnesses about whether they had seen appellant with a knife and presented the jury with the defense theory that appellant did not have a knife. Furthermore, because this court previously held that the State presented sufficient evidence to support appellant's conviction for robbery with the use of a deadly weapon and that the district court properly instructed the jury on the definitions of "deadly weapon" and "use,"<sup>4</sup>

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

<sup>3</sup>Strickland, 466 U.S. at 697.

<sup>4</sup>Arcille v. State, Docket No. 42794 (Order of Affirmance, August 24, 2005).

appellant necessarily failed to demonstrate prejudice. Thus, the district court did not err in denying this claim.

Second, appellant claimed that his trial counsel was ineffective for failing to prevent Brady<sup>5</sup> violations from occurring. Specifically, appellant claimed that counsel should have insured that the videotape was produced earlier, and that the victim's shirt and medical records were admitted into evidence. As with the first claim, this court previously addressed this issue on direct appeal and held that these items were not considered Brady material.<sup>6</sup> Thus, appellant cannot demonstrate that he was prejudiced as the underlying Brady claim lacks merit. Therefore, we conclude that the district court did not err in denying this claim.

Last, appellant claimed that his counsel was ineffective for failing to object on the basis that the deadly weapon enhancement violated of Appendi v. New Jersey.<sup>7</sup> Appellant failed to demonstrate that his trial counsel's performance was deficient. The jury properly determined that appellant had used a deadly weapon in the commission of a robbery, and

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<sup>5</sup>Brady v. Maryland, 373 U.S. 83 (1963).

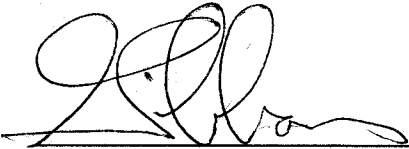
<sup>6</sup>Arcille v. State, Docket No. 42794 (Order of Affirmance, August 24, 2005).


<sup>7</sup>530 U.S. 466 (2000). To the extent that appellant raised the underlying issue independently from his ineffective assistance of counsel claim, we conclude that the issue is waived; it should have been raised on direct appeal, and appellant did not demonstrate good cause for his failure to do so. See NRS 34.810(1)(b).

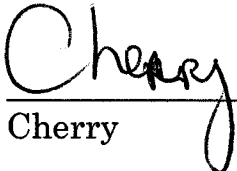
therefore, the deadly weapon enhancement did not violate Appendi.<sup>8</sup> Thus, the district court did not err in denying this claim.

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.<sup>9</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>10</sup>

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Cherry

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<sup>8</sup>See Blakely v. Washington, 542 U.S. 296, 303 (2004) (stating that precedent makes it clear that the statutory maximum that may be imposed is "the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant") (emphasis in original).

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

<sup>10</sup>We 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.

cc: Hon. Stewart L. Bell, District Judge  
Hon. Donald Mosley, District Judge  
James Arcille  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk