

IN THE SUPREME COURT OF THE STATE OF NEVADA


JAMES E. STOREY A/K/A JAMES
EUGENE STOREY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48012

FILED

FEB 28 2007

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; Donald M. Mosley, Judge.

On April 27, 2005, the district court convicted appellant, pursuant to a jury verdict, of one count of compound or manufacture of a controlled substance (second offense) and one count of trafficking in a controlled substance. The district court sentenced appellant to serve a term of 36 to 120 months in the Nevada State Prison for the compound or manufacture of a controlled substance count, and a concurrent sentence of 12 to 48 months for the trafficking count. This court affirmed appellant's judgment of conviction on direct appeal.¹ The remittitur issued on December 14, 2005.

On May 12, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The

¹Storey v. State, Docket No. 45343 (Order of Affirmance, November 17, 2005).

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.

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.² The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.³

Appellant claimed that his trial counsel was ineffective for failing to move the court for the exclusion of (1) prior bad acts and (2) a police statement regarding white supremacist materials found at appellant's residence. Our review of the record on appeal reveals that these claims are belied by the record.⁴ Counsel did object to the admission of this evidence.⁵ Additionally, this court held on direct appeal that the

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.


⁴Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

⁵Appellant claimed that counsel should have filed a motion in limine to exclude the remark regarding white supremacist materials. This remark occurred during trial, and thus, counsel could not have moved for its exclusion previous to trial. Counsel moved the court for a mistrial following the statement.


district court did not err in permitting the admission of prior bad act evidence. Further, this court held that the witness's remark regarding white supremacist materials had been cured and that the remark was harmless.⁶ Therefore, appellant failed to demonstrate that his counsel's performance was deficient or that he was prejudiced. Thus, the district court did not err in denying these claims.

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.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Saitta

cc: Hon. Donald M. Mosley, District Judge
James E. Storey
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁶Storey v. State, Docket No.45343 (Order of Affirmance, November 17, 2005).

⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).