

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES MIKKEL A/K/A JAMES
MIKELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48038

FILED

OCT 17 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge.

Appellant James Mikkel was convicted, pursuant to a jury verdict, of first-degree kidnapping with the use of a deadly weapon and robbery with the use of a deadly weapon. He was sentenced to serve two consecutive life terms in prison with the possibility of parole after 5 years for first-degree kidnapping with the use of a deadly weapon and two consecutive prison terms of 26 to 120 months for robbery with the use of a deadly weapon. We affirmed his judgment of conviction.¹ Mikkel filed a timely post-conviction petition for a writ of habeas corpus, which the district court denied after conducting an evidentiary hearing. This appeal followed.

¹Mikkel v. State, Docket No. 37059 (Order of Affirmance, October 1, 2002).

Mikkel contends that the district court erroneously denied his claims of ineffective assistance of trial and appellate counsel.² He first claims that trial counsel was not adequately prepared for trial as evidenced by: failing to present an opening statement; presenting a short closing argument; cross-examining the victim too briefly; and failing to call witnesses for the defense. The district court determined that Mikkel's assertions were bare allegations, and we conclude that he has not demonstrated that the district court erred in so finding.³ Therefore, the district court did not err in denying this claim.

Mikkel next argues that counsel was ineffective for not objecting to the admission of prior bad act evidence.⁴ Specifically, he contends that counsel should have objected to a police officer's reference at trial to other similar robberies in the area and to another police officer's testimony concerning a co-defendant's possible gang affiliation. The district court specifically found that no prior bad acts were improperly admitted at trial and that counsel properly refrained from making frivolous objections. Mikkel has not shown that the district court's findings of fact are unsupported by substantial evidence or clearly wrong.⁵ Therefore, the district court did not err in denying this claim.

²See Strickland v. Washington, 466 U.S. 668 (1984); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

³See Lader v. Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

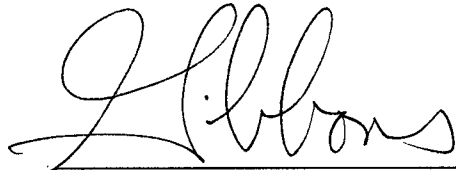
⁴See NRS 48.045.

⁵See Lader, 121 Nev. at 686, 120 P.3d at 1166.

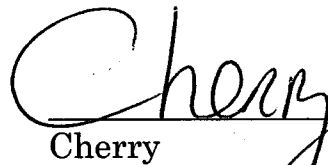
Finally, Mikkel contends that appellate counsel should have asserted on appeal that he was entitled to a separate trial. Specifically, Mikkel argues that significant spillover evidence from a co-defendant prejudiced him, but he neglects to identify the problematic evidence.⁶ Mikkel also asserts that a joint trial prejudiced him because his two co-defendants entered guilty pleas during trial, leaving him as the sole defendant. The district court found that appellate counsel was not ineffective for raising this "futile" matter on appeal. Mikkel has not shown that the district court's findings of fact in this regard are erroneous.⁷ Thus, the district court did not err in denying this claim.

Having considered Mikkel's arguments and concluded that the district court did not err in denying his habeas petition, we

ORDER the judgment of the district court AFFIRMED.

 J.

Gibbons

 J.

Cherry

 J.

Saitta

⁶Lisle v. State, 113 Nev. 679, 689, 941 P.2d 459, 466 (1997), limited on other grounds by Middleton v. State, 114 Nev. 1089, 1117 n.9, 968 P.2d 296, 315 n.9 (1998).

⁷See Lader, 121 Nev. at 686, 120 P.3d at 1166.

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