

IN THE SUPREME COURT OF THE STATE OF NEVADA

HELEN MARKS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48095

FILED

MAR 20 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Reed*
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; Michael A. Cherry, Judge.

On August 15, 2005, the district court convicted appellant, pursuant to a jury verdict, of one count of robbery. The district court adjudicated appellant a habitual criminal and sentenced appellant to serve a term of 5 to 20 years in the Nevada State Prison. This court affirmed the judgment of conviction and sentence on direct appeal.¹ The remittitur issued on May 16, 2006.

On May 24, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court.² 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

¹Marks v. State, Docket No. 45920 (Order of Affirmance, April 20, 2006). We note that this order mistakenly indicates that appellant was convicted of robbery with the use of a deadly weapon.

²Appellant filed a duplicate petition on June 6, 2006.

conduct an evidentiary hearing. On October 17, 2006, the district court denied appellant's petition. This appeal followed.

In her petition, appellant claimed that she received ineffective assistance of trial counsel. 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.³ The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.⁴

First, appellant claimed that her counsel was ineffective for failing to adequately represent or defend her in any of the proceedings. This was a bare and naked claim for relief that was unsupported by specific factual allegations.⁵ Accordingly, we conclude the district court did not err in denying this claim.

Second, appellant claimed that her counsel was ineffective for failing to summarize facts and the actual existence of information that was vital to the outcome of her trial. Appellant failed to identify what additional facts or information her counsel should have summarized, or how additional summarization of the facts and information would have

³Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

⁴Strickland, 466 U.S. at 697.

⁵See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

altered the outcome of the trial.⁶ Accordingly, we conclude the district court did not err in denying this claim.

Third, appellant claimed that her counsel was ineffective for failing to point out inconsistencies between police reports and witness testimony given at the trial and preliminary hearing. Appellant failed to demonstrate that her counsel was deficient or that she was prejudiced by counsel's actions. The record reveals that appellant's counsel thoroughly cross-examined the witnesses and identified numerous inconsistencies that occurred between witness testimony and the police reports. Appellant failed to identify what additional inconsistencies her counsel should have pointed out that would have resulted in a different outcome at trial. Accordingly, we conclude the district court did not err in denying this claim.

Appellant also claimed that her appellant counsel was ineffective. To state a claim of ineffective assistance of appellate counsel, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that the omitted issue would have a reasonable probability of success on appeal.⁷ Appellate counsel is not required to raise every non-

⁶See id.

⁷Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996) (citing Strickland, 466 U.S. 668).

frivolous issue on appeal.⁸ This court has held that appellate counsel will be most effective when every conceivable issue is not raised on appeal.⁹

Appellant claimed that her appellate counsel was ineffective for failing to state facts in the appeal. Appellant failed to demonstrate that her counsel was deficient or that she was prejudiced. Appellant failed to identify what additional facts her counsel should have raised on appeal, and failed to demonstrate that raising additional facts would have resulted in the success of her appellate claim. Accordingly, we conclude the district court did not err in denying this claim.

Finally, appellant claimed: (1) her conviction was invalid because her preliminary hearing had to be continued because the witnesses did not show up at the first scheduled hearing; (2) her conviction was invalid because it was based on false statements; (3) the judge engaged in misconduct by urging a juror who was feeling ill to remain on the jury for the duration of the trial; and (4) a juror committed misconduct by bringing donuts to the trial, thereby cultivating the favor of the court. Appellant waived these claims by failing to raise them in her direct appeal and by failing to demonstrate good cause for not raising the claims earlier.¹⁰ Accordingly, we conclude the district court did not err in denying these claims.


⁸Jones v. Barnes, 463 U.S. 745, 751 (1983).

⁹Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989).


¹⁰See NRS 34.810(1)(b)(2).

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.¹¹ Accordingly, we

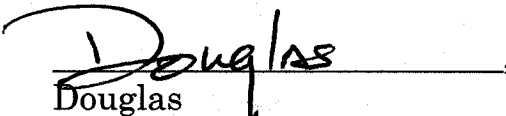
ORDER the judgment of the district court AFFIRMED.


_____, C.J.

Maupin


_____, J.

Gibbons


_____, J.

Douglas

cc: Eighth Judicial District Court Dept. 17, District Judge
Helen Marks
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

¹¹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).