

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIE WARREN A/K/A CHARLES  
RAY BOWERS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 48124

**FILED**

APR 06 2007

ORDER OF AFFIRMANCE

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

This is a proper person appeal from a district court order denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

On May 13, 2004, the district court convicted appellant Willy Warren, pursuant to a jury verdict, of robbery. He was sentenced to a term of 72 to 180 months in prison. This court affirmed his conviction and sentence.<sup>1</sup> Subsequently, Warren filed a timely postconviction petition for a writ of habeas corpus, which the district denied. This appeal followed.

Warren raised several claims of ineffective assistance of counsel in his petition. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, Warren must demonstrate that counsel's performance fell below an objective standard of reasonableness and that counsel's deficient performance prejudiced the defense.<sup>2</sup> He must demonstrate prejudice by showing a reasonable

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<sup>1</sup>Warren v. State, 121 Nev. 886, 124 P.3d 522 (2005).

<sup>2</sup>See Strickland v. Washington, 466 U.S. 668 (1984); Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996).

probability that but for counsel's errors the result of the trial would have been different.<sup>3</sup>

Warren argued that his counsel was ineffective for not presenting an entrapment defense and requesting a corresponding instruction. Warren's conviction stemmed from a robbery decoy operation conducted by the Las Vegas Metropolitan Police Department to curb the high number of street robberies and larcenies committed in downtown Las Vegas. Initially, Warren indicated at trial that he was raising an entrapment defense. The State responded that it intended to offer a minute order reflecting Warren's California conviction for larceny to rebut the entrapment defense.

"[E]ntrapment is an affirmative defense," and "[t]he defendant bears the burden of producing evidence of governmental instigation."<sup>4</sup> "Once the defendant puts forth evidence of governmental instigation, the State bears the burden of proving that the defendant was predisposed to commit the crime."<sup>5</sup> To prove predisposition, the State is entitled to offer proof of specific instances of conduct such as a prior conviction.<sup>6</sup>

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<sup>3</sup>See Thomas v. State, 120 Nev. 37, 43-44, 83 P.3d 818, 823 (2004).

<sup>4</sup>Foster v. State, 116 Nev. 1088, 1091, 13 P.3d 61, 63 (2000).

<sup>5</sup>Id.

<sup>6</sup>NRS 48.055(2); Foster, 116 Nev. at 1095, 13 P.3d at 66.

Here, over counsel's objection,<sup>7</sup> the district court ruled that if Warren testified and raised an entrapment defense, the prior California conviction could be used for both impeachment and to show predisposition.<sup>8</sup> Subsequently, Warren did not testify or call any witnesses. Counsel responded negatively to the district court's query whether an entrapment instruction was necessary, stating that the defense had presented no evidence of entrapment. Counsel's strategic or tactical decisions are "virtually unchallengeable absent extraordinary circumstances."<sup>9</sup> When faced with evidence of a prior larceny conviction showing Warren's predisposition to commit robbery, counsel abandoned an entrapment defense. And because no evidence of entrapment was

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<sup>7</sup>Counsel objected to admission of the minute order, arguing that the document was insufficient to establish that the person referenced in it was Warren.

<sup>8</sup>Warren also argued that the district court erred in admitting the minute order for impeachment purposes. However, as this claim is appropriate for direct appeal, it is procedurally barred. See NRS 34.810(1)(b)(2). Moreover, he raised this matter on direct appeal and further consideration of it is barred by the law of case. See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975). This court concluded that the district court erred in ruling the minute order admissible for impeachment purposes, but that the error was harmless because it was admissible to show Warren's predisposition to commit robbery if he raised an entrapment defense.

<sup>9</sup>Doleman v. State, 112 Nev. 843, 848, 921 P.2d 278, 280 (1996) (quoting Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990) abrogated on other grounds by Harte v. State, 116 Nev. 1054, 13 P.3d 420 (2000)).

introduced, an instruction on this defense was inappropriate.<sup>10</sup> We conclude that Warren failed to demonstrate that his counsel was ineffective in this regard. The district court did not err in denying this claim.

Warren next contended that his counsel was ineffective for not objecting to the district court limiting counsel's cross-examination of a police officer. To support his claim, Warren cited to the district court's query, "Anything else?" after the officer answered a question posed by counsel. Immediately following this comment, the prosecutor began her redirect of the officer. We conclude that the district court's question did not preclude counsel from further cross-examination. In fact, the district court asked if any additional questioning was forthcoming. Accordingly, we conclude that the district court did not err in denying this claim.

Finally, Warren asserted that counsel was ineffective for not investigating witnesses he requested. Warren's accomplice in the robbery pleaded guilty to conspiracy to commit robbery. During her plea canvass, she denied that force was used to rob the officer. Warren argued that counsel was aware of the accomplice's plea canvass and failed to secure witnesses to corroborate it. However, Warren failed to identify what potential witnesses, if any, could have testified that no force was used during the robbery. Moreover, force is not a necessary element of robbery.<sup>11</sup> We conclude that the district court did not err in denying this claim.

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<sup>10</sup>See generally Barron v. State, 105 Nev. 767, 773, 783 P.2d 444, 448 (1989).

<sup>11</sup>See NRS 200.380(1).

Having reviewed the record, and for the reasons set forth above, we conclude that the district court did not err in denying Warren's postconviction petition for a writ of habeas corpus. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>12</sup>

Parraguirre, J.  
Parraguirre

Hardesty, J.  
Hardesty

Douglas, J.  
Douglas

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

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<sup>12</sup>We deny Warren's proper person motions.