

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAMAAR BRAZIER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 48157

**FILED**

**MAY 25 2007**

ORDER OF AFFIRMANCE

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

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

On April 8, 2003, appellant Lazaar Brazier was convicted by the district court, pursuant to a jury verdict, of robbery of a victim 65 years old or older. The district court sentenced him to serve two consecutive terms of 120 months in prison with the possibility of parole in 40 months. This court affirmed his conviction on direct appeal.<sup>1</sup>

Brazier filed several postconviction petitions and supplemental petitions in the district court in proper person. The State opposed the petitions and supplements. The district court declined to appoint counsel to represent Brazier,<sup>2</sup> but conducted an evidentiary hearing where his trial counsel, Deputy Public Defender Craig Jorgenson,

---

<sup>1</sup>Brazier v. State, Docket No. 41173 (Order of Affirmance, April 20, 2005).

<sup>2</sup>See NRS 34.750.

testified.<sup>3</sup> The district court later issued an order on October 31, 2006, denying Brazier postconviction relief. This appeal followed.

Brazier contends on appeal that the district court improperly denied several claims that his trial counsel was ineffective. A claim of ineffective assistance of counsel presents a mixed question of law and fact subject to independent review.<sup>4</sup> To establish that counsel's assistance was ineffective, a two-part test must be satisfied.<sup>5</sup> First, a petitioner must show that the performance of his trial counsel was deficient, falling below an objective standard of reasonableness.<sup>6</sup> Second, there must be prejudice.<sup>7</sup> Prejudice is demonstrated by showing that, but for the errors of the petitioner's trial counsel, there is a reasonable probability that the result of the proceedings would have been different.<sup>8</sup> Judicial review of trial counsel's representation is highly deferential, and a petitioner must overcome the presumption that a challenged action was trial strategy.<sup>9</sup>

#### Failure to investigate and call witnesses

First, Brazier contends that the district court improperly denied his claim that his trial counsel, Jorgenson, was ineffective for

---

<sup>3</sup>Brazier was also briefly represented by Deputy Public Defender Lauren Diefenbach while he attempted to remove Jorgenson as counsel.

<sup>4</sup>See Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996).

<sup>5</sup>See Strickland v. Washington, 466 U.S. 668, 687 (1984); Kirksey, 112 Nev. at 987-88, 923 P.2d at 1107.

<sup>6</sup>See Strickland, 466 U.S. at 687.

<sup>7</sup>Id.

<sup>8</sup>Id. at 694.

<sup>9</sup>Id. at 689.

failing to investigate and call during trial two potential witnesses who allegedly possessed exculpatory information. Trial counsel has a duty to make all reasonable investigations into potential exculpatory evidence or to make a reasonable decision not to do so.<sup>10</sup> Specifically, Brazier contends that Jorgenson was ineffective for failing to investigate and call as witnesses a man named Tony Means, who is also called "New York," and another man named "Mr. Delgado." We disagree.

### Means

Brazier admitted during the postconviction hearing that he cashed a check belonging to the 81-year-old victim, but he maintains that he did not steal the check. Rather, he contends that the check was actually given to him by Means and that Means would have admitted this information had he been called by Jorgenson to testify.

Jorgenson, however, testified at the hearing that Brazier did not even inform him of the existence of the check until the day of trial. Brazier has failed to explain how Jorgenson could have investigated the check when he did not learn of the check until the day of his trial. After learning of the check, Jorgenson asked the district court for a continuance, but it was denied. Brazier has failed to show that Jorgenson's conduct was unreasonable.

Jorgenson also testified that he did not recall Brazier ever mentioning Means. Although Brazier's recollection conflicted with Jorgenson's testimony, the district court apparently found Jorgenson to be

---

<sup>10</sup>Id. at 691.

the more credible of the two men.<sup>11</sup> Moreover, Brazier's interest in Means as a witness is premised on the unlikely idea that Means would incriminate himself by admitting to robbing the victim.

We conclude that Brazier has failed to demonstrate that Jorgenson was ineffective on this matter, and the district court properly denied this claim.

### Delgado

Brazier also contends that Delgado was the driver of a stolen vehicle in which Brazier was a passenger on the day he was arrested. A wallet was found in the vehicle that contained a piece of identification belonging to the victim. Brazier maintains that he did not leave the wallet in the vehicle. Had Delgado testified, Brazier asserts, Delgado could have testified about who actually left the wallet in the vehicle.

Jorgenson testified at the evidentiary hearing that he was aware of Delgado, but he did not believe that Delgado had any value as a witness and Brazier did not indicate to him otherwise. The decision of whom to call as a witness is a strategic decision that rests within the discretion of trial counsel,<sup>12</sup> and Brazier has failed to specify exactly what information Delgado would have revealed that would have altered the outcome of his trial. Rather, Brazier only speculates that Delgado may have possessed information about who, besides Brazier, rode in the stolen vehicle Delgado was driving on the day Brazier was arrested. And even if

---

<sup>11</sup>See generally Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

<sup>12</sup>See Strickland, 466 U.S. at 689.

Brazier wanted to call Delgado to testify, the record indicates that the State subpoenaed Delgado but was unable to locate him.

We conclude that Brazier has also failed to demonstrate that Jorgenson was ineffective on this matter, and the district court properly denied this claim.

Failure to impeach with preliminary hearing transcript

Second, Brazier contends that the district court improperly denied his claim that Jorgenson was ineffective for failing to impeach the victim's trial testimony. Specifically, Brazier maintains that at the preliminary hearing the victim identified a different person as the robber and Jorgenson was ineffective for failing to impeach the victim at trial with the preliminary hearing transcript. We disagree.

Our review of the preliminary hearing transcript does not indicate that the victim identified a different person as the robber. Thus, even if Jorgenson had a transcript of the hearing and moved to admit it during trial when he cross-examined the victim, Brazier has failed to demonstrate that the transcript itself had any impeachment value. Moreover, the victim testified during trial that he had initially identified a person other than Brazier as the robber during the preliminary hearing but he corrected himself. This information was therefore brought to the jury's attention. Even assuming the preliminary hearing transcript had impeachment value, Jorgenson testified during the postconviction hearing that due to the victim's old age and his identification of Brazier during trial, he made the decision not to heavily cross-examine the victim during

trial on his misidentification of Brazier during the preliminary hearing. Jorgenson's decision was reasonable and is afforded deference on review.<sup>13</sup>

For these reasons, we conclude that Brazier has failed to demonstrate that Jorgenson was ineffective on this matter, and the district court properly denied this claim.

Failure to object to the admission of a wallet into evidence

Third, Brazier contends that the district court improperly denied his claim that Jorgenson was ineffective for failing to object to the admission into evidence of a wallet that contained the victim's identification that was found in a stolen vehicle that Brazier was riding in when he was arrested. We disagree. Brazier complains that the wallet did not belong to the victim. However, testimony at trial showed that the wallet contained identification belonging to the victim. Brazier has failed to specify on what basis Jorgenson should have objected to the admission of the wallet and that his objection would have been successful.<sup>14</sup> We conclude that Brazier has failed to demonstrate that Jorgenson was ineffective on this matter, and the district court properly denied this claim.

Failure to request handwriting expert

Fourth, Brazier contends that the district court improperly denied his claim that Jorgenson was ineffective for failing to secure a

---

<sup>13</sup>The day after the victim testified, Jorgenson moved to admit a transcript of the preliminary hearing. The motion was denied. This court affirmed on direct appeal the district court's decision to deny the motion. See Brazier, Docket No. 41173, at 6-9.

<sup>14</sup>See Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

handwriting expert to determine whether it was his signature on the victim's check. We disagree. Brazier admitted during postconviction proceedings that he cashed the victim's check. Thus, Brazier's own admission about cashing the check refutes his contention that Jorgenson should have called a handwriting expert.

Moreover, Jorgenson only learned of the check on the day of trial and moved for a continuance to secure the assistance of a handwriting expert. The district court denied the motion.<sup>15</sup> We conclude that Brazier has failed to demonstrate that Jorgenson was ineffective on this matter, and the district court properly denied this claim.

Failure of counsel to communicate, file pretrial motions, and prepare an adequate defense strategy

Finally, Brazier contends that the district court improperly denied his claim that Jorgenson was ineffective for failing to communicate with him, file pretrial motions, and prepare an adequate defense strategy. We disagree.

Brazier fails to explain how additional communications with Jorgenson would have altered the outcome of his trial. Brazier also fails to specify what pretrial motions Jorgenson should have filed and explain why those motions would have been granted, let alone how they would have altered the outcome of his trial.<sup>16</sup> And Brazier further fails to articulate what defense strategy Jorgenson should have pursued and how it would have been successful. We conclude that Brazier has failed to demonstrate

---

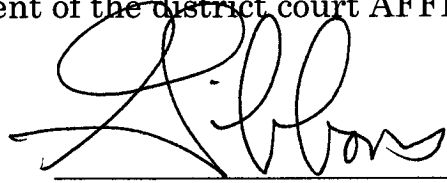
<sup>15</sup>This court affirmed on direct appeal the district court's decision to deny Brazier's motion. See Brazier, Docket No. 41173, at 4-6.

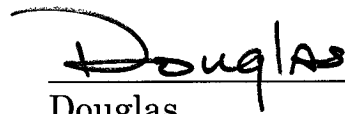
<sup>16</sup>Id.

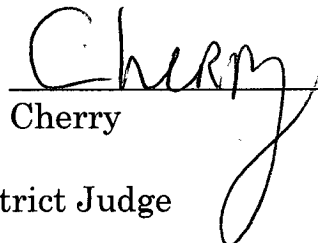
that Jorgenson was ineffective on these matters, and the district court properly denied these claims.

Having reviewed the record on appeal, and for the reasons set forth above,<sup>17</sup> we conclude that Brazier is not entitled to relief and the district court properly denied his petition. Briefing and oral argument are not warranted.<sup>18</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>19</sup>

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

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

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

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

---

<sup>17</sup>Brazier also asserts that the district court improperly advised him to raise his ineffective assistance of trial counsel claims on direct appeal. Even if this assertion is true, and the district court misinformed Brazier, he has failed to articulate how this provides any basis for relief.

<sup>18</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>19</sup>Brazier's proper person motion to file an opening brief was received by the clerk of this court on March 29, 2007. We have reviewed this document and conclude that no relief based upon it is warranted.