

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN LAMONT MONROE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48204

FILED

AUG 02 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Alvarado
DEPUTY CLERK

This is an appeal from a district court order denying appellant Steven Lamont Monroe's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

Monroe was convicted, pursuant to a jury verdict, of one count of conspiracy to commit robbery (count I) and two counts of robbery with the use of a deadly weapon (counts II & III). The district court sentenced Monroe to serve a prison term of 12-36 months for count I, two consecutive prison terms of 24-84 months for count II to run concurrently with the sentence imposed for count I, and two consecutive prison terms of 24-84 months for count III. This court affirmed Monroe's conviction and sentence on direct appeal.¹

¹Monroe v. State, Docket No. 42050 (Order of Affirmance, February 28, 2005).

With the assistance of counsel, Monroe filed a timely post-conviction petition for a writ of habeas corpus and a supplemental brief in support of the petition. The State opposed the petition. The district court heard arguments from counsel, and on October 4, 2006, entered an order denying Monroe's petition. This timely appeal followed.

Monroe contends that the district court erred by finding that he did not receive ineffective assistance of trial and appellate counsel. To state a claim of ineffective assistance of trial counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness, and that counsel's errors were so severe that there was a reasonable probability that the outcome would have been different.² "To establish prejudice based on the deficient assistance of appellate counsel, the defendant must show that the omitted issue would have a reasonable probability of success on appeal."³

First, Monroe contends that the district court erred by finding that trial counsel were not ineffective for failing to (1) investigate and present exculpatory evidence at trial, and (2) "properly interview and call potential alibi witnesses." Specifically, Monroe claims that counsels'

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

³Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996).

failure to secure both a written statement and the trial testimony of “David,” who allegedly informed three of Monroe’s attorneys, a defense investigator, his mother (Venus Hudson), and his girlfriend (Kanika Hawkins) that he was the perpetrator of the crime, not Monroe, entitles him to a reversal of his conviction. Additionally, Monroe contends that trial counsel were ineffective for (3) failing to present witnesses who knew that David was allegedly willing to accept responsibility for the crime, and (4) allegedly telling David that he would be subject to criminal charges if he appeared in court. We disagree.

At trial, the victims, Daniel Reuben and Gabor Orosz, testified that they were approached by Monroe, who demanded money and threatened them, stating, “Don’t make me pull my 9 out on you,” indicating that he had a gun. Orosz testified that Monroe possessed a black, semi-automatic handgun. Reuben gave Monroe \$130.00, and Orosz handed over approximately \$50-\$60.00. Both victims testified that David approached their vehicle and threatened them, and then punched Reuben twice in the face as Reuben sat on the driver’s side of the vehicle with the window down. The district court excluded the allegedly exculpatory statements made by David to a defense investigator, stating, among other things, “that the Court has serious questions on the trustworthiness and reliability of the statement.” In fact, Monroe concedes that his first retained attorney, Robert Langford, “did not particularly believe David.” The district court also rejected Monroe’s request for a continuance.

At the hearing in the district court on Monroe's habeas petition, the State noted that based on the trial testimony of the victims and Monroe's girlfriend, Kanika Hawkins, who was present at the scene of the crime, David was a co-conspirator and would not have exonerated Monroe. After hearing arguments from counsel, the district court stated that there were "trial strategy issues," and as a result, found that counsel were not ineffective. Based on all of the above, we conclude that Monroe has failed to demonstrate that had counsel secured a written statement and/or the trial testimony of David that there was a reasonable probability that the outcome of the trial would have been different. Therefore, we conclude that the district court did not err by rejecting this claim.

Second, Monroe contends that the district court erred by finding that counsel was not ineffective for failing to "thoroughly" cross-examine one of the victims, Daniel Reuben, and impeach him with pretrial statements not consistent with his trial testimony, namely, his statements regarding who approached him in his vehicle, Monroe or David, demanded money, and stated that he had a gun. We disagree. Defense counsel, Dowon Kang, conducted the cross-examination and specifically confronted Reuben and questioned him about his inconsistent statements. Accordingly, Monroe's contention is belied by the record.⁴ Additionally, despite the inconsistencies in Reuben's statements, the other victim,

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

Gabor Orosz, testified consistently with Reuben's trial testimony, that it was Monroe who possessed a black, semi-automatic handgun during the commission of the crime. Therefore, we further conclude that the district court did not err in rejecting this claim.

Third, Monroe contends that the district court erred by finding that trial counsel was not ineffective for failing to investigate and pursue "potential leads to support the defense." Specifically, Monroe claims that Kanika Hawkins informed trial counsel about a traffic surveillance camera located near the crime scene, and had counsel secured the videotape footage, it would have shown that Monroe did not possess a gun and "was not a true and willing participant of this incident."

We disagree with Monroe's contention and conclude that it is speculative, at best. Monroe has not satisfied his burden and demonstrated that a videotape ever existed, or that the traffic camera was in working order and in position to capture the incident. Moreover, even if the incident was captured by the surveillance camera, Monroe fails to demonstrate that it would have been favorable to the defense. Presumably, the videotape would have shown what Monroe admitted – that he approached the victims' vehicle and asked for money. The existence of a videotape, lacking audio capabilities, would not have supported Monroe's contention that he did not verbally threaten the victims with a gun, as they testified. Therefore, we conclude that the district court did not err by rejecting this claim.

Fourth, Monroe contends that the district court erred by finding that appellate counsel was not ineffective for failing to challenge the State's cross-examination of defense witness, Kanika Hawkins. Specifically, Monroe claims that the State violated NRS 50.095 when it questioned Hawkins about a citation she received for petit larceny after Hawkins stated that she had "never been in trouble before." After a bench conference, the district court overruled defense counsel's objection. NRS 50.085(3), however, "permits impeaching a witness on cross-examination with questions about specific acts as long as the impeachment pertains to truthfulness or untruthfulness and no extrinsic evidence is used."⁵ This court has stated that "larceny involve[s] dishonesty,"⁶ and is conduct

⁵Collman v. State, 116 Nev. 687, 703, 7 P.3d 426, 436 (2000). NRS 50.085(3) provides:

Specific instances of the conduct of a witness, for the purpose of attacking or supporting his credibility, other than conviction of crime, may not be proved by extrinsic evidence. They may, however, if relevant to truthfulness, be inquired into on cross-examination of the witness himself or on cross-examination of a witness who testifies to an opinion of his character for truthfulness or untruthfulness, subject to the general limitations upon relevant evidence and the limitations upon relevant evidence and the limitations upon interrogation and subject to the provisions of NRS 50.090.

⁶Yates v. State, 95 Nev. 446, 450, 596 P.2d 239, 242 (1979).

relevant to a witness' truthfulness. At the hearing on Monroe's petition, the district court found that the cross-examination was proper under NRS 50.085. We agree and conclude that this omitted issue did not have a reasonable probability of success on appeal, and that the district court did not err by rejecting this claim.

Fifth, Monroe contends that the district court erred by finding that appellate counsel was not ineffective for failing to challenge the sufficiency of evidence with regard to the use of a deadly weapon. In support of his argument, Monroe points out "the significant inconsistency in the alleged victim's [sic] testimony." In his direct appeal, however, Monroe did, in fact, specifically challenge the sufficiency of the evidence used to convict him, while arguing that pretrial statements made by the victims were not consistent with their trial testimony. This court rejected Monroe's argument and found that there was sufficient evidence to establish guilt beyond a reasonable doubt. Therefore, we conclude that Monroe's claim is belied by the record and the district court did not err by rejecting it.⁷


Finally, Monroe contends that the district court erred by finding that appellate counsel was not ineffective for failing to "federalize" his direct appeal issues in order to preserve them for federal appellate review. Monroe has offered no argument whatsoever demonstrating that

⁷Hargrove, 100 Nev. at 503, 686 P.2d at 225.


the results of his direct appeal would have been different if counsel had “federalized” the issues. Therefore, we conclude that the district court did not err by rejecting this claim.

Having considered Monroe’s contentions and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.⁸


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Saitta

⁸We also conclude that Monroe has not demonstrated that the district court erred as a matter of law in rejecting these claims without conducting an evidentiary hearing. See NRS 34.770; Thomas v. State, 120 Nev. 37, 44, 83 P.3d 818, 823 (2004) (stating that a habeas petitioner “is not entitled to an evidentiary hearing if the factual allegations are belied or repelled by the record”); Mann v. State, 118 Nev. 351, 354-55, 46 P.3d 1228, 1230 (2002).

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