

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY MARTIN SOUSA A/K/A
ANTHONY LEE MARTIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48532

FILED

MAY 24 2007

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

ORDER OF AFFIRMANCE

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; Joseph T. Bonaventure, Judge.

On February 2, 2005, the district court convicted appellant, pursuant to a jury verdict, of two counts of burglary and one count of grand larceny. The district court sentenced appellant to serve terms totaling 24 to 90 months in prison. This court affirmed the judgment of conviction and sentence on direct appeal.¹ The remittitur issued on November 1, 2005.

On August 30, 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

¹Sousa v. State, Docket No. 44613 (Order of Affirmance, October 3, 2005).

²He filed an identical petition in the district court on September 11, 2006.

district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On November 16, 2006, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that he 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

Appellant claimed counsel was ineffective for failing to interview and subpoena witnesses or to obtain additional surveillance video of appellant, apparently to establish that appellant did not enter the burglarized premises with the intent to commit a felony therein. Appellant failed to provide any facts to support this claim.⁵ Appellant also failed to explain how counsel's alleged deficiency prejudiced him. The jury was properly instructed that intent was a question of fact to be determined by the defendant's conduct and all other circumstances established by

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) (holding that a petitioner is not entitled to an evidentiary hearing on "bare" or "naked" claims for relief that are unsupported by any specific factual allegations).

evidence. Evidence regarding appellant's conduct and the circumstances of each incident were provided in surveillance video and testimony from security personnel. To rebut this evidence, appellant testified that he did not have intent sufficient to support the burglary convictions. The jury was capable of assessing the credibility of all the witnesses, including appellant.⁶ We conclude the district court did not err in denying these claims.

Appellant also claimed counsel was ineffective for failing to cross-examine the State's witnesses on whether appellant actually left the building after taking store property, which appellant argued would have negated the asportation element required for larceny. We conclude the district court did not err in rejecting this claim. Even if appellant had been able to establish that he did not leave the store, slight movement of the property is sufficient asportation,⁷ and appellant was not required to leave the store in order to satisfy the asportation element. We conclude the district court did not err in denying this claim.

Appellant further claimed counsel was ineffective for failing to allow him to participate in discovery and failing to investigate mitigation factors. Appellant provided no facts to support either of these claims.⁸ He also failed to explain how counsel's alleged deficient performance in these

⁶See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981) (holding that it is for the jury to determine the degree of weight and credibility to give testimony); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

⁷See Walker v. Sheriff, 93 Nev. 298, 300, 565 P.2d 326, 326 (1977).

⁸See Hargrove, 100 Nev. at 502, 686 P.2d at 225.

regards prejudiced him in light of the substantial evidence admitted at trial. We conclude the district court did not err in denying these claims.

Appellant next claimed counsel was ineffective for giving him inappropriate clothing to wear at trial, specifically, according to appellant, a Hawaiian shirt and khaki pants. Appellant failed to explain how counsel's alleged deficient performance in this regard prejudiced him in light of the substantial evidence admitted at trial. We conclude the district court did not err in denying this claim.

Appellant also claimed that the district court erred by failing to ensure he received a preliminary hearing and was present at a critical stage of the proceedings (argument on whether to consolidate or sever the charges); denying his motion to dismiss counsel and represent himself; refusing to admit evidence he offered during trial; refusing to conduct an evidentiary hearing; and awarding insufficient jail time credits. These claims were waived by appellant's failure to raise them on direct appeal.⁹ Appellant made no attempt to show good cause and prejudice sufficient to overcome this procedural bar.¹⁰ We conclude the district court did not err in denying these claims.

In addition, appellant claimed the district court erred in joining the charges and threatening to gag him in front of the jury. Appellant also claimed there was insufficient evidence to support his convictions. These claims were all raised and decided on their merits in appellant's direct appeal. This court's rulings are now the law of the case

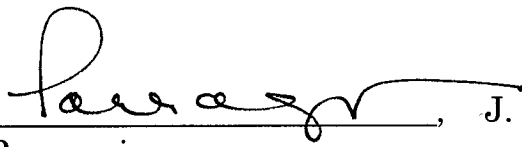
⁹See NRS 34.810(1)(b)(2).

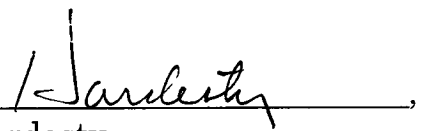
¹⁰See NRS 34.810(1)(b).


and they will not be revisited.¹¹ We conclude the district court did not err in denying these claims.

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.¹² Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Saitta

cc: Eighth Judicial District Court Dept. 6, District Judge
Anthony Martin Sousa
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

¹¹See Pellegrini v. State, 117 Nev. 860, 879, 34 P.3d 519, 532 (2001).

¹²See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).