

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOVAN YOUNG A/K/A JOVAN C.
YOUNG,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48588

FILED

JUN 29 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
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; Valorie Vega, Judge.

On June 22, 2005, the district court convicted appellant, pursuant to a jury verdict, of conspiracy to commit robbery (Count 1), robbery with use of a deadly weapon (Count 2), and grand larceny auto (Count 3). The district court sentenced appellant to serve a term of 19 to 48 months for Count 1, two consecutive terms of 48 to 120 months for Count 2, and a term of 19 to 48 months for Count 3 in the Nevada State Prison. The terms for each count were imposed concurrently. This court affirmed the judgment of conviction on appeal.¹ The remittitur issued on April 11, 2006.

On July 21, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The

¹Young v. State, Docket No. 45505 (Order of Affirmance, March 16, 2006).

State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On November 3, 2006, the district court denied appellant's petition. This appeal followed.

In his petition, appellant first claimed that he was denied conflict free counsel. To show a Sixth Amendment violation of his right to counsel, appellant must demonstrate both an actual conflict and an adverse effect on his attorney's performance.² "In general, a conflict exists when an attorney is placed in a situation conducive to divided loyalties."³ Where a petitioner demonstrates an actual conflict of interest which adversely affects his counsel's performance, this court presumes prejudice to the petitioner.⁴ However, appellant did not allege sufficient facts to show that his counsel's loyalty was compromised. He merely asserted that he was denied his choice of counsel. Therefore, the district court did not err in denying this claim.

Second, appellant claimed that his trial counsel was ineffective for failing to investigate. 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

²Cuyler v. Sullivan, 446 U.S. 335, 348 (1980); see also Burger v. Kemp, 483 U.S. 776, 783 (1987) (providing that prejudice is presumed "only if the defendant demonstrates that counsel actively represented conflicting interests and that an actual conflict of interest adversely affected his lawyer's performance" (citation omitted, emphasis added)).

³Clark v. State, 108 Nev. 324, 326, 831 P.2d 1374, 1376 (1992) (quoting Smith v. Lockhart, 923 F.2d 1314, 1320 (8th Cir. 1991)).

⁴Id.

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.⁵ The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.⁶

Appellant claimed that his counsel should have interviewed the State's witnesses before trial and conducted his own photographic lineup. However, he did not establish how such an investigation would have undermined the State's case. He did not allege sufficient facts to show that the identifications of either the victim of the carjacking or officer who observed him flee the stolen vehicle were particularly vulnerable to attack through the investigative methods that he proffered. Moreover, appellant also told an officer on the scene where firearms similar to those identified by the victim could be found. Thus, appellant did not allege sufficient facts related to his counsel's investigation that demonstrated a reasonable probability of a different outcome at trial. Therefore, the district court did not err in denying the claim.

Lastly, appellant claimed that the trial court improperly allowed a co-defendant's hearsay testimony into his trial and that police officers questioned him in violation of the Fifth Amendment. The district court did not err in dismissing these claims as they could have been raised

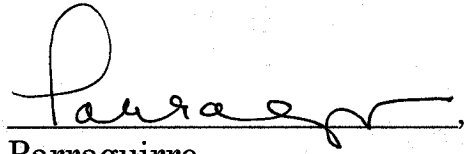
⁵Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

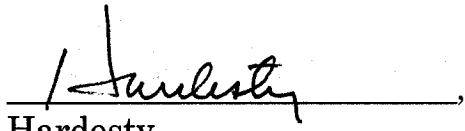
⁶Id. at 697.

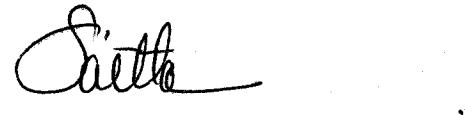
on appellant's direct appeal and appellant failed to demonstrate good cause for his failure to do so.⁷

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.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Saitta

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

⁷NRS 34.810(1)(b)(1), (2).

⁸See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).