

IN THE SUPREME COURT OF THE STATE OF NEVADA

JASON DUANE PARKER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48931

FILED

JUL 17 2007

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant's post-conviction petition for a writ of habeas corpus. Fifth Judicial District Court, Esmeralda County; John P. Davis, Judge.

On February 26, 2004, appellant Jason Duane Parker was convicted, pursuant to a jury verdict, of one count of sexual assault and two counts of voluntary sexual conduct between a prisoner and another person. The district court sentenced Parker to serve a prison term of 10 to 25 years for the sexual assault and two concurrent prison terms of 12 to 32 months for the voluntary sexual conduct. Parker filed a direct appeal, and this court affirmed the judgment of conviction.¹

On March 30, 2006, Parker filed a proper person post-conviction petition for a writ of habeas corpus. The State opposed the petition. The district court appointed counsel to represent Parker, and

¹Parker v. State, Docket No. 42913 (Order of Affirmance, September 23, 2005).

counsel supplemented the petition. After hearing arguments from counsel the district court denied the petition. Parker filed this timely appeal.

Parker contends that the district court erred in rejecting his claims of ineffective assistance of counsel. In particular, Parker contends that defense counsel was ineffective for failing to object to jury instruction number four² and for failing to offer an alternative jury instruction based on Green v. State.³

The district court found that defense counsel was not ineffective under the standard set forth in Strickland v. Washington.⁴ The district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal.⁵ Parker has not demonstrated that the district court's finding was not supported by substantial evidence or was clearly wrong. Moreover, Parker has not demonstrated that the district court erred as a matter of law.

²Jury instruction number four provided in relevant part: "Each charge and the evidence pertaining to it should be considered separately. The fact that you may find a defendant guilty or not guilty as to one of the offenses charged should not control your verdict as to any other offense charged."


³119 Nev. 542, 80 P.3d 93 (2003) (holding that jurors should be instructed that they should consider the lesser-included offense only if, after considering the primary offense, they find the defendant not guilty of the primary offense or are unable to agree).

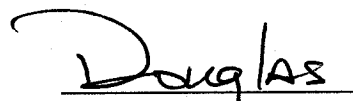
⁴466 U.S. 668 (1984).

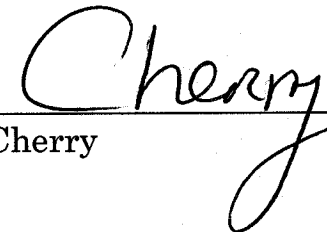
⁵See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

Having considered Parker's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. John P. Davis, District Judge
David H. Neely III
Attorney General Catherine Cortez Masto/Carson City
Esmeralda County District Attorney
Esmeralda County Clerk