

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEMETRICK SHARPE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49051

FILED

JUL 23 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Demetrick Sharpe's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Sharpe was convicted, pursuant to a jury verdict, of one count each of robbery with the use of a deadly weapon and grand larceny auto. The district court sentenced Sharpe to serve a prison term of 26 to 120 months for the robbery count, an equal and consecutive term for the deadly weapon enhancement, and a concurrent prison term of 16 to 72 months for the grand larceny auto count. This court affirmed the judgment of conviction on direct appeal.¹

On November 20, 2006, Sharpe filed a timely petition for a writ of habeas corpus. The State opposed the petition. After hearing argument from counsel, the district court denied the petition. This appeal follows.

¹Sharpe v. State, Docket No. 46139 (Order of Affirmance, May 23, 2006).

Sharpe contends that the district court erred by rejecting his claims of 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.² The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.³

Sharpe contends that trial counsel rendered ineffective assistance by failing to present character witnesses, despite informing the court that he was planning to do so. Sharpe claims that the failure to present these witnesses prejudiced his case because they were needed to support his testimony that he was innocent of the crime and that he possessed an impeccable character.

The district court found that trial counsel's decision not to present character witnesses was a tactical decision.⁴ We have held that "the trial lawyer alone is entrusted with decisions regarding legal tactics such as deciding what witnesses to call."⁵ We conclude that the district court did not err in finding that Sharpe's counsel made a tactical decision

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

³Strickland, 466 U.S. at 697.

⁴See Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989) (holding that tactical decisions by counsel are virtually unchallengeable absent extraordinary circumstances).

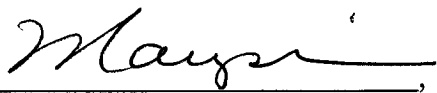
⁵Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002).

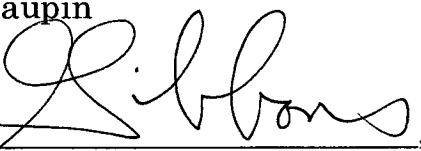
not to call character witnesses, and Sharpe did not demonstrate any extraordinary circumstances for challenging that decision.

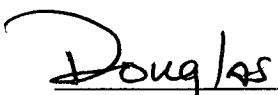
Moreover, even assuming that trial counsel was deficient for failing to present the character witnesses, Sharpe failed to demonstrate he was prejudiced by the deficient conduct. At trial, the victim identified Sharpe as the person who pointed a gun at her and took her purse and vehicle. Police apprehended Sharpe after he crashed the stolen vehicle into a tree. A videotape from a casino surveillance camera was admitted into evidence showing Sharpe as he attempted to escape from police. Further, a police officer testified that Sharpe confessed to taking the vehicle. Given the overwhelming evidence against him, Sharpe failed to demonstrate that, had the character witnesses testified on his behalf, there was a reasonable likelihood of a different outcome at trial. Accordingly, we conclude that the district court did not err in denying Sharpe's petition.

Having considered Sharpe's contention and concluded that it is without merit, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Maupin


_____, J.
Gibbons


_____, J.
Douglas

cc: Hon. Douglas W. Herndon, District Judge
Kirk T. Kennedy
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk