

IN THE SUPREME COURT OF THE STATE OF NEVADA

GREGORY RICHARDSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49649

FILED

FEB 21 2008

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

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; Jennifer Togliatti, Judge.

On March 20, 2006, the district court convicted appellant, pursuant to a jury verdict, of one count of conspiracy to commit robbery, one count of robbery with the use of a deadly weapon, and one count of battery with the use of a deadly weapon. The district court sentenced appellant to serve a term in the Nevada State Prison of 14 to 48 months for the conspiracy, a concurrent prison term of 36 to 120 months for the robbery plus an equal and consecutive prison term for the use of a deadly weapon, and a consecutive prison term of 24 to 72 months for the battery. Appellant's judgment of conviction was affirmed on appeal.¹ The remittitur issued on August 4, 2006.

On March 14, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The

¹Richardson v. State, Docket No. 46763 (Order of Affirmance, July 10, 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 July 30, 2007, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that his trial counsel was ineffective. To state a claim of ineffective assistance of 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 they rendered the jury's verdict unreliable.² The court can dispose of a claim if the petitioner makes an insufficient showing on either prong.³

First, appellant claimed that his trial counsel was ineffective for failing to investigate the facts surrounding prosecution witness Byroneasha Clark's reasons for testifying for the prosecution prior to her giving a statement or testifying at trial. Appellant failed to demonstrate that trial counsel's performance was deficient or that he was prejudiced. At trial, both the State and appellant's counsel questioned Clark extensively regarding her decision to testify and the plea agreement she made with the State in exchange for her testimony. Moreover, both the State and appellant's trial counsel elicited testimony concerning how appellant's plea agreement impacted Clark's possible sentences for the charges she faced for her own involvement in the events involved in this

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

³Strickland, 466 U.S. at 697.

case. Thus, the jury was well informed that Clark benefited from offering her testimony in the instant case and was able to determine how this fact affected Clark's credibility as a witness.⁴ Therefore, the district court did not err in denying appellant's claim.

Second, appellant claimed that trial counsel was ineffective for failing to file a motion to suppress Clark's testimony because Clark had offered three or four conflicting statements in regard to this case. Appellant failed to demonstrate that trial counsel was deficient or that he was prejudiced. Appellant failed to demonstrate that such a motion would have been meritorious.⁵ Moreover, at trial, appellant's counsel elicited testimony concerning inconsistencies in Clark's various statements and testimony. Thus, the jury was aware of these inconsistencies. Therefore, the district court did not err in denying this claim.

Third, appellant claimed that trial counsel was ineffective for failing to investigate letters that Clark wrote to appellant disavowing his participation in the crimes. Appellant failed to demonstrate that he was prejudiced. At trial, the State elicited testimony regarding a letter Clark wrote to appellant wherein Clark stated that she knew that appellant had not engaged in any wrongdoing. This letter, along with several others, was entered into evidence and the jury was able to review the correspondence that took place between appellant and Clark prior to appellant's trial. Appellant failed to elucidate how a further investigation

⁴See Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

⁵See Kirksey v. State, 112 Nev. 980, 990, 923 P.2d 1102, 1109 (1996).

concerning this correspondence would have altered the outcome of his trial.⁶ Therefore, the district court did not err in denying this claim.

Fourth, appellant claimed that his trial counsel was ineffective for failing to investigate the access of other persons to the place where the .22 caliber shells were found in appellant's residence. Appellant failed to demonstrate that his trial counsel was deficient or that he was prejudiced. At trial, Lieutenant Theodore Snodgrass testified that Richardson admitted to possessing the ammunition, stating, "He said something about that he had been holding them for somebody. . . . That he was holding the shells for someone else." Appellant failed to state which individuals, other than himself, had access to the area where he admitted he was keeping the shells. Therefore, the district court did not err in denying this claim.

Fifth, appellant claimed that his trial counsel was ineffective for failing to investigate whether the .22 caliber shells that were found in his residence were of the same type as the cartridge found at the scene of the crime. At trial, Dinnah Caluag of the LVMPD forensic lab, an expert in the area of firearms and tool marks examinations, testified that the cartridge case found at the scene of the crime was consistent with a portion of the ammunition found in appellant's closet because they shared common manufacturing marks. However, Caluag also testified that she could not conclusively state that the cartridge case found at the crime scene came out of the box of ammunition found in appellant's closet. Thus, while the evidence did not conclusively show that the cartridge found at the crime scene came out of the ammunition box found in appellant's

⁶Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).

closet, it did show that the ammunition found in appellant's closet was of the same type as the cartridge found at the scene. Thus, it is unlikely that further investigation of this issue would have altered the outcome of appellant's trial.⁷ Therefore, the district court did not err in denying appellant's claim.

Next, appellant argued that the deadly weapon enhancement was unconstitutional because the jury did not find the facts necessary to enhance his sentence, namely that he used a deadly weapon in the commission of a crime, pursuant to NRS 193.165. This claim is waived because this claim should have been raised on direct appeal, and appellant failed to demonstrate good cause for his failure to do so.⁸ Moreover, as a separate and independent ground to deny relief, appellant's claim lacked merit. In this case, the jury determined that appellant used a deadly weapon in the commission of the robbery and battery. Therefore, the district court properly imposed the deadly weapon enhancement on those particular counts and enhanced appellant's sentence.⁹

⁷Id.

⁸NRS 34.810(1)(b)(2); see Franklin v. State, 110 Nev. 750, 877 P.2d 1058 (1994) overruled in part on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999) (holding that claims that are appropriate for direct appeal must be raised on direct appeal or they will be deemed waived).

⁹See Blakely v. Washington, 542 U.S. 296, 303 (2004) (stating that precedent makes it clear that the statutory maximum that may be imposed is "the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant") (emphasis in original).

Further, appellant claimed that the district court erred in submitting a special verdict form to the jury because it required the jury to find whether appellant was armed with a deadly weapon during the commission of the crimes but failed to instruct the jury that separate deadly weapon findings must be proved beyond a reasonable doubt. This claim is waived because this claim should have been raised on direct appeal, and appellant failed to demonstrate good cause for his failure to do so.¹⁰ Moreover, as a separate and independent ground to deny relief, appellant's claim lacked merit. Jury instruction number 5 specifically instructed the jury that the State had the burden to prove every material element of the crime beyond a reasonable doubt. The jury determined that appellant was guilty of robbery with the use of a deadly weapon and battery with the use of a deadly weapon. Therefore, the district court did not err in denying this claim.

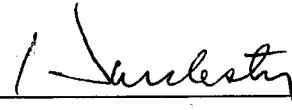
Finally, appellant claimed that the evidence presented at the preliminary hearing was insufficient to justify the justice court's action in binding him over to the district court. Notably, appellant already raised this issue on direct appeal and this court specifically determined that there was sufficient evidence both to bind appellant over to the district court and to sustain the jury's conviction. Thus, this claim is barred by the doctrine of law of the case.¹¹ Therefore, the district court did not err in denying this claim.

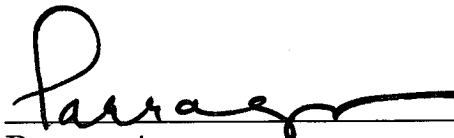
¹⁰NRS 34.810(1)(b)(2); see Franklin, 110 Nev. 750, 877 P.2d 1058 overruled in part on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

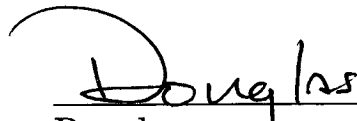
¹¹See Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975).

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.¹³


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Jennifer Togliatti, District Judge
Gregory Richardson
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

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

¹³We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.