

IN THE SUPREME COURT OF THE STATE OF NEVADA

LEON KENTRILL MCCOY A/K/A LEON
KENTRELL MCCOY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49973

FILED

DEC 03 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
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; Jackie Glass, Judge.

On January 25, 2005, the district court convicted appellant, pursuant to a jury verdict, of murder with the use of a deadly weapon. The district court sentenced appellant to serve two equal and consecutive terms of life in the Nevada State Prison with the possibility of parole after twenty years. This court affirmed appellant's conviction on appeal.¹ The remittitur issued on May 2, 2006.

On March 15, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the

¹McCoy v. State, Docket No. 44583 (Order of Affirmance, April 7, 2006).

district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On July 3, 2007, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that (1) the trial court improperly permitted accomplice hearsay testimony, (2) the trial court improperly denied appellant the right to present a defense by excluding a videotaped statement of a witness, (3) the trial court failed to instruct the jury that a witness was under the influence of drugs, (4) the trial court permitted a tainted in-court identification, (5) there was insufficient evidence to sustain appellant's conviction and the deadly weapon enhancement, (6) law enforcement failed to adequately investigate appellant's case, (7) the State committed prosecutorial misconduct by making improper statements during closing arguments and withholding evidence, (8) the trial court improperly removed appellant's family from the courtroom, and (9) jurors of appellant's race were systematically excluded. These claims should have been raised on appellant's direct appeal, and appellant failed to demonstrate good cause for his failure to do so.² Therefore, the district court did not err in denying these claims.

Appellant also claimed that a witness improperly testified that appellant was a "known killer" and improperly communicated with jurors

²NRS 34.810(1)(b)(2).

outside the courtroom.³ This court rejected these claims on direct appeal. The doctrine of the law of the case prevents further litigation of these claims and cannot be avoided by a more detailed and focused argument.⁴ Therefore, the district court did not err in denying these claims.

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

First, appellant claimed that his counsel was ineffective for failing to communicate with appellant and keep appellant apprised of the issues at appellant's trial. Appellant did not demonstrate that his counsel was deficient or that he was prejudiced. Appellant did not allege any

³The witness actually testified that appellant was a "known criminal."

⁴Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

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

⁶Strickland, 466 U.S. at 697.

specific facts regarding what issues his counsel failed to keep him apprised of during the trial or how further communication would have altered the outcome.⁷ Therefore, the district court did not err in denying this claim.

Second, appellant claimed that his counsel was ineffective for (1) failing to interview or subpoena alibi witnesses, (2) failing to present eyewitnesses to the crime that could testify that appellant was not the killer, (3) failing to call witnesses to impeach the State's witnesses, and (4) failing to call witnesses that could prove the theory of defense. Appellant did not demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Appellant did not identify the possible or potential witnesses his counsel should have called or the potential testimony that the witnesses would have offered.⁸ Further, appellant did not identify the information that would have been obtained had his counsel interviewed any of the witnesses.⁹ Therefore, we conclude the district court did not err in denying this claim.

Third, appellant claimed that his counsel was ineffective for not permitting appellant to testify at trial. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. The

⁷Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984) (holding that "bare" or "naked" claims, which are unsupported by specific facts, are insufficient to grant relief).

⁸Id.

⁹Id.

decision on whether a defendant testifies in his own defense at trial is one for the defendant to make.¹⁰ The record reveals that the district court thoroughly advised appellant of his right to testify and the implications of doing so. Appellant stated that he understood his rights. Appellant did not inform the court that he wished to testify in his own behalf. Moreover, appellant failed to set forth any facts related to what his testimony would have been.¹¹ To the extent that appellant challenged a recommendation of his counsel not to testify, counsel's advice was strategic in nature and appellant failed to demonstrate that he was prejudiced by counsel's advice.¹² Therefore, we conclude that the district court did not err in denying this claim.

Fourth, appellant claimed that his trial counsel was ineffective for failing to investigate facts related to the credibility of State witnesses Wayne Grayson, Tonya Jackson, and Deanna O'Dell. Appellant failed to establish that his counsel was defective or that he was prejudiced. Appellant did not allege any specific facts about Grayson, Jackson, and O'Dell that counsel could have discovered that would have undermined

¹⁰See Lara v. State, 120 Nev. 177, 182, 87 P.3d 528, 531 (2004) (citing Jones v. Barnes, 463 U.S. 745, 751 (1983)).

¹¹Hargrove, 100 Nev. at 502, 686 P.2d at 225.

¹²See 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).

their credibility and affected the outcome of the trial.¹³ Therefore, the district court did not err in denying this claim.

Fifth, appellant claimed that his trial counsel was ineffective for failing to object to the district court's order forcing appellant to wear an electronic device. Appellant failed to establish that his counsel was deficient or that he was prejudiced. Appellant did not identify the type of device that he was forced to wear.¹⁴ Further, he did not allege that wearing the device prejudiced the jury or hindered his ability to consult with his counsel and follow the proceedings.¹⁵ Therefore, the district court did not err in denying this claim.

Sixth, appellant claimed that his trial counsel was ineffective for being misled by the State regarding Sydney Brown, who looked like appellant but was not investigated for the crime. Appellant failed to establish that his counsel was deficient or that he was prejudiced. Appellant did not allege any specific facts about how the State misled his

¹³See Hargrove, 100 Nev. at 502, 686 P.2d at 225.

¹⁴See id.

¹⁵See generally, Hymon v. State, 121 Nev. 200, 207-08, 111 P.3d 1092, 1098 (2005) (citations omitted) (stating that visible physical restraints may undermine a defendant's presumption of innocence in the eyes of the jury and the stun belt, while often concealed, may hinder a defendant's ability to consult with his attorney or follow the proceedings).

counsel about Brown.¹⁶ Further, photographs of Brown and appellant were admitted as exhibits so that the jury could judge whether appellant looked like Brown. Therefore, the district court did not err in denying this claim.

Appellant also claimed that he received ineffective assistance of appellate counsel. To state a claim of ineffective assistance of appellate counsel, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that the omitted issue would have a reasonable probability of success on appeal.¹⁷ Appellate counsel is not required to raise every non-frivolous issue on appeal.¹⁸ This court has held that appellate counsel will be most effective when every conceivable issue is not raised on appeal.¹⁹

Appellant claimed that his appellate counsel was ineffective for failing to communicate with appellant and keep appellant involved in what was going on during his direct appeal. Specifically, appellant asserted that his counsel did not keep him informed of the grounds being raised on appeal, denied him the "right to present a defense on direct

¹⁶See Hargove, 100 Nev. at 502, 686 P.2d at 225.

¹⁷Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996).

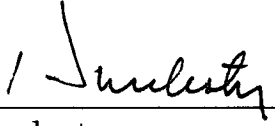
¹⁸Jones v. Barnes, 463 U.S. 745, 751 (1983).


¹⁹Ford, 105 Nev. at 853, 784 P.2d at 953.


appeal," and failed to inform him that his conviction had been affirmed. Appellant failed to demonstrate that his appellate counsel was deficient or that he was prejudiced. Appellant did not identify any issues that his counsel failed to argue, but would have argued had his counsel spoken with him. Appellant also failed to identify what issues his counsel denied him the opportunity to argue on appeal. Moreover, the outcome of appellant's appeal would have been the same regardless of whether his counsel informed him that it was affirmed. Therefore, the district court did not err in denying this claim.

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.²⁰ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

²⁰See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Jackie Glass, District Judge
Leon Kentrill McCoy
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Clark County District Attorney David J. Roger
Eighth District Court Clerk