

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM LYLE DUNN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50249

**FILED**

OCT 13 2008

THOMAS A. LINDEMAN  
CLERK OF SUPREME COURT  
BY: *[Signature]*  
CHIEF 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; Michael Villani, Judge.

On November 1, 2005, the district court convicted appellant, pursuant to a jury verdict, of robbery.<sup>1</sup> The district court adjudicated appellant a habitual criminal and sentenced appellant to serve a term of 60 to 150 months in the Nevada State Prison. This court affirmed appellant's judgment of conviction on appeal.<sup>2</sup> The remittitur issued on April 18, 2006.

On March 23, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The

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<sup>1</sup>An amended judgment of conviction was entered November 28, 2005.

<sup>2</sup>Dunn v. State, Docket No. 46291 (Order of Affirmance, March 24, 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 August 15, 2007, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that his 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 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.<sup>3</sup> The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.<sup>4</sup>

Appellant claimed that his counsel was ineffective for failing to obtain video evidence from the scene of the robbery and present it to the jury. Specifically, appellant claimed that his counsel failed to obtain video from a camera that was pointed at the door of the establishment that would have demonstrated appellant's innocence by showing that he did not use force during the crime. He asserted that the video evidence should have been presented at the preliminary hearing, motion to dismiss, trial, and on appeal. He further claimed that his counsel failed to present an expert witness concerning the video evidence to rebut the State's expert witness testimony.

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<sup>3</sup>Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in Strickland).

<sup>4</sup>Strickland, 466 U.S. at 697.

Appellant failed to demonstrate that his counsel's performance was deficient. Counsel was not appointed to represent appellant until March 18, 2005, eight days after he was arrested at the scene of the alleged robbery. The owner of the business testified that the video data from the surveillance system is recorded over every three to four days. Thus, the video evidence of the robbery no longer existed at the time that counsel began representing appellant. We further note that on direct appeal, this court held that the district court did not err in denying his motion to dismiss based on the State's failure to gather the video evidence because appellant failed to show that the videotape contained material, exculpatory information or that the officers acted in bad faith by not collecting it. Further, the State did not present any expert testimony during trial and appellant failed to identify the expert appellant should have called to support his theory of defense.<sup>5</sup> Therefore, the district court did not err in denying this claim.

Appellant also claimed that the State violated Brady v. Maryland<sup>6</sup> when it did not preserve a recording of the robbery or turn it over to the defense. As noted previously, this court held that appellant failed to show that the videotape contained material, exculpatory information. The doctrine of the law of the case prevents further litigation of this issue and cannot be avoided by a more detailed and precisely

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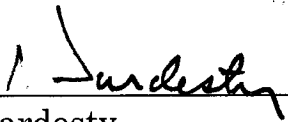
<sup>5</sup>Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

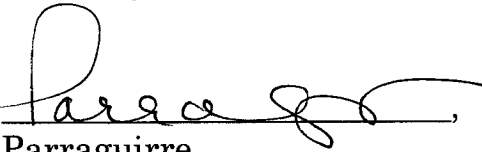
<sup>6</sup>373 U.S. 83 (1963).

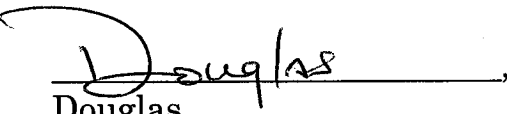
focused argument.<sup>7</sup> Therefore, the district court did not err in denying this claim.

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.<sup>8</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>9</sup>

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

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<sup>7</sup>See Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975).

<sup>8</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>9</sup>We 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.

cc: Hon. Michael Villani, District Judge  
William Lyle Dunn  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk