

IN THE SUPREME COURT OF THE STATE OF NEVADA

SCOTT MICHAEL TYZBIR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50278

FILED

FEB 11 2008

ORDER OF AFFIRMANCE

TRACIE N. LINDEMAN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

This is an appeal from a district court order denying appellant's post-conviction petition for a writ of habeas corpus. First Judicial District Court, Carson City; William A. Maddox, Judge.

On March 9, 2004, appellant Scott Michael Tyzbir was convicted, pursuant to a jury verdict, of one count of felony possession of a controlled substance. The district court sentenced Tyzbir to serve a prison term of 19 to 48 months. Tyzbir filed a direct appeal, and this court affirmed the judgment of conviction.¹

On August 19, 2005, Tyzbir 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 Tyzbir. After hearing argument from counsel, the district court denied the petition. Tyzbir filed this timely appeal.

Tyzbir contends that the district court erred in rejecting his claims of ineffective assistance of counsel without conducting an evidentiary hearing. Specifically, Tyzbir argues that trial counsel was

¹Tyzbir v. State, Docket No. 43076 (Order of Affirmance, March 29, 2005).

ineffective for failing to: (1) communicate with him regarding the case; (2) present evidence at the preliminary hearing; (3) "refute testimony of the arresting officer at the motions hearing"; (4) file a motion to suppress based on Tyzbir's illegal detention and a break in the chain of custody; (5) file a timely motion for discovery of the booking video; (6) investigate Tyzbir's "previous relationship" with the arresting officers; (7) file a motion to dismiss based on inconsistent testimony and the State's failure to preserve the booking video; (8) file a pretrial petition for a writ of habeas corpus challenging the probable cause determination; (9) present expert witnesses at trial on the discrepancy in the weight of the controlled substance; and (10) present mitigating witnesses and evidence at the sentencing hearing. Tyzbir also alleges that he received ineffective assistance of counsel on direct appeal.

The district court found that counsel was not ineffective under the standard set forth in Strickland v. Washington.² In particular, the district court found that "counsel's performance was not deficient" and that Tyzbir could not demonstrate prejudice "because there was overwhelming evidence of guilt." The district court's factual findings regarding claims of ineffective assistance of counsel are entitled to deference when reviewed on appeal.³ Tyzbir has not demonstrated that the district court's findings of fact are not supported by substantial


²466 U.S. 668 (1984).


³See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).


evidence or are clearly wrong. Moreover, Tyzbir has not demonstrated that the district court erred as a matter of law.⁴

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

ORDER the judgment of the district court AFFIRMED.⁵


_____, J.
Maupin


_____, J.
Cherry


_____, J.
Saitta

⁴See *id.* at 648-49, 878 P.2d at 279.

⁵On November 13, 2007, counsel for appellant filed a motion to withdraw as counsel of record in this appeal. We deny the motion as moot. Additionally, Tyzbir has submitted several proper person documents to this court. Because Tyzbir is represented by counsel in this matter, we decline to grant him permission to file documents in proper person. See NRAP 46(b). Accordingly, this court shall take no action on and shall not consider the proper person documents that Tyzbir has submitted to this court.

cc: Hon. William A. Maddox, District Judge
Carolyn E. Tanner
Attorney General Catherine Cortez Masto/Carson City
Carson City District Attorney
Carson City Clerk
Scott Michael Tyzbir