

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES EDWARD WATTS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50472

CHARLES EDWARD WATTS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50501

FILED

DEC 29 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Docket No. 50472 is a proper person appeal from an order of the district court denying a motion for a new trial. Docket No. 50501 is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Valorie Vega, Judge. We elect to consolidate these appeals for disposition.¹

On April 5, 2006, the district court convicted appellant Charles Watts, pursuant to a jury verdict, of one count of trafficking in a controlled substance and one count of felony escape. The district court sentenced appellant to serve a term of 48 to 120 months in the Nevada State Prison for trafficking and a consecutive prison term of 12 to 30

¹See NRAP 3(b).

months for escape. This court affirmed appellant's judgment of conviction and sentence on appeal.² The remittitur issued on September 19, 2006.

Docket No. 50472

On September 28, 2007, appellant filed a proper person motion for a new trial. The State opposed the motion. On November 21, 2007, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that the police officers fabricated their testimony. A motion for a new trial made on any grounds other than newly discovered evidence must be made within seven days after the jury's verdict.³ As appellant's motion was not based upon newly discovered evidence and was not filed within seven days after the jury's verdict, the district court did not err in denying appellant's motion.

Docket No. 50501

On May 21, 2007, appellant filed a timely proper person post-conviction petition for a writ of habeas corpus in the district court. On July 17, 2007, appellant filed an amended post-conviction petition for a writ of habeas corpus. The 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 December 7, 2007, the district court denied appellant's petition. This appeal followed.

First, appellant claimed 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

²Watts v State, Docket No. 47184 (Order of Affirmance, August 24, 2006).

³See NRS 176.515(4).

performance fell below an objective standard of reasonableness, and there is a reasonable probability that in the absence of counsel's errors, the results of the proceedings would have been different.⁴ The court need not consider both prongs if the petitioner makes an insufficient showing on either prong.⁵

Appellant claimed that his trial counsel was ineffective for failing to investigate a surveillance video from Arizona Charlie's Hotel and Casino that covered the parking lot during his arrest. At trial, the surveillance video from Arizona Charlie's was played for the jury. The video showed appellant's arrest; however, appellant claimed that an investigation would have uncovered further surveillance video. Appellant failed to demonstrate that he was prejudiced. At trial, Officer Ziros testified that he asked Arizona Charlie's for any video recordings of the incident and that the video played in court was the entirety of what Arizona Charlie's gave him. As such, appellant failed to demonstrate that an investigation would have uncovered any additional surveillance and would have resulted in a reasonable probability of a different outcome.⁶ Further, a review of the record reveals that there was substantial evidence of appellant's guilt, given the testimony of two police officers who witnessed appellant discard drugs and drug paraphernalia. Therefore, the district court did not err in denying this claim.

⁴See Strickland v. Washington, 466 U.S. 668, 687-88, 694 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting test set forth in Strickland).

⁵Strickland, 466 U.S. at 697.

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

Next, appellant claimed that his appellate counsel was ineffective. 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.⁷ Appellate counsel is not required to raise every non-frivolous issue on appeal.⁸ This court has held that appellate counsel will be most effective when every conceivable issue is not raised on appeal.⁹

Appellant claimed that his appellate counsel was ineffective for failing to argue on direct appeal that the State withheld exculpatory evidence by not presenting a surveillance video of the entire incident at Arizona Charlie's. Appellant failed to demonstrate that he was prejudiced. As stated above, Officer Ziros testified that the surveillance tape that was played before the jury was the entirety of the tape that Arizona Charlie's provided. Further, there was substantial evidence of appellant's guilt given the testimony of two police officers, who witnessed appellant discard drugs and drug paraphernalia. Thus, appellant failed to demonstrate that any claim regarding the withholding of exculpatory evidence would have had a reasonable probability of success on appeal. Therefore, the district court did not err in denying this claim.

Finally, appellant claimed that the State withheld exculpatory evidence by not presenting a surveillance video of the entire incident at Arizona Charlie's. Appellant failed to demonstrate that the State

⁷Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996).

⁸Jones v. Barnes, 463 U.S. 745, 751 (1983).


⁹Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989).

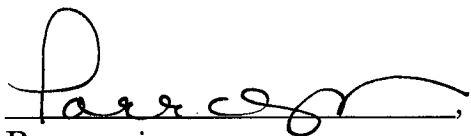
withheld surveillance video and appellant failed to demonstrate that the video was material to his defense.¹⁰ Thus, appellant failed to demonstrate good cause for failing to raise this claim in his direct appeal and prejudice.¹¹ Therefore, the district court did not err in denying this claim.

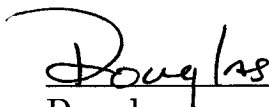
Conclusion

Having reviewed the records 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 judgments of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Valorie Vega, District Judge
Charles Edward Watts
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

¹⁰State v. Bennett, 119 Nev. 589, 599, 81 P.3d 1, 8 (2003).

¹¹See NRS 34.810(b)(2).

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