

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAY JOSEPH MCGRATH, SR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50573

JAY JOSEPH MCGRATH, SR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50574

FILED

MAR 06 2008

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

ORDER OF AFFIRMANCE

These are consolidated appeals from a district court order “denying and/or dismissing” appellant’s post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Robert H. Perry, Judge.

On November 4, 2005, appellant Jay Joseph McGrath was convicted in two separate district court cases, pursuant to guilty pleas, of one count of assault with a deadly weapon and one count of uttering a forged instrument. The district court sentenced McGrath to serve a prison term of 16 to 72 months for the assault case and a consecutive prison term of 12 to 34 months for the uttering case. McGrath did not file direct appeals.

On May 10, 2006, McGrath filed in the district court a proper person post-conviction petition for a writ of habeas corpus in both district court cases. The district court appointed counsel to represent McGrath, and counsel filed a supplement to the petition. The State filed an opposition to the petition and a motion for partial dismissal of the petition.

After conducting an evidentiary hearing, the district court denied the petition. McGrath filed this timely appeal.

McGrath contends that the district court erred in rejecting his claims of ineffective assistance of counsel. Specifically, McGrath contends that defense counsel were ineffective for failing to discuss a claim of self-defense to the assault charge and a defense of necessity to the uttering a forged instrument charge. Additionally, McGrath contends that defense counsel were ineffective in promising him probation and in failing to present evidence that he was a "battered person" to mitigate his conduct.

The district court found that defense counsel were not ineffective under the standard set forth in Strickland v. Washington.¹ In particular, the district court found that McGrath was not prejudiced by counsels' failure to discuss potential defenses because there was no factual basis for a self-defense claim and there was no legal basis for a necessity defense to a charge of uttering a forged instrument. Additionally, the district court found that the record belied McGrath's claim that defense counsel promised him probation. Finally, the district court found that the additional evidence that McGrath was "battered" would not have impacted the sentence, which was based on McGrath's significant criminal history. The district court's factual findings are entitled to deference when reviewed on appeal.² McGrath has not demonstrated that the district court's findings of fact are not supported by substantial evidence. Moreover, McGrath has not demonstrated that the district court erred as a

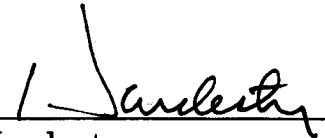
¹466 U.S. 668 (1984).

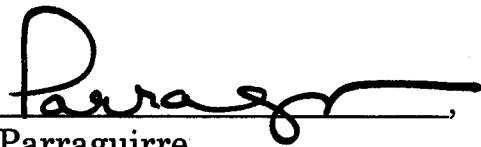
²See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

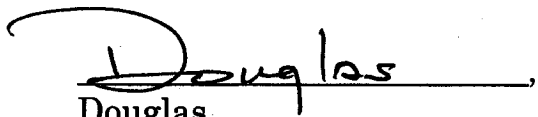
matter of law.³ Accordingly, the district court did not abuse its discretion in denying the petition.

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

ORDER the judgment of the district court AFFIRMED.⁴


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Robert H. Perry, District Judge
Jay Joseph McGrath, Sr.
Mary Lou Wilson
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

³See *id.*; see also *Kirksey v. State*, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996) (petitioner must show a reasonable probability that, but for counsel's deficient conduct, he would have insisted on going to trial).

⁴Because McGrath is represented by counsel in this matter, we decline to grant McGrath permission to file documents in proper person in this court. See NRAP 46(b). Accordingly, this court shall take no action on and shall not consider the proper person documents that McGrath has submitted to this court in this matter.