

IN THE SUPREME COURT OF THE STATE OF NEVADA

CURTIS CHARLES BROWN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50660

FILED

SEP 09 2008

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

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Curtis Charles Brown's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On June 14, 2005, the district court convicted Brown, pursuant to a guilty plea, of one count of attempted sexual assault of a minor under 14 years of age. The district court sentenced Brown to serve a prison term of 15 years. Brown did not file a direct appeal.

On January 30, 2006, Brown filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed a response, the district court conducted an evidentiary hearing, and the district court denied Brown's petition.

On appeal, we remanded the matter to the district court with instructions to conduct an evidentiary hearing on Brown's appeal

deprivation claim.¹ Thereafter, the district court determined that Brown was deprived of his right to a direct appeal and appointed counsel to assist Brown in filing a habeas petition that raised issues appropriate for a direct appeal.²

On June 29, 2007, Brown filed a second amended and supplemental petition for a writ of habeas corpus in the district court. The State filed a response. The district court conducted a hearing, entered findings of fact and conclusions of law, and ordered Brown's petition denied. This appeal follows.

Brown contends that the district court erred by finding defense counsel was effective despite counsel's apparent failure to investigate whether the prosecution of this case was barred by the statute of limitations.

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, and that the petitioner was prejudiced by counsel's performance.³ To show prejudice, a petitioner who has entered a guilty plea must demonstrate "a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would

¹Brown v. State, Docket No. 47460 (Order Affirming in part, Reversing in part and Remanding, December 26, 2006).

²See Lozada v. State, 110 Nev. 349, 359, 871 P.2d 944, 950 (1994).

³Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996) (citing Strickland v. Washington, 466 U.S. 668, 687 (1987)).

have insisted on going to trial.”⁴ Whether a defendant received ineffective assistance of counsel is a mixed question of law and fact and is therefore subject to independent review.⁵ However, the “purely factual findings of an inferior tribunal regarding a claim of ineffective assistance are entitled to deference on subsequent review of that tribunal’s decision.”⁶

Here, the district court found that a licensed clinical social worker filed a report with the Las Vegas Metropolitan Police Department on April 30, 1997, which stated that the victim had been sexually assaulted by Brown in December 1994. The State filed a criminal complaint charging Brown with the sexual assault of the victim on November 19, 1997. The district court also found that the statute of limitations was tolled within the time frame proscribed by NRS 171.083(1) and NRS 171.085(1), and that the Nevada Supreme Court had previously ruled that the statute of limitations did not apply in Brown’s case.⁷ The district court concluded that defense counsel could not be deemed ineffective for failing to raise claims that were entirely without merit.

⁴Id. at 988, 923 P.2d at 1107 (quoting Hill v. Lockhart, 474 U.S. 52, 59 (1985)).

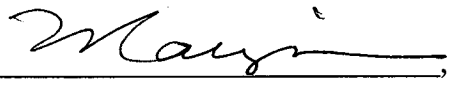
⁵Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

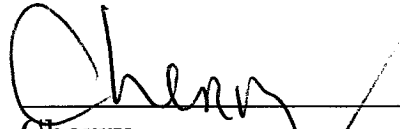
⁶Id.

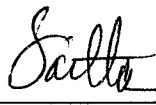
⁷See Brown, Docket No. 47460 (Order Affirming in part, Reversing in part and Remanding) at 4.

Brown has not demonstrated that the district court's findings of fact are not supported by substantial evidence or are clearly wrong. Moreover, Brown has not demonstrated that the district court erred as a matter of law. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Maupin


_____, J.
Cherry


_____, J.
Saitta

cc: Hon. Jackie Glass, District Judge
Anthony M. Goldstein
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk