

IN THE SUPREME COURT OF THE STATE OF NEVADA

DERRICK FARR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51135

FILED

NOV 19 2008

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

ORDER OF AFFIRMANCE

This 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; Michael Villani, Judge.

On April 21, 2006, the district court convicted appellant, pursuant to a jury verdict, of one count of conspiracy to commit larceny (gross misdemeanor), one count of unlawful taking of a motor vehicle (gross misdemeanor), one count of conspiracy to commit robbery (felony), and one count of robbery (felony). The district court adjudicated appellant a habitual criminal on the felony counts and sentenced appellant to serve two concurrent terms of 5 to 20 years in the Nevada State Prison and sentenced appellant to credit for time served on the gross misdemeanor

counts. This court affirmed the judgment of conviction on direct appeal.¹ The remittitur issued on December 12, 2006.

On October 4, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. 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 January 25, 2008, the district court denied appellant's petition. This appeal followed.

In his petition, appellant claimed that he received ineffective assistance of counsel. 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.² The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.³

¹Farr v. State, Docket No. 47077 (Order of Affirmance, November 15, 2006).

²Strickland 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).

³Strickland, 466 U.S. at 697.

First, appellant claimed that his trial counsel was ineffective for failing to present appellant's version of the incident in order to provide him with a viable defense. Appellant claimed that the victim lied to the police. Contrary to the victim's statements to the police and testimony that his wallet and car were taken by force by appellant and the codefendant, appellant claimed that the victim solicited sex from Estelle Golightly, a prostitute and appellant's fiancé at the time, and allowed Golightly to use his vehicle while he stayed in the "party house" and did drugs. Appellant noted that the victim was never given a drug test and did not seek medical treatment. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. The defense did present this theory at trial. Golightly testified that the victim had solicited and received sexual favors for money from Golightly and that the victim allowed her to use his vehicle for errands. Defense counsel for both appellant and his codefendant argued during closing arguments that the victim lied about the incident. Further, during closing arguments, appellant's counsel noted that no injuries were listed in the police report. Appellant failed to demonstrate that further testimony, evidence or arguments on this point would have had a reasonable probability of altering the outcome at trial. Therefore, we conclude that the district court did not err in denying this claim.

Second, appellant claimed that trial counsel was ineffective for failing to conduct further investigation into the fact that the victim was not truthful. Appellant claimed that trial counsel should have contacted the victim's wife for details about how the victim was not truthful about

the incident and the victim had solicited prostitutes and used drugs on a regular basis. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Appellant's claim that the victim's wife would support his defense was not supported by any specific facts and was purely speculative. Thus, appellant failed to demonstrate that there was a reasonable probability of a different outcome had trial counsel performed further investigation. Therefore, we conclude that the district court did not err in denying this claim.

Third, appellant claimed that trial counsel was ineffective for failing to cross-examine the victim with inconsistent statements. In particular, appellant noted that the victim told the police he was coming from the gas station when he was robbed, but testified at trial that he was going to the gas station when he was robbed. Appellant failed to demonstrate that his trial counsel was deficient or that he was prejudiced. Codefendant's trial counsel, who cross-examined the victim before appellant's trial counsel, examined the victim on this point. Thus, the jury was presented with the inconsistency between the police statement and the trial testimony. Appellant failed to demonstrate that there was a reasonable probability of a different outcome had appellant's trial counsel examined the victim on this point. Therefore, we conclude that the district court did not err in denying this claim.

Fourth, appellant claimed that trial counsel was ineffective for failing to locate and subpoena any witnesses on his behalf. The only witness identified by appellant was the victim's wife, who would have testified that the victim made false statements to the police. Appellant

failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. The defense did present one witness, Estelle Golightly. As noted earlier, appellant's claim regarding the victim's wife was based on pure speculation, and thus, he failed to demonstrate that there was a reasonable probability of a different outcome absent the failure to call appellant's wife. Appellant failed to identify any other witnesses that should have been located and called to testify. Therefore, we conclude that the district court did not err in denying this claim.

Next, appellant claimed that the district court erred in denying the defense witness the ability to testify in street clothing rather than jail house clothing. This claim was waived as it could have been raised on direct appeal and appellant failed to demonstrate good cause for his failure to do so.⁴ Moreover, appellant failed to demonstrate actual prejudice in the instant case as appellant's claim for relief lacked merit.⁵ Appellant's codefendant raised this claim on direct appeal, and this court determined that any error was harmless.⁶ Therefore, we conclude that the district court did not err in denying this claim.

Finally, appellant claimed that the district court erred when it failed to dismiss charges due to insufficient evidence. Appellant argued

⁴NRS 34.810(1)(b).

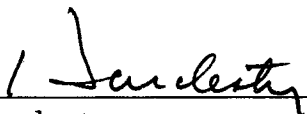
⁵Id.


⁶Hightower v. State, 123 Nev. 55, 60, 154 P.3d 639, 642 (2007).

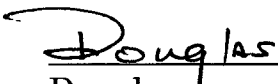
that there was insufficient evidence on direct appeal, and this court considered and rejected that claim. The doctrine of the law of the case prevents further litigation of this claim and cannot be avoided by a more detailed and precisely focused argument.⁷ Therefore, we conclude that the district court 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.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

⁷Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

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

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