

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES ERIC STEWART,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 51246

**FILED**

MAR 05 2009

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; Stewart L. Bell, Judge.

On October 19, 2006, the district court convicted appellant, pursuant to a jury verdict, of one count of second-degree murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole. This court affirmed the judgment of conviction on direct appeal. Stewart v. State, Docket No. 48370 (Order of Affirmance, June 8, 2007). The remittitur issued on July 5, 2007.

On October 13, 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 February 19, 2008, the district court denied appellant's petition. This appeal followed.

In his petition, appellant raised five claims of 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. Strickland 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). The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one. Strickland, 466 U.S. at 697.

First, appellant claimed that his trial counsel was ineffective for failing to object the prosecution's presentation of unreliable and conflicting witness testimony. Appellant claimed that the eyewitness to the shooting made conflicting statements. Appellant further claimed that the witness who saw the gun tossed from the vehicle made conflicting statements as to who was driving the vehicle and who was the passenger. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Appellant failed to identify with any specificity the conflicting statements made by the eyewitness. The jury was presented with the conflicting testimony regarding whether appellant was the driver or the passenger of the vehicle involved in the shooting. It was for the jury to determine the weight and credibility of witness testimony. See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981). Appellant failed to demonstrate that any such objections would have been sustained or 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 his trial counsel was ineffective for failing to conduct an adequate pretrial investigation regarding the accuracy and reliability of state witnesses and appellant's requested defenses. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Appellant failed to identify what information would have been discovered with further investigation or that any such information would have had a reasonable probability of altering the outcome at trial. Appellant further failed to identify the requested defenses or that any of these defenses 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.

Third, appellant claimed that his trial counsel was ineffective for failing to file a motion to suppress eyewitness testimony. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Appellant failed to provide any specific facts regarding this claim or demonstrate that a motion to suppress would have been granted. Therefore, we conclude that the district court did not err in denying this claim.

Fourth, appellant claimed that his trial counsel was ineffective for failing to adequately cross-examine witnesses as to whether they were offered inducements for testifying for the State. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Appellant's claim regarding inducements appears to have

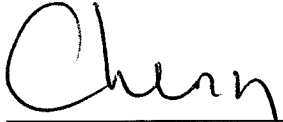
been based on nothing more than speculation. Appellant failed to demonstrate that any such examination would have had a reasonable probability of altering the outcome at trial. Therefore, we conclude that the district court did not err in denying this claim.


Fifth, appellant claimed that his trial counsel was ineffective for failing to move to exclude and object to use of appellant's nickname, "No Good," at trial. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Appellant's trial counsel moved to exclude use of the nickname and the district court limited the use of the nickname. Appellant's trial counsel further objected to several instances of the State's use of the nickname. On direct appeal, appellant argued that the prosecutor committed misconduct by using the nickname in violation of the court's order. This court considered and rejected this claim on direct appeal. Because the underlying claim has been considered and rejected, appellant cannot demonstrate he was prejudiced by trial counsel's performance. Therefore, we conclude that the district court did not err in denying this claim.

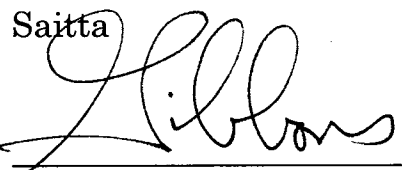
Next, appellant claimed that: (1) the prosecutor violated his rights by presenting unreliable and conflicting testimony; (2) insufficient evidence was presented to support the enhancement; and (3) the district court provided the jury with a flawed jury instruction regarding second-degree murder. These claims were waived as they should have been raised on direct appeal, and appellant failed to demonstrate good cause for his failure to do so. NRS 34.810(1)(b). Therefore, we conclude that the district court did not err in denying these claims.

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

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Gibbons

cc: Eighth Judicial District Court Dept. 7, District Judge  
Charles Eric Stewart  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk