

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES ANTHONY SUMMERS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 51520

**FILED**

**AUG 25 2009**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
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; Valerie Adair, Judge.

On June 30, 2005, the district court convicted appellant, pursuant to a jury verdict, of first-degree murder with the use of a deadly weapon, assault with the use of a deadly weapon, and attempted murder with the use of a deadly weapon. The district court sentenced appellant to serve terms totaling life without the possibility of parole. This court affirmed the judgment of conviction on appeal. Summers v. State, 122 Nev. 1326, 148 P.3d 778 (2006). The remittitur issued on January 23, 2007.

On December 21, 2007, appellant filed a proper person 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 April 17, 2008, the district court denied the petition. This appeal followed.

In his petition, appellant raised six claims of ineffective assistance of trial 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 but for counsel's errors there would be a reasonable probability of a different outcome of the proceedings. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984). 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 request a psychiatric examination for appellant and for failing to request a competency hearing for appellant. Appellant claimed that prior to trial, trial counsel had his mental health evaluated by Dr. Ken Sura, but that trial counsel did not advise the district court of his mental health problems. Appellant also claimed that he suffered from depression and behavioral problems since childhood. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. This court has held that the test for determining competency is "whether [the defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him." Melchor-Gloria v. State, 99 Nev. 174, 180, 660 P.2d 109, 113 (1983) (quoting Dusky v. United States, 362 U.S. 402, 402 (1960)) (alteration in original). As appellant was evaluated by a doctor at the behest of his counsel prior to trial, appellant

failed to demonstrate that requesting the district court to order a psychiatric examination would have had a reasonable probability of altering the proceedings. Further, appellant failed to demonstrate that that his alleged depression or behavioral problems precluded him from aiding his counsel or understanding the charges against him. Accordingly, appellant failed to demonstrate this claim had a reasonable probability of altering the outcome of the proceedings and 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 request additional peremptory challenges. Appellant claimed that the failure to request additional peremptory challenges resulted in a biased jury. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. NRS 175.051(1) provides that, with an offense that is punishable by death, each side is entitled to eight peremptory challenges. There is no provision allowing for additional peremptory challenges. Appellant failed to demonstrate that had trial counsel requested additional peremptory challengers there was a reasonable probability of a different outcome at trial. Therefore, the district court did not err in denying this claim.

Third, appellant claimed that his trial counsel was ineffective for failing to argue that the jury was biased due to the presence of a juror who was acquainted with counsel for the State. This court considered and rejected the underlying claim on direct appeal. Because this court has rejected the merits of the underlying claim, appellant cannot demonstrate that he was prejudiced. Therefore, the district court did not err in denying this claim.

Fourth, appellant claimed that his trial counsel was ineffective for failing to interview Officer Joel Cranford prior to trial. Appellant claimed that the failure to interview Officer Cranford allowed a key witness to “slip through the cracks.” Appellant failed to demonstrate that his trial counsel’s performance was deficient or he was prejudiced. Officer Cranford testified that a woman approached him and told him that she had heard from others that appellant was involved in the murder. Officer Cranford testified that the woman did not have firsthand information and that she wanted her identity to remain confidential. Officer Cranford testified that this unnamed woman was how the police first came to view appellant as a suspect. Prior to trial, appellant’s counsel attempted to obtain information concerning the woman’s identity, but were unable to do so because the State prosecutors also did not have that information. Counsel questioned Officer Cranford concerning the reasons why he withheld her identify. As the woman did not have firsthand knowledge of the incident, appellant failed to demonstrate that any testimony she may have provided would have been admissible. See NRS 51.035; NRS 51.065. Thus, appellant failed to demonstrate that had his counsel performed additional pretrial questioning of Officer Cranford there was a reasonable probability of a different outcome at trial. Therefore, the district court did not err in denying this claim.

Fifth, appellant claimed that his trial counsel was ineffective for failing to question Andrew Bowman about a conversation between Bowman and appellant in which appellant stated that Fred Ameen committed the murder. Appellant failed to demonstrate that his trial counsel’s performance was deficient or that he was prejudiced. The district court ruled that, if the defense admitted appellant’s statements,

the State would then be permitted to present evidence of appellant's felony convictions. During a hearing outside of the presence of the jury, appellant's trial counsel stated that, because of appellant's criminal history, a tactical decision had been made that Bowman would not be questioned about appellant's statements. Appellant failed to demonstrate that these statements would have had a reasonable probability of a different outcome at trial because the jury heard testimony from a defense witness that Fred Ameen committed the murders and nevertheless found appellant guilty of the murder. Therefore, the district court did not err in denying this claim.

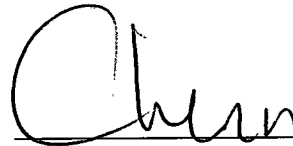
Sixth, appellant claimed that his trial counsel was ineffective for failing to object to the district court's abuse of discretion in permitting an employee of the district attorney's office to read into the record the preliminary hearing testimony from an unavailable witness. Appellant failed to demonstrate that he was prejudiced. Appellant failed to explain why he was prejudiced by the manner in which the unavailable witness' testimony was read into the record. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Thus, appellant failed to demonstrate that had his trial counsel objected to an employee of the district attorney's office reading missing witness testimony there was a reasonable probability of a different outcome at trial. Therefore, the district court did not err in denying this claim.<sup>1</sup>


---

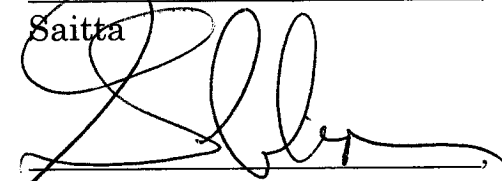
<sup>1</sup>Appellant claimed his appellate counsel was ineffective for failing to raise this claim on direct appeal. For the reasons stated above, we conclude that appellant failed to demonstrate that there was a reasonable probability of success on direct appeal for this claim. See Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996).

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

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

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

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

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

cc: Hon. Valerie Adair, District Judge  
Charles Anthony Summers  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk

---

<sup>2</sup>We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.