

IN THE SUPREME COURT OF THE STATE OF NEVADA

TONY CONRAD SHERMAN A/K/A
TONY C. SHERMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51871

FILED

MAY 07 2009
TRACIE A. 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; David Wall, Judge.

On June 21, 2006, the district court convicted appellant, pursuant to a jury verdict, of one count of robbery. The district court sentenced appellant to serve a term of 28 to 96 months in the Nevada State Prison. This court affirmed the judgment of conviction on appeal. Sherman v. State, Docket No. 47665 (Order of Affirmance, June 8, 2007). The remittitur issued on June 26, 2007.

On March 10, 2008, 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 June 2, 2008, the district court denied appellant's petition. This appeal followed.

In his petition, appellant raised eight 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 fell below an objective standard of reasonableness, and there is a reasonable probability that in the absence of counsel's errors, the results of the proceedings would have been different. See 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 set forth in Strickland). The court need not consider both prongs if the petitioner makes an insufficient showing on either prong. Strickland, 466 U.S. at 697.

First, appellant claimed that his trial counsel was ineffective for failing to sever his trial from that of his codefendant. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Appellant's counsel filed a motion to sever, which was denied by the district court. Further, 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.

Second, appellant claimed that his trial counsel was ineffective for failing to seek expert testimony about the percentage of known robbers that would have settled for the \$50 taken from the victim without asking if the victim had a wallet or other valuables. Appellant failed to demonstrate that he was prejudiced. Appellant failed to identify any experts that could have testified concerning this type of evidence or how this type of testimony would have changed the outcome of the trial.

Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Thus, appellant failed to demonstrate that there was a reasonable probability of altering the outcome of the trial had his trial counsel sought this type of testimony. Therefore, the district court did not err in denying this claim.

Third, appellant claimed that his trial counsel was ineffective for failing to investigate possible defenses, possible witnesses, or mitigation evidence. Appellant failed to demonstrate that he was prejudiced. At trial, appellant's trial counsel challenged the identification of appellant as one of the robbers. At sentencing, his trial counsel presented mitigation evidence by stating that appellant had two children, had not been involved with violent crimes, and that appellant was not an active gang member. Appellant failed to identify what other defenses, possible witnesses, or mitigation evidence his attorney should have presented or how any additional information would have had a reasonable probability of changing the outcome of the proceedings. Id. Therefore, the district court did not err in denying this claim.

Fourth, appellant claimed that his trial counsel was ineffective for failing to visit the crime scene and for failing to interview the tattoo shop owners or a cab driver to see if the victim's story was truthful. Appellant failed to demonstrate that he was prejudiced. The victim's story was challenged on cross-examination and appellant failed to demonstrate that further pretrial investigation of the victim's story would have had a reasonable probability of altering the outcome of the trial. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Therefore, the district court did not err in denying this claim.

Fifth, appellant claimed that his trial counsel was ineffective for failing to adequately challenge the victim and police officers' testimonies identifying him as one of the robbers. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Appellant's counsel filed a motion to suppress the identification testimony, which was denied by the district court. Further, appellant's trial counsel cross-examined the victim and the police officers concerning the victim's identification of appellant and argued to the jury that the victim's testimony was insufficient to convict appellant. Appellant failed to demonstrate that there was a reasonable probability of a different outcome of the trial had his trial counsel raised additional challenges to the identification testimony. Therefore, the district court did not err in denying this claim.

Sixth, appellant claimed that his trial counsel did not adequately question the victim. Appellant claimed that his trial counsel should have asked the victim if he had additional valuables that were not taken by the robbers and should have asked the victim questions concerning the reasons for his visit to the area in which he was robbed. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Appellant's trial counsel thoroughly cross-examined the victim, challenging the victim's story and identification of appellant as one of the robbers. Appellant failed to demonstrate that these or any other additional questions would have had a reasonable probability of altering the outcome of the trial. Therefore, the district court did not err in denying this claim.

Seventh, appellant claimed that his trial counsel was ineffective for failing to follow his direction during trial or object during trial when asked to by appellant. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. "[T]actical decisions [of counsel] are virtually unchallengeable absent extraordinary circumstances" and appellant failed to demonstrate any such circumstances in regards to his trial counsel's conduct during the trial. See Ford v State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989). Further, appellant failed to identify the disagreements he had with counsel or the issues he wished his trial counsel to object to. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Therefore, the district court did not err in denying this claim.


Eighth, appellant claimed that his trial counsel was ineffective for failing to return his phone calls. Appellant failed to demonstrate that he was prejudiced. Appellant failed to demonstrate that he was prejudiced by the failure of his trial counsel to return phone calls. Therefore, the district court did not err in denying this claim.

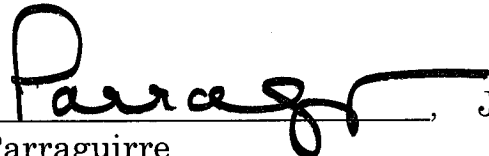
Next, appellant claimed that there was insufficient evidence to support his conviction. This claim was considered and rejected on direct appeal. The doctrine of law of the case prevents further litigation of this issue and cannot be avoided by a more detailed and precisely focused argument. See Hall v State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975). Therefore, the district court did not err in denying this claim.

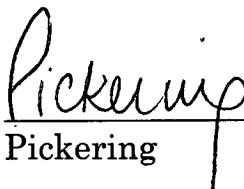
Having reviewed the record on appeal and for the reasons set forth above, we conclude that appellant is not entitled to relief and that

briefing and oral argument are unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Hardesty


_____, J.
Parraguirre


_____, J.
Pickering

cc: Hon. David Wall, District Judge
Tony Conrad Sherman
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

¹We 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.