

IN THE SUPREME COURT OF THE STATE OF NEVADA

WALTER RAYMOND FREITAS, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 51998

**FILED**

NOV 03 2009

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

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; Elizabeth Goff Gonzalez, Judge.

On November 9, 2006, the district court convicted appellant, pursuant to a jury verdict, of one count of burglary while in possession of a firearm. The district court sentenced appellant to serve a term of 72 to 180 months in the Nevada State Prison. This court affirmed appellant's judgment of conviction and sentence on appeal. Freitas v. State, Docket No. 48554 (Order of Affirmance, September 7, 2007).

On November 29, 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 June 19, 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 warrant a new sentencing hearing, a petitioner must

demonstrate that that his counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability that, but for counsel's errors, the outcome of the proceedings would have been different. Strickland v. Washington, 466 U.S. 668, 687-88, 694 (1984); Weaver v. Warden, 107 Nev. 856, 858-59, 822 P.2d 112, 114 (1991). 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.

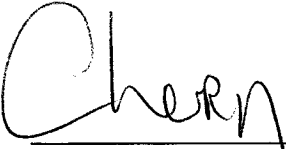
In his petition, appellant claimed that trial counsel was ineffective because trial counsel failed to object to the compact disk played at sentencing which contained statements from the victim's family and friends. Our review of the record on appeal reveals that appellant failed to demonstrate that trial counsel's performance was deficient or that he was prejudiced. Appellant failed to explain what grounds existed that trial counsel could have objected to the admission of the compact disk. A victim of a crime may speak at sentencing and the district court is allowed to consider any reliable and relevant evidence in making its sentencing decision. See NRS 176.015(3),(6). Because appellant was unable to demonstrate that trial counsel could have successfully objected to the admission, appellant also failed to demonstrate a reasonable probability of a different outcome at sentencing had trial counsel objected to the playing of the compact disk. Therefore, the district court did not err in denying this claim.


Appellant also claimed that the district erred by not instructing the jury on the lesser included offense of trespass. This claim was waived because it should have been raised on direct appeal and appellant failed to demonstrate good cause for his failure to do so. See

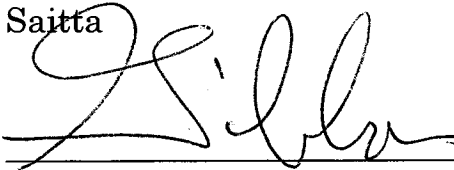
NRS 34.810(1)(b). Therefore, the district court did not err in denying this claim.

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.<sup>1</sup>

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

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

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

cc: Hon. Elizabeth Goff Gonzalez, District Judge  
Walter Raymond Freitas Jr.  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk

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<sup>1</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.