

IN THE SUPREME COURT OF THE STATE OF NEVADA

TRACEY MORRELL WARREN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52389

FILED

JAN 08 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; Douglas W. Herndon, Judge.

On May 24, 2005, the district court convicted appellant, pursuant to a jury verdict, of one count of burglary and one count of robbery. The district court adjudicated appellant a habitual criminal pursuant to NRS 207.010 on the robbery count. The district court sentenced him to serve a term of 36 to 120 months in the Nevada State Prison for the burglary count and a consecutive term of life in the Nevada State Prison with the possibility of parole after 10 years as a habitual criminal for the robbery count. This court affirmed the judgment of conviction. Warren v. State, Docket No. 45497 (Order of Affirmance, May 9, 2007). The remittitur issued on June 5, 2007.

On June 4, 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 August 15, 2008, the district court denied appellant's petition. This appeal followed.

First, appellant claimed that the district court erred because he was incorrectly sentenced to terms for both the primary offense and for the habitual offender enhancement. Appellant failed to demonstrate good cause for failing to raise this claim in his direct appeal and prejudice, and therefore, we conclude that the district court did not err in denying this claim. See NRS 34.810(1)(b)(2).

Next, appellant claimed that the State collected handwriting samples in violation of his right against self-incrimination. Appellant challenged the collection of the handwriting samples in his direct appeal, and this court rejected that challenge. 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.

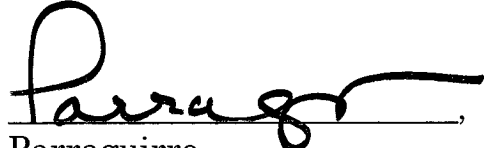
Next, appellant claimed that his trial counsel was ineffective. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness, and there is a reasonable 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, 694 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting 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.

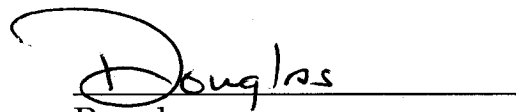
First, appellant claimed that his trial counsel was ineffective for failing to object when he was sentenced pursuant to NRS 205.060 on the burglary count and sentenced as a habitual criminal for the robbery count. Appellant appeared to claim that he was incorrectly sentenced to terms for both the primary offense and for the habitual offender enhancement. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. The district court properly exercised its discretion when it adjudicated appellant as a habitual criminal on only one of the charges. NRS 207.010(2). The two sentences imposed were within the statutory guidelines for the two charges of which appellant was convicted. See NRS 205.060; NRS 207.010(1)(b)(2). Therefore, the district court did not err in denying this claim.

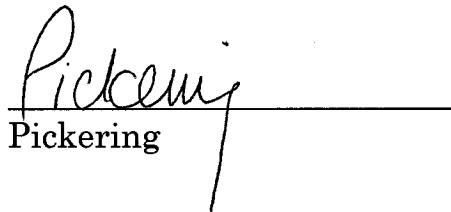
Second, appellant claimed that his trial counsel was ineffective for failing to investigate witnesses to testify in his defense. Specifically, appellant claimed that he informed his trial counsel about an employee at a donut shop located near the florist where the incident occurred. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Appellant failed to identify any facts that the donut shop employee would have testified to. Because appellant failed to support his claim with specific factual allegations, he was not entitled to an evidentiary hearing. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Further, there was substantial evidence of appellant's guilt, considering the multiple eyewitness identifications of appellant, the testimony of the victim, and the testimony of the handwriting expert. 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.


_____, J.
Parraguirre


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Douglas W. Herndon, District Judge
Tracey Morrell Warren
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk