

IN THE SUPREME COURT OF THE STATE OF NEVADA

RANDY ROYAL JOHNSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52394

**FILED**

FEB 04 2009

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Randy Royal Johnson's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

Johnson was convicted, pursuant to a jury verdict, of robbery with the use of a deadly weapon and, pursuant to a guilty plea, of ex-felon in possession of a firearm. The district court sentenced Johnson to serve two consecutive prison terms of 40 to 180 months for robbery with the use of a deadly weapon and a concurrent prison term of 12 to 30 months for ex-felon in possession of a firearm.

Johnson filed a timely post-conviction petition for a writ of habeas corpus in proper person. Counsel filed a supplemental petition. The State moved to dismiss the petitions, Johnson's counsel opposed the motion to dismiss, and the State filed a reply. The district court entered an order dismissing some of the claims raised in the petitions and directing an evidentiary hearing on the remaining claims. After conducting an evidentiary hearing, the district court entered an order denying the petition for a writ of habeas corpus. This appeal followed.

Johnson claims that the district court erred by finding that trial counsel was not ineffective, despite trial counsel's failure to object to his wearing, and receiving a warning shock from, a stun device during trial. Johnson also claims that the district court erred by finding that appellate counsel was not ineffective, despite appellate counsel's failure to challenge the use of the stun device. We conclude that the district court did not err by finding that counsel were not 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 counsel's errors were so severe they rendered the jury's verdict unreliable. 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 in Strickland). To state a claim of ineffective assistance of appellate counsel, a petitioner must demonstrate that counsel's performance was deficient in that it fell "below an objective standard of reasonableness," and resulting prejudice such that "the omitted issue would have a reasonable probability of success on appeal." Kirksey v. State, 112 Nev. 980, 987-88, 998, 923 P.2d 1102, 1107, 1114 (1996). Appellate counsel is not required to raise every non-frivolous issue on appeal. Jones v. Barnes, 463 U.S. 745, 751 (1983). This court has held that appellate counsel will be most effective when every conceivable issue is not raised on appeal. Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989).

"[A] habeas corpus petitioner must prove the disputed factual allegations underlying his ineffective-assistance claim by a preponderance of the evidence." Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33

(2004). Factual findings of the district court that are supported by substantial evidence and are not clearly wrong are entitled to deference when reviewed on appeal. Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

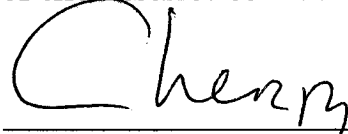
The district court conducted an evidentiary hearing on Johnson's claims that trial counsel were ineffective for failing to object to the use of a stun device and appellate counsel was ineffective for failing to challenge the use of the stun device on appeal. The district court found that Johnson's testimony regarding wearing a stun device and receiving a warning shock was not credible. The district court further found that trial counsel credibly testified that they were not aware that Johnson was wearing a stun device and they were never informed that Johnson received a warning shock. Additionally, the district court found that the stun devices used by the deputies do not give a warning shock, rather they emit an audible warning, and there was no audible warning during the trial. Finally, the district court found that appellate counsel credibly testified that she did not raise a claim challenging the use of a stun device because the record did not support a claim that a stun device was used during the trial. The district court determined that trial and appellate counsel were not ineffective for failing to object to or challenge the use of a stun device.

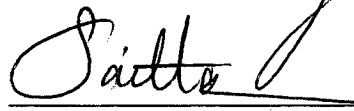
Johnson has not demonstrated that the district court's findings of fact are not supported by substantial evidence or are clearly wrong. Moreover, Johnson has not demonstrated that the district court

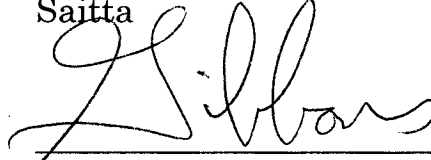
erred as a matter of law. Accordingly, we affirm the denial of these claims.<sup>1</sup>

Having considered Johnson's contentions and determined that they lack merit, we

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

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

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

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

cc: Hon. Steven P. Elliott, District Judge  
Mary Lou Wilson  
Attorney General Catherine Cortez Masto/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

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<sup>1</sup>To the extent Johnson claims that his constitutional rights were violated by requiring him to wear a stun device, we conclude that Johnson could have raised this claim on direct appeal and he failed to demonstrate good cause for his failure to do so and actual prejudice. NRS 34.810(1)(b)(2).

<sup>2</sup>Although Johnson raised numerous additional claims in his petition and supplemental petition, he has not challenged the denial of these claims on appeal. Accordingly, we conclude that he waived these claims.