

IN THE SUPREME COURT OF THE STATE OF NEVADA

GERALD E. VONTOBEL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52569

**FILED**

JAN 07 2010

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; David B. Barker, Judge.

Appellant filed a timely proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. The district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing, see NRS 34.750 and 34.770, and denied the petition.

In his petition, appellant raised a total of 49 claims. He raised 12 claims of ineffective assistance of trial counsel: (1) second chair counsel was ineffective; (2) counsel failed to object to the premeditated and deliberate instruction; (3) counsel failed to reasonably investigate appellant's innocence; (4) counsel failed to adequately advise appellant of the consequences of his plea; (5) counsel failed to object to the reasonable doubt instruction; (6) counsel failed to object to prosecutorial misconduct; (7) counsel failed to object to the prejudicial courtroom environment and emotional displays permitted in the courtroom; (8) counsel failed to adequately cross-examine a witness; (9) counsel failed to investigate and


pursue appellant's theory of defense; (10) counsel failed to "adequately prepare and present the inconsistent statements of the hearsay declarant whose statement implicated appellant at trial;" (11) counsel failed to challenge the implied malice instruction on appeal; and (12) counsel failed to challenge the reasonable doubt instruction on appeal. Appellant also raised 2 claims of ineffective assistance of appellate counsel: (1) counsel failed to challenge appellant's sentence based on his right to be sentenced by a jury; and (2) counsel failed to challenge the premeditated and deliberate instruction on appeal. Appellant raised 8 claims of prosecutorial misconduct: (1) the State failed to produce evidence that it provided inducements to the witnesses for testimony, in violation of Brady v. Maryland, 373 U.S. 83 (1963); (2) the defense's expert was improperly characterized as a hired gun; (3) the State failed to preserve potentially exculpatory evidence and failed to conduct a forensic evaluation of the time of the incident; (4) the State misstated facts at closing; (5) the State introduced inadmissible character evidence which lacked foundation and corroboration; (6) the prosecutor made statements of his personal beliefs as to appellant's guilt; (7) the State referred to appellant's offer to submit to a polygraph exam which appellant later withdrew; and (8) the State attempted to shift the burden of proof by presenting false and misleading testimony. Appellant raised 13 claims that the district court erred by: (1) erroneously allowing repetitive, irrelevant, and prejudicial evidence to be presented at trial; (2) erroneously denying appellant's motion to continue trial; (3) improperly coercing a jury verdict after the jury indicated it was deadlocked; (4) giving an improper "proximate cause instruction which, in conjunction with an erroneous instruction on contributory negligence," eliminated the requirement for the jury to find guilt beyond a reasonable

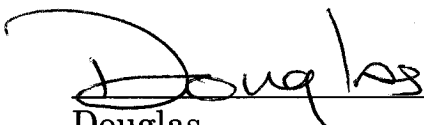
doubt; (5) giving improper instructions on implied malice and reasonable doubt; (6) not instructing on a lesser included crime; (7) refusing to grant challenges for cause; (8) improperly instructing the jury regarding unanimous verdicts; (9) improperly allowing the State to participate in the ex-parte hearing for an investigator and for fees; (10) refusing to allow portions of the trial to be recorded; (11) improperly refusing to allow appellant to have an expert witness conduct a physical and psychological examination of the victims; (12) failing to grant appellant's motion for new trial; and (13) allowing the State's expert to testify that in his opinion a sexual assault occurred. Appellant further raised claims arguing that his conviction and sentence were unconstitutional because: (1) his conviction for sexual assault was based solely on the uncorroborated testimony of the victim; (2) evidence was introduced at trial that appellant attempted to manufacture a weapon during trial; (3) a juror was removed during trial; (4) juror misconduct occurred; (5) appellant was deprived of meaningful access to the resources needed to prepare and present his defense; (6) the State's expert was unqualified; and (7) the defense's mental health expert failed to provide complete assistance. Finally, appellant raised 7 additional claims arguing that: (1) insufficient evidence existed to bind appellant over to district court; (2) insufficient evidence existed to convict appellant; (3) a conflict of interest existed with appellate counsel because the public defender's office represented appellant at trial and on appeal; (4) jurisdiction was not proven beyond a reasonable doubt; (5) law enforcement failed to adequately investigate; (6) the cumulative error that existed at trial required reversal of appellant's conviction; and (7) this court failed to conduct a fair and adequate appellate review.

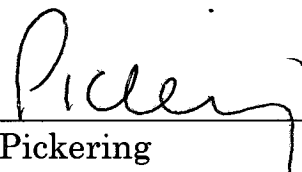
Our review of the record on appeal reveals that all 49 claims that appellant raised were naked and bare claims. Appellant failed to support any of his claims with specific facts, that if true, would warrant relief. See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Because appellant failed to provide specific facts, the district court did not err in denying the petition. Also, the claims not alleged as ineffective assistance—i.e., those alleging trial court error, prosecutorial misconduct, and those challenging the validity of the conviction and sentence—could have been raised on direct appeal, and therefore, are procedurally barred under NRS 34.810(1)(b). Appellant failed to demonstrate good cause to excuse this procedural default. See NRS 34.810(1),(3).

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.  
Hardesty

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. David B. Barker, District Judge  
Gerald Vontobel  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk