

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM JONES BROOKS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52587

**FILED**

MAY 07 2010

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

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant's post-conviction petition for writ of habeas corpus. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

First, appellant argues that the district court erred in denying his claims of ineffective assistance of trial counsel. To prove a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate (a) that counsel's performance was deficient in that it fell below an objective standard of reasonableness and (b) prejudice in that counsel's errors were so severe that they rendered the jury's verdict unreliable. 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). Both components of the inquiry must be shown. Strickland, 466 U.S. at 697.

Appellant claims that trial counsel was ineffective in failing to conduct a pretrial investigation into discrepancies among law enforcement reports as to the amount of cash and narcotics found in the search. Appellant fails to demonstrate deficiency or prejudice. The cash was not an element to any of the charges, so there was no reason for appellant's counsel to question the missing money, nor has appellant demonstrated a

reasonable probability that it could have affected the trial's outcome. The differences in the estimated amounts of narcotics reported by appellant's parole officer compared with the counted and weighed amounts reported by detectives were not so significant that an objectively reasonable attorney would have necessarily investigated further. Moreover, appellant failed to provide competent evidence at the evidentiary hearing that the officer in question planted evidence in this or in any other case. Appellant, having failed to demonstrate the facts underlying his claim by a preponderance of the evidence, see Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004), has also failed to demonstrate a reasonable probability that the jury verdict was unreliable. We therefore conclude that the district court did not err in denying this claim.

Appellant also claims that trial counsel was ineffective in failing to move to suppress evidence based on an alleged break in the chain of custody. Appellant fails to demonstrate deficiency or prejudice. Doubt arising from evidence tampering resulting from a break in the chain of custody, "if any, goes to the weight of the evidence," not to admissibility. Sorce v. State, 88 Nev. 350, 352-53, 497 P.2d 902, 903 (1972). Thus, a motion to suppress the contraband based on a break in the chain of custody would not have had a reasonable probability of success. See Kirksey v. State, 112 Nev. 980, 990, 923 P.2d 1102, 1109 (1996). We therefore conclude that the district court did not err in denying this claim.

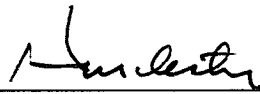
Second, appellant argues that the district court abused its discretion when it denied his request for appointment of post-conviction counsel to assist him in investigating and presenting his petition. This matter was rendered moot when appellant retained post-conviction counsel and successfully moved to continue the evidentiary hearing for nearly two months to prepare.

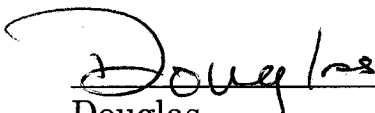
Third, appellant argues that the district court erred in relying on "exceptionally poor quality" photographs at the evidentiary hearing. This argument is frivolous as it was appellant who offered the photographs into evidence and used them during examination of the witness. Cf. Evans v. State, 117 Nev. 609, 632, 28 P.3d 498, 514 (2001). We therefore conclude that the district court did not err in considering the photographs.

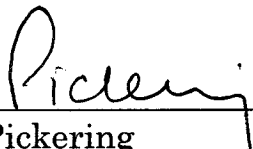
Finally, appellant argues that even if the individual claims above do not warrant relief, cumulatively, they entitle him to a new trial. As appellant fails to demonstrate any error, he failed to demonstrate any cumulative effect of error that would amount to ineffective assistance of counsel. We therefore conclude that the district court did not err in denying this claim.

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Hardesty

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

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

cc: Hon. Douglas W. Herndon, District Judge  
Jonathan E. MacArthur  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk