

IN THE SUPREME COURT OF THE STATE OF NEVADA

LEE MURRAY SYKES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53086

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; Jackie Glass, Judge.

In his petition, appellant made seven claims of ineffective assistance of trial counsel. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and prejudice such 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). 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.

Competency

First, appellant claimed that his trial counsel was ineffective for failing to argue that he was not competent to stand trial, for failing to ensure he received a proper medical evaluation and treatment, for failing to argue that the medical reports were tainted, and for withholding medical reports from him and his doctors. Appellant failed to demonstrate that he was prejudiced. Given that appellant was examined at Lake's Crossing and determined to be competent, he failed to demonstrate that further arguments or evaluations would have had a reasonable probability of altering the outcome of the competency proceedings. Further, appellant put forth only bare and naked claims that the medical reports were withheld or tainted. Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Therefore, the district court did not err in denying this claim.

Kidnapping

Second, appellant claimed that his trial counsel was ineffective for failing to review the victim's statements, which showed that the victim could have left, and therefore was not kidnapped. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. The opportunities for the victim to leave appellant's presence occurred before appellant displayed a weapon and held the victim at gunpoint. There was overwhelming evidence that the victim was confined or carried away for the purpose of inflicting substantial bodily harm. NRS 200.310. Appellant failed to demonstrate a reasonable probability that the outcome of the trial would have been

different had counsel reviewed the victim's statement further. Therefore, the district court did not err in denying this claim.

Relationship with the victim

Third, appellant claimed that his trial counsel was ineffective for failing to investigate and present testimony from R. Fields that appellant and the victim had a tumultuous relationship. Appellant failed to demonstrate that he was prejudiced. The victim testified about the tumultuous nature of her relationship with appellant. Appellant failed to demonstrate a reasonable probability that the outcome of trial would have been different had further testimony of this kind been presented to the jury. Therefore, the district court did not err in denying this claim.

Gun shots

Fourth, appellant claimed that his trial counsel was ineffective for failing to review M. Erickson's statement that appellant fired two shots at the victim in order to refute the State's claims that he fired eight shots. Appellant failed to demonstrate that he was prejudiced. The State presented evidence that there were seven shell casings found at the scene and multiple witnesses testified that appellant fired numerous shots. Accordingly, appellant failed to demonstrate a reasonable probability that the outcome of trial would have been different had his trial counsel reviewed Erickson's statement further. Therefore, the district court did not err in denying this claim.

Exculpatory evidence

Fifth, appellant claimed that his trial counsel was ineffective for failing to argue that the State withheld and/or lost exculpatory evidence from his car, phone calls with the victim, and visits to the jail by

the victim. The underlying claim was raised in appellant's direct appeal and this court rejected that claim. Sykes v. State, Docket No. 47524 (Order of Affirmance, September 21, 2007). Because this court already rejected the underlying claim, appellant failed to demonstrate prejudice. Therefore, the district court did not err in denying this claim.

Viable theory of defense

Sixth, appellant claimed that his trial counsel was ineffective for failing to develop a viable theory of defense. Appellant failed to demonstrate that he was prejudiced. Given the overwhelming evidence of appellant's guilt, appellant failed to demonstrate a reasonable probability of a different outcome had some other defense been presented. Therefore, the district court did not err in denying this claim.

Cumulative error

Seventh, appellant claimed that the cumulative effect of trial counsel's errors totally deprived him of representation. As appellant failed to demonstrate that he was prejudiced in any of the above claims, he failed to demonstrate that the errors of counsel totally deprived him of representation. Therefore, the district court did not err in denying this claim.

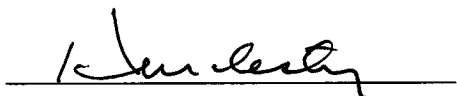
Remarks to counsel

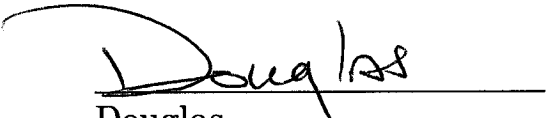
Next, appellant claimed that the district court erred by interfering with the jury selection process by making disparaging remarks towards counsel. This claim was raised on direct appeal and this court rejected this claim. Sykes v. State, Docket No. 47524 (Order of Affirmance, September 21, 2007). The doctrine of law of the case prevents further litigation of this claim and cannot be avoided by a more detailed and

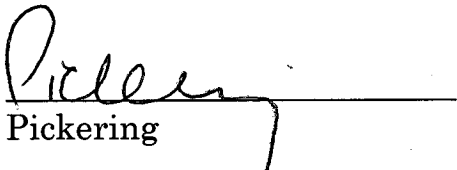
precisely focused argument. See Hall v State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975). Therefore, the district court did not err in denying this claim.

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.¹


Hardesty, J.


Douglas, J.


Pickering, J.

¹We 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.

cc: Hon. Jackie Glass, District Judge
Lee Murray Sykes
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk