

IN THE SUPREME COURT OF THE STATE OF NEVADA

GISTARVE RUFFIN, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53368

FILED

MAY 09 2011

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 a post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.


Appellant argues that the district court erred in denying, without conducting an evidentiary hearing, his claim that his trial counsel was ineffective for failing to object when a police officer testified to his opinion that appellant's shoes matched shoe prints found at the crime scene. Appellant fails to demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability that, but for counsel's errors, the outcome of the proceedings would have been different. 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).

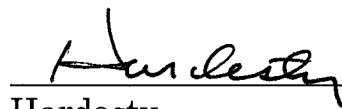
Appellant fails to demonstrate that counsel's performance was deficient as the officer's opinion was rationally based on his perception and was helpful to the determination of a fact in issue, NRS 50.265, and therefore, this testimony was properly admitted at trial. Appellant fails to demonstrate a reasonable probability that the outcome of the proceedings

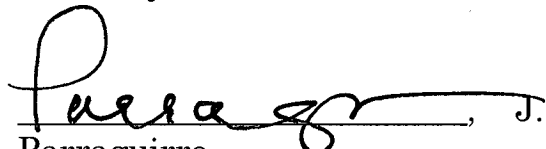
would have been different had counsel objected to the officer's testimony. As this testimony was properly admitted at trial, appellant fails to demonstrate the district court erred in failing to conduct an evidentiary hearing concerning this claim. See Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Therefore, the district court did not err in denying this claim.

Next, appellant argues that the district court erred by declining to appoint post-conviction counsel.¹ Appellant fails to demonstrate that the district court abused its discretion in declining to appoint post-conviction counsel. See NRS 34.750(1). Appellant fails to demonstrate that the issues were difficult, that he was unable to comprehend the proceedings, or that counsel was necessary to proceed with discovery. See id. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

¹In his reply brief, appellant asserts that the State has confessed error by failing to adequately respond to this allegation in the State's answering brief. We conclude that appellant's claim lacks merit as the State did respond to this claim with sufficient detail.

cc: Hon. Brent T. Adams, District Judge
Merchant Law Firm, Ltd.
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk