

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN KEVIN GRAY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53846

FILED

APR 08 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
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. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

On appeal, appellant argues that the district court erred in denying six claims of ineffective assistance of counsel.¹ 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

¹Appellant is represented in this appeal by the same counsel that represented him on direct appeal. It appears that appellant knowingly waived this conflict of interest by retaining his own counsel. Further, it appears that appellant authorized counsel to file the petition on his behalf based on the answers given by appellant when the district court canvassed appellant regarding the potential conflict. See Nevius v. Sumner, 105 F.3d 453, 458-59 (9th Cir. 1996) (holding that a defendant cannot claim a conflict of interest when the petition has been authorized by him and the defendant was informed of the consequences of that authorization).

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.

Appellant claims that trial counsel was ineffective for failing to object to: (1) a jury instruction; (2) the detective's answers as to his opinion of appellant's veracity; (3) the detective's non-responsive statement that appellant lied; (4) the detective's statement that he had "never arrested anybody under false accusation;" (5) non-expert, hearsay testimony on DNA; and (6) testimony regarding tests performed on other sexual assault victims. The substantive claims underlying these ineffective assistance of counsel claims were previously raised on direct appeal and were rejected under the plain error standard. Because this court has already concluded that appellant's underlying claims did not demonstrate prejudice sufficient to warrant reversal, appellant necessarily failed to demonstrate prejudice from counsels' failure to object to these claims. Therefore, the district court did not err in denying these claims.

Appellant also claims that clear constitutional error warrants a new trial because the State committed prosecutorial misconduct during its closing argument and because the district court erred by instructing the jury to determine whether the confession was voluntary. These claims were raised on direct appeal and were rejected by this court. See Gray v. State, Docket No. 48338 (Order of Affirmance, December 4, 2007). The doctrine of law of the case precludes further litigation of these issues and cannot be avoided by a more detailed and precisely focused argument. See

Hall v. State, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975). Therefore, the district court did not err in denying these claims. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Michael Villani, District Judge
Ciciliano & Associates, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk