

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES E. BARKLEY,

No. 34910

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

SEP 13 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT

BY *J. P. [Signature]*
CHIEF 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.

We have reviewed the record on appeal and for the reasons stated in the attached order of the district court, we conclude that the district court properly denied appellant's petition. Therefore, briefing and oral argument are not warranted in this case. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976). Accordingly, we affirm the order of the district court.

It is so ORDERED.

[Signature]

Shearing J.

[Signature]

Agosti J.

[Signature]

Leavitt J.

cc: Hon. Donald M. Mosley, District Judge
Attorney General
Clark County District Attorney
James E. Barkley
Clark County Clerk

1 **ORDR**
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

FILED
SEP 7 3 56 PM '99
Shirley B. Rungius
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,
8
9 Plaintiff,
10
11 -vs-
12 JAMES EDWARD BARKLEY,
13 #1205643
14
15 Defendant.

Case No.. C140381
Dept. No. XIV
Docket T

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

DATE OF HEARING: 08-20-99
TIME OF HEARING: 9:00 A.M.

17 THIS CAUSE having come on for hearing before the Honorable DONALD M.
18 MOSLEY, District Judge, on the 20th day of August, 1999, the Petitioner not being present, in
19 Proper Person and represented by CRAIG F. JORGENSON, Deputy Public Defender, the
20 Respondent being represented by STEWART L. BELL, District Attorney, by and through J.
21 TIMOTHY FATTIG, Deputy District Attorney, and the Court having considered the matter,
22 including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore,
23 the Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

- 24
- 25 1. On December 18, 1996, James Barkley, "Defendant", robbed the Rancho Market.
 - 26 2. On January 15, 1997, Defendant pled not guilty to robbery and battery with substantial
27 bodily harm.
 - 28 3. On April 7, 1997, a jury found Defendant guilty of robbery and misdemeanor battery.

1 4. On May 12, 1997, Defendant was sentenced to a maximum term of eighty-eight (88)
2 months, with a minimum parole eligibility of thirty-five (35) months for the robbery, and two
3 (2) months for the battery. The battery sentence to run concurrent with the robbery sentence.

4 5. Defendant file a direct appeal. On May 28, 1998, the Nevada Supreme Court affirmed
5 his conviction. Remittitur was issued on June 16, 1998.

6 6. On June 4, 1999, Defendant filed the instant Petition for Writ of Habeas Corpus (Post-
7 Conviction).

8 7. This Petition alleges four instances of ineffective assistance of counsel: (1) failure to
9 conduct a proper voir dire of prospective jurors; (2) failure to conduct an adequate investigation
10 of the State's primary witness; (3) failure to inform or consult with Defendant during trial; and
11 (4) failure to adequately prepare for trial.

12 CONCLUSIONS OF LAW

13 8. To demonstrate ineffective assistance of counsel, a defendant must show that his
14 counsel's performance was deficient and that the deficient performance prejudiced his case.
15 Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984).

16 9. A deficient performance is one in which counsel made errors so serious that he was
17 not functioning as the counsel guaranteed by the Sixth Amendment. Id.

18 10. The defendant must show that the representations of defense counsel were not within
19 the range of competence demanded of attorneys in criminal cases. Hill v. Lockhart, 474 U.S.
20 52, 106 S.Ct. 366 (1985).

21 11. The proper standard for an attorney's performance is that of "reasonably effective
22 assistance." Strickland, supra, 466 U.S. at 687, 104 S.Ct. at 2064.

23 12. It is not prejudicial for the court or the defense to conduct voir dire en masse in the
24 interest of time. Leonard v. State, 114 Nev. 1196, 969 P.2d 288 (1988).

25 13. Here, the examination of the prospective jurors failed to yield any indicators of bias.

26 14. In addition, Defendant has presented no evidence to demonstrate that any of the
27 jurors acted improperly.

28 ///

1 15. Therefore, Defendant's claim of ineffective assistance of counsel on the grounds that
2 his trial counsel failed to conduct proper voir dire fails for lack of merit and lack of prejudice.

3 16. Defendant contends that his counsel did not conduct an adequate investigation of his
4 case prior to trial.

5 17. "The law of the first appeal is the law of the case on all subsequent appeals in which
6 the facts are substantially the same." Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

7 18. "[T]he doctrine of the law of the case cannot be avoided by a more detailed and
8 precisely focused argument subsequently made after reflection upon the previous proceedings."
9 Id. at 316, 535 P.2d at 799.

10 19. In his direct appeal, Defendant claimed that Valdez was too far away to witness the
11 taking.

12 20. The claims raised here are just refinements of the same argument raised on appeal.

13 21. Thus, this argument is barred by the doctrine of law of the case.

14 22. Even if the Court were to consider the claim on its merits, the claim would be
15 rejected.

16 23. Under Strickland, defense counsel has a duty 'to make reasonable investigations or
17 to make a reasonable decision that makes particular investigations unnecessary.'" Id. at 691, 104
18 S.Ct. at 2066. State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

19 24. Naked allegations of new exculpatory evidence does not warrant relief without
20 sufficient specificity. See Hargrove v. State, 100 Nev. 498; 686 P.2d 222 (1984).

21 25. Defendant contends that if his trial counsel had counsel conducted an adequate
22 investigation, counsel would have discovered that the State's witness's view was blocked by a
23 six foot high island and that the witness could not have seen what he testified that he saw.

24 26. Here, Defendant's allegations regarding new evidence are naked allegations, which
25 do not warrant extraordinary relief.

26 27. Moreover, the evidence adduced at trial showed that Defendant was in the plain view
27 of the State's witness and that his view was not in fact blocked by the island.

28 ///

1 28. Based on that evidence, Defendant's trial counsel made a reasonable decision that
2 investigation of the facts in question was unnecessary.

3 29. Therefore, counsel was not ineffective for failing to conduct further investigation.

4 30. Defendant claims that his trial counsel was not adequately prepared and that counsel
5 failed to consult with Defendant throughout the trial.

6 31. The allegations are naked claims which are not supported by the record, which do
7 not warrant extraordinary relief. Hargrove, supra.

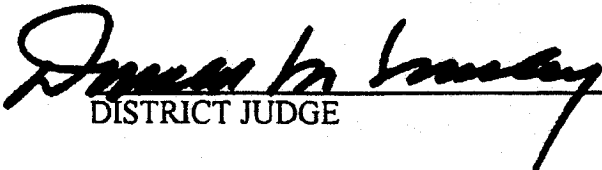
8 32. Defendant has not demonstrated that counsel's conduct was deficient; nor has he
9 demonstrated any prejudice arising from the alleged error.

10 33. Therefore, the Petition for Writ of Habeas Corpus (Post-Conviction) is denied.

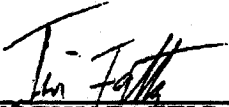
11 ORDER

12 THEREFORE, IT IS HEREBY ORDERED that the Defendant's Petition for Writ of
13 Habeas Corpus (Post-Conviction) shall be, and it is, hereby denied.

14 DATED this 26th day of August, 1999.

15
16 
17 DISTRICT JUDGE SW

18 STEWART L. BELL
19 DISTRICT ATTORNEY
20 Nevada Bar #000477

21 BY 
22 J. TIMOTHY FATTIG
23 Deputy District Attorney
24 Nevada Bar #006639

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26
27
28 DAGGM:da

**SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK**

JAMES E. BARKLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 34910
District Court Case No. C140381

RECEIPT FOR DOCUMENTS

TO: Attorney General
Clark County District Attorney
James E. Barkley #53855
Shirley Parraguirre , Clark Co. Clerk

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

02/17/00 Filed Record on Appeal (Copy).
Vols. 1 and 2. Mailed on 02/14/00.

DATE: February 17, 2000

Janette M. Bloom, Clerk of Court

By: _____
Deputy Clerk *Sy*