

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALEJANDRO A. MANZO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54418

FILED

MAY 10 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
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.¹ Eighth Judicial District Court, Clark County; James M. Bixler, Judge.

In his petition filed on February 19, 2009, appellant claimed that he received ineffective assistance of trial counsel. To prove ineffective assistance of counsel, a petitioner must 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). Both components of the inquiry must be shown. Strickland, 466 U.S. at 697.

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

First, appellant claimed that his trial counsel was ineffective for failing to obtain expert witnesses in pathology, firearms, ballistics, and crime scene analysis. Appellant failed to demonstrate that he was prejudiced. The State presented witnesses that testified extensively in these areas. Appellant failed to identify any experts that would have testified in a different manner. Accordingly, he failed to demonstrate that there was a reasonable probability of a different outcome at trial had his trial counsel sought additional expert witness testimony. Therefore, the district court did not err in denying this claim.

Second, appellant claimed that his trial counsel was ineffective for failing to seek a pretrial dismissal of the charges because the State misplaced the victim's clothes. Appellant failed to demonstrate prejudice. Appellant failed to demonstrate that sanctions were warranted for the failure to gather this evidence because he failed to demonstrate a reasonable probability that the outcome of the trial would have been different had the victim's clothes been available to the defense. Randolph v. State, 117 Nev. 970, 987, 36 P.3d 424, 435 (2001). Therefore, the district court did not err in denying this claim.


Third, appellant claimed that his trial counsel was ineffective for failing to argue there was insufficient evidence to convict him and for failing to argue that trying him along with a codefendant violated Bruton v. United States, 391 U.S. 123 (1968). Appellant cannot demonstrate that he was prejudiced because the underlying claims were raised on direct appeal and this court rejected those claims. Manzo v. State, Docket No. 49002 (Order of Affirmance, October 17, 2008). Therefore, the district court did not err in denying these claims.

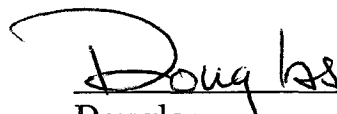
Fourth, appellant claimed that the above errors amounted to cumulative error. Because appellant failed to demonstrate that he was prejudiced by any of the above claims, he failed to demonstrate that the cumulative effect amounted to ineffective assistance of counsel. Therefore, the district court did not err in denying this claim.


Next, appellant claimed: (1) the State committed prosecutorial misconduct for attacking its own witness, (2) the State committed misconduct for failing to ascertain if the bullets were removed from the victim's body at the hospital, (3) the State committed misconduct for failing to collect the bullets, and (4) the jury instruction concerning possession of a deadly weapon was erroneous. These claims could have been raised on direct appeal. Appellant failed to allege or demonstrate cause for his failure to do so. See NRS 34.810(1)(b). Therefore, the district court did not err in denying these claims.

Having considered appellant's contentions and concluding that they are without merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. James M. Bixler, District Judge
Alejandro A. Manzo
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk