

IN THE SUPREME COURT OF THE STATE OF NEVADA


DERRICK DENNIS MCCULLAH,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 54423

**FILED**

**MAY 07 2010**

ORDER OF AFFIRMANCE

TRACHE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

In his petition, appellant raised three claims of ineffective assistance of trial counsel. To state a claim of ineffective assistance of counsel a petitioner must demonstrate that his 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 of a different outcome but for counsel's errors. See Strickland v. Washington, 466 U.S. 668, 687-88, 694 (1984); Warden v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984). The court need not address both components of the

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<sup>1</sup>This 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).

inquiry if the petitioner makes an insufficient showing on either one. Strickland, 466 U.S. at 697.

First, appellant claimed that trial counsel was ineffective for failing to investigate and recover the jacket worn by appellant on the night of his arrest. Appellant specifically argued that the jacket was necessary to disprove the victim's claims that she was robbed by a person wearing a brown jacket, because his jacket was not brown. Appellant failed to demonstrate that he was prejudiced. The victim admitted during cross-examination at trial that she had inconsistently identified the color of the jacket, first describing the jacket to the police as "black dark," later at the preliminary hearing as "dark brown," and at trial as "a dark jacket." As the jury was aware that the victim had not consistently identified the jacket's specific color, appellant failed to demonstrate a reasonable probability of a different result had appellant's jacket been admitted into evidence at trial. Therefore, the district court did not err in denying this claim.

Second, appellant claimed that trial counsel was ineffective for failing to impeach the victim regarding inconsistent statements made describing appellant's facial hair, the length of appellant's hair, the color of appellant's jacket, and the type of weapon used by appellant. Appellant failed to demonstrate that counsel was deficient or that he was prejudiced. Defense counsel thoroughly cross-examined the victim regarding inconsistencies in her statements that the person who robbed her was clean shaven, that he had short dark hair, that he wore a dark jacket, and that he used a revolver with a "spinner." Defense counsel admitted a picture of appellant contemporaneous to his arrest that demonstrated that in actuality, appellant had a short goatee, and that his hair was braided

closely to his head, and pulled back into a pony tail. Defense counsel also elicited testimony from a LVMPD officer that the only gun paraphernalia recovered during the police investigation belonged to a nine millimeter semi automatic hand gun, which would not have had a "spinner." As the jury was aware of the inconsistencies in the victim's testimony, appellant failed to demonstrate a reasonable probability of a different result had trial counsel conducted further cross-examination. Accordingly, the district court did not err in denying this claim.

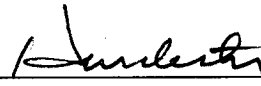
Third, appellant claimed that trial counsel was ineffective for failing to present expert testimony from an identification specialist to refute the victim's identification of appellant at the "show up" procedure. Appellant failed to demonstrate that he was prejudiced. Given the other overwhelming evidence presented against appellant, including the fact that he was observed in the vehicle with the same license plate number identified by the victim and that the victim's cellular phone was discovered in appellant's pocket shortly after the robbery, and the fact that the jury was aware of the inconsistencies of the victim's description and identification of appellant, appellant failed to demonstrate a reasonable probability of a different result had trial counsel presented the testimony of an identification expert. Accordingly, the district court did not err in denying this claim.

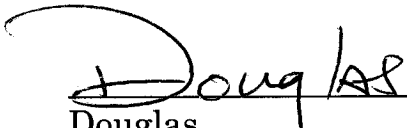
In addition to his claims of ineffective assistance of trial counsel, appellant also claimed that (1) the trial court erred by not holding an evidentiary hearing regarding the admissibility of the victim's identification of appellant, (2) the trial court erred in denying appellant's motion to suppress the victim's identification of appellant, (3) the trial court erred in denying appellant's motion for a mistrial due to lack of


diversity in the jury venire, (4) insufficient evidence existed to support the judgment of conviction, and (5) the State violated appellant's confrontation rights by attempting to call a witness it knew to be unavailable. These claims were raised on direct appeal and rejected by this court. McCullah v. State, Docket No. 47915 (Order of Affirmance, March 27, 2008). Accordingly, these claims are barred by the doctrine of law of the case, which "cannot be avoided by a more detailed and precisely focused argument." Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975). Therefore, the district court did not err in denying these claims.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. Jackie Glass, District Judge  
Derrick Dennis McCullah  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk