

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDERICK LOUIS WARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54876

FILED

APR 08 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY A. Ingersoll
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court dismissing a post-conviction petition for a writ of habeas corpus.¹ Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Preliminarily, we note that the district court improperly dismissed appellant's petition filed on December 26, 2007, based on the fact that appellant was no longer incarcerated. Appellant was incarcerated when he filed his petition and therefore was entitled to review of his petition. See NRS 34.724(1). Nevertheless, for the reasons

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 Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

discussed below, we affirm the order of the district court because the district court reached the correct result in dismissing the petition. See Kraemer v. Kraemer, 79 Nev. 287, 291, 382 P.2d 394, 396 (1963) (holding that a correct result will not be reversed simply because it is based on the wrong reason).

Appellant raised five claims that his trial counsel was ineffective. 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 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.

First, appellant claimed that counsel was ineffective for failing to argue that the charges should be dismissed with prejudice when the justice court dismissed the charges after the preliminary hearing. Appellant failed to demonstrate that counsel's performance was deficient or that he was prejudiced because he failed to demonstrate that such an argument would have been successful. See Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978). The State may still pursue charges against a defendant when the charges have been dismissed after a preliminary

hearing. See NRS 173.035(2); NRS 178.562(2). Therefore, the district court did not err in dismissing this claim.

Second, appellant claimed that counsel was ineffective for failing to file a motion to suppress the testimony of the police officers because a report was not written about the incident. Contrary to appellant's assertions a report was written. Therefore, this claim was belied by the record and appellant failed to demonstrate that counsel was ineffective in this regard.

Third, appellant claimed that counsel was ineffective for failing to recover the surveillance tape at the store where the crime occurred. Appellant failed to support this claim with specific facts that, if true, would warrant relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Specifically, appellant failed to demonstrate that a surveillance tape existed or that it would show the transaction.

Fourth, appellant claimed that counsel was ineffective for failing to investigate and for failing to file appellant's proper person motions. Appellant failed to support this claim with specific facts that, if true, would warrant relief because appellant failed to specify what counsel failed to investigate and what motions appellant wanted filed. Id.

Finally, appellant claimed that counsel told appellant to testify when it was not in his best interest. Appellant failed to demonstrate that counsel's performance was deficient. Appellant was properly canvassed by the district court prior to testifying and appellant told the district court that he thought he should testify in order to tell his

side of the story. Therefore, appellant failed to demonstrate ineffective assistance of counsel. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Connie J. Steinheimer, District Judge
Frederick Louis Ward
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

²We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.