

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALEX RANGEL KING,
Appellant,
vs.
WARDEN, LOVELOCK
CORRECTIONAL CENTER, JACK
PALMER AND THE STATE OF
NEVADA,
Respondents.

No. 55014

FILED

SEP 29 2010

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

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Alex King's post-conviction petition for a writ of habeas corpus. Third Judicial District Court, Lyon County; David A. Huff, Judge.

King was convicted of two counts of sexually assaulting his ex-girlfriend and did not file a direct appeal. After the district court denied his petition for post-conviction relief without an evidentiary hearing, King filed the instant appeal. He now argues that the district court erred in denying his multiple claims of ineffective assistance of trial counsel related to counsel's alleged failure to investigate, call various witnesses, file motions, and pursue a direct appeal. To prove a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, King must demonstrate (1) that his counsel's performance was deficient in that it fell below an objective standard of reasonableness and (2) prejudice in 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);

Kirksey v. State, 112 Nev. 980, 987-88, 998, 923 P.2d 1102, 1107, 1114 (1996). Because King has failed to meet this burden as to any of his claims, we conclude that the district court did not err in denying his petition and affirm its judgment.

First, King asserts that, had counsel effectively investigated, King's mother and her boyfriend would have testified that King and the victim had a prior relationship and that the victim attended sex parties. King failed to demonstrate that trial counsel's performance was deficient or that he was prejudiced. The prior relationship was conclusively established at trial and insinuations about the victim's prior sexual conduct are not admissible. NRS 50.090. Therefore, the district court did not err in denying this claim.

Second, King claims that two former girlfriends and one of their mothers would have testified that King was a nice guy and a good boyfriend who never sexually abused them. King failed to demonstrate that counsel's performance was deficient or that he was prejudiced. This type of character-bolstering evidence is inadmissible unless relevant to the conduct with which he was charged. See NRS 48.045; Daly v. State, 99 Nev. 564, 571-72, 665 P.2d 798, 803-04 (1983), modified on other grounds by Richmond v. State, 118 Nev. 924, 932, 59 P.3d 1249, 1254 (2002). Because of the dubious relevance of this testimony, and the fact that counsel's choice of which witnesses to call is a strategic decision that is "virtually unchallengeable absent extraordinary circumstances," Doleman v. State, 112 Nev. 843, 848, 921 P.2d 278, 280-81 (1996) (quoting Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990), abrogated on other grounds by Harte v. State, 116 Nev. 1054, 1072, 13 P.3d 420, 432 (2000)),

we conclude that counsel was not deficient in failing to call these witnesses. Accordingly, the district court did not err in rejecting this claim.

Third, King asserts that, with better questioning and more thorough investigation, two of King's former roommates would have offered additional testimony about King's character, King's prior sexual relationship with the victim, and the layout of the apartment. This claim is belied by the record as both witnesses testified to each fact that King alleged in his petition. Accordingly, the district court did not err in rejecting this claim.

Fourth, King asserts that had counsel effectively investigated, Chris Velasco, the victim's boyfriend at the time of the assault, would have testified about the victim's possible motives to lie about the assault. This assertion is "mere speculation" that finds no support in the record, see Sterling v. State, 108 Nev. 391, 396, 834 P.2d 400, 403 (1992), and King therefore fails to demonstrate counsel's deficiency or that he was prejudiced. Accordingly, the district court did not err in rejecting this claim.

Fifth, King claims that counsel was ineffective for failing to file a motion to introduce evidence of the victim's sexual relationship with Velasco, positing that he could have caused the victim's injuries. Because the district court made a pretrial ruling that no evidence of sexual conduct with anyone except the defendant would be admissible, King fails to show that his counsel was deficient in failing to file such a motion. Accordingly, the district court did not err in rejecting this claim.

Sixth, King claims that counsel was ineffective for failing to call King to testify that the sex was consensual. King failed to demonstrate that trial counsel's performance was deficient or that he was prejudiced. During trial, the district court canvassed King concerning his right to testify and whether he had discussed this right with his attorney. Thus, King waived the right to testify and the district court did not err in denying this claim.

Seventh, King claims that counsel was ineffective for failing to file a motion in limine to exclude or limit the number of photos of the victim's injuries. Because such photographs are admissible to assist the testimony of an expert in describing injuries, see Theriault v. State, 92 Nev. 185, 193, 547 P.2d 668, 674 (1976), overruled on other grounds by Alford v. State, 111 Nev. 1409, 1415 n.4, 906 P.2d 714, 717-18 n.4 (1995), King fails to persuade us that such a motion would have been successful and that counsel was therefore deficient in failing to file it. Accordingly, the district court did not err in rejecting this claim.

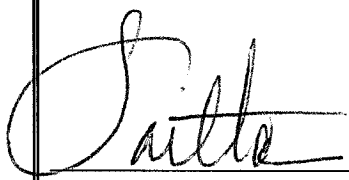
Eighth, King claims that counsel was ineffective for failing to make a motion for the assistance of a private investigator. We reject his conclusory assertion that counsel required such assistance. See Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

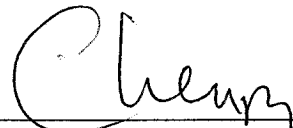
Ninth, King claims that counsel was ineffective for failing to file an appeal. There is no indication in the record—and King did not assert in his petition—that he requested counsel to file an appeal. Cf. Mann v. State, 118 Nev. 351, 353-54, 46 P.3d 1228, 1229-30 (2002). Instead, he asserted that counsel should file an appeal in every case where a conviction carries a life sentence. We reject that contention and


conclude that counsel was not deficient. Accordingly, the district court did not err in rejecting this claim.

Having considered King's contentions and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.


Saitta, J.


Cherry, J.


Gibbons, J.

cc: Hon. David A. Huff, District Judge
Lyon Co. Clerk
Carter R. King
Attorney General/Carson City
Lyon County District Attorney