

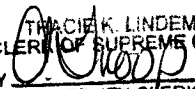
IN THE SUPREME COURT OF THE STATE OF NEVADA

MARCUS T. ANDERSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55154

FILED

SEP 10 2010

THACIEK L. LINDEMAN
CLERK OF SUPREME COURT
BY  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; Donald M. Mosley, Judge.

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

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).

P.2d 504, 505 (1984) (adopting the test in Strickland). Both components of the inquiry must be shown, Strickland, 466 U.S. at 697.

First, appellant claimed that his trial counsel failed to file a pretrial motion challenging the probable cause determination to bind him over to district court. Appellant cannot demonstrate deficiency because his trial counsel filed a pretrial petition for a writ of habeas corpus which challenged the probable cause determination. Further, appellant cannot demonstrate prejudice because he was ultimately found guilty beyond a reasonable doubt by a jury of the charged offenses. United States v. Mechanik, 475 U.S. 66, 70 (1986); Lisle v. State, 114 Nev. 221, 224-25, 954 P.2d 744, 746-47 (1998). Therefore, the district court did not err in denying this claim.

Second, appellant claimed that his trial counsel was ineffective for failing to investigate facts and witnesses to establish appellant's version of events. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Appellant did not identify what facts he wanted presented or identify any witnesses who should have been called. See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Appellant failed to demonstrate a reasonable probability of a different outcome at trial had his trial counsel conducted further investigation regarding appellant's version of events. See Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Therefore, the district court did not err in denying this claim.

Third, appellant claimed that his trial counsel was ineffective for failing to provide a competent opening statement and closing argument, failing to implement a competent defense strategy, and for

failing to argue the State had not proven a connection between appellant, the drugs and the firearm. Appellant failed to demonstrate prejudice stemming from these issues because there was overwhelming evidence of appellant's guilt presented at trial. The police found drugs both in the vehicle appellant was driving and in his apartment. In addition, appellant's fingerprint was discovered on the firearm in the apartment. Therefore, the district court did not err in denying this claim.

Fourth, appellant claimed that his trial counsel was ineffective for failing to prepare appropriate jury instructions. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Appellant did not identify any errors in the jury instructions used at trial and did not identify any additional jury instructions that should have been given. See Hargrove, 100 Nev. at 502, 686 P.2d at 225. Therefore, the district court did not err in denying this claim.

Fifth, appellant claimed that his trial counsel was ineffective for failing to restrict admission of his prior felonies. Appellant cannot demonstrate prejudice because appellant was charged as an ex-felon in possession of a firearm and evidence that proved appellant had been convicted of two felonies was relevant to prove the charged crime. NRS 48.025(1). Therefore, the district court did not err in denying this claim.²

²To the extent that appellant claimed that trial counsel was ineffective for failing to object when one of the State's witnesses commented that appellant had a prior conviction, appellant cannot demonstrate that his counsel was deficient because counsel did object
continued on next page . . .

Sixth, appellant claimed that his trial counsel was ineffective for failing to pursue evidence showing that the State coerced his codefendant's consent to search their apartment. Appellant failed to demonstrate that his trial counsel was deficient or that he was prejudiced. Appellant made only a bare and naked claim that the police coerced his codefendant and there was no support for this claim in the record. See Hargrove, 100 Nev. at 502, 686 P.2d at 225. In addition, as police officers viewed the drugs in the vehicle in plain sight and also obtained a search warrant for the apartment, appellant failed to demonstrate a reasonable probability of a different outcome had his trial counsel argued that the State coerced the codefendant. Therefore, the district court did not err in denying this claim.

Seventh, appellant claimed that his trial counsel was ineffective for failing to argue that the search warrant was invalid. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. The search warrant of the apartment was obtained after appellant's codefendant had consented to the search and showed the police officers the drugs hidden in the apartment. Given these facts, appellant failed to demonstrate that a motion to suppress the

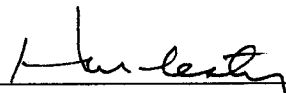
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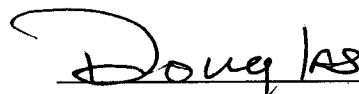
when this statement was made. Further, appellant cannot demonstrate prejudice because the underlying claim was raised on direct appeal and this court rejected that claim. Anderson v. State, Docket No. 52501 (Order of Affirmance, November 5, 2009).


evidence obtained in the search of the apartment had a reasonable likelihood of success. Kirksey v. State, 112 Nev. 980, 990, 923 P.2d 1102, 1109 (1996).

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

ORDER the judgment of the district court AFFIRMED.³


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Donald M. Mosley, District Judge
Marcus T. Anderson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³We 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.