

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES RONELL GREEN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 55757

**FILED**

NOV 08 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

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; Donald M. Mosley, Judge.

In his petition filed on October 6, 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

---

<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).

must be shown, Strickland, 466 U.S. at 697, and the petitioner must demonstrate the underlying facts by a preponderance of the evidence, Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). We give deference to the district court's factual findings regarding ineffective assistance of counsel but review the court's application of the law to those facts de novo. Lader v. Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

First, appellant claimed that trial counsel was ineffective for failing to file a motion to dismiss the drug charges after the preliminary hearing. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced because slight or marginal evidence was presented at the preliminary hearing to support the bind over to the district court. See Sheriff v. Hodes, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980); Kinsey v. Sheriff, 87 Nev. 361, 363, 487 P.2d 340, 341 (1971). Therefore, we conclude that the district court did not err in denying this claim.

Second, appellant claimed that trial counsel was ineffective for failing to question detectives about a stop two weeks prior to this crime to show a pattern of racial profiling and individual harassment. Appellant failed to demonstrate that trial counsel's performance was deficient or that he was prejudiced. Trial counsel testified that she did not believe testimony about a prior traffic stop would be helpful, she could not find documentation regarding the alleged stop, and she did not want to open the door to testimony about appellant's prior criminal history. Appellant failed to demonstrate that there was a reasonable probability of a different outcome had trial counsel questioned the detectives about the stop.

Therefore, we conclude that the district court did not err in denying this claim.

Third, appellant claimed that trial counsel was ineffective for failing to object to the State's telling the court that appellant had threatened S. Jones and that S. Jones' father was shot on appellant's orders. Appellant failed to demonstrate that he was prejudiced as this information was not brought out in front of the jury. Therefore, we conclude that the district court did not err in denying this claim.

Fourth, appellant claimed that trial counsel was ineffective for failing to call a robbery victim from an unrelated crime to testify because the search warrant stated that the suspect in the warrant was a suspect in an unrelated robbery. Appellant also claimed that trial counsel was ineffective for failing to provide evidence that appellant was not in a gang and did not answer to the moniker, "Little C." Trial counsel testified that she did not call the robbery victim to testify because she did not want to take the chance that appellant would be identified as a robbery suspect in an unrelated crime at trial and she would not open the door to any alleged gang involvement. Tactical decisions of counsel are virtually unchallengeable absent extraordinary circumstances, and appellant demonstrated no such extraordinary circumstances here. Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990). Appellant failed to demonstrate that there was a reasonable probability of a different result had trial counsel called the robbery victim to testify or further explored his alleged gang involvement or moniker. Therefore, we conclude that the district court did not err in denying this claim.

Fifth, appellant claimed that trial counsel was ineffective for objecting to S. Jones' preliminary hearing testimony being read into the

record because there was no proof of a medical emergency making her unavailable. Trial counsel testified that she was “somewhat happy” that S. Jones was unavailable because her testimony at the preliminary hearing was equivocal in that S. Jones was not positive in her identification of appellant. Counsel’s decision not to object was a tactical decision, and appellant failed to demonstrate an extraordinary circumstance exists to challenge that decision. Id. The record further reveals that prior to the commencement of trial, the State represented that S. Jones had a medical emergency and was transported to the hospital. Appellant failed to demonstrate that there was a reasonable probability of a different outcome had trial counsel objected. Therefore, we conclude that the district court did not err in denying this claim.

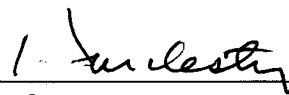
Next, appellant claimed that appellate counsel was ineffective for failing to argue that the State sought an indictment on weapons charges after the weapons charges were dismissed at the preliminary hearing. Counsel testified that she did not raise this argument on direct appeal because appellant was found not guilty of the weapons charge. Appellant failed to demonstrate that counsel’s performance was unreasonable or that this argument had a reasonable likelihood of success on appeal. Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). Therefore, we conclude that the district court did not err in denying this claim.

Next, appellant claimed that the district court erred in refusing defense jury instructions on witness identification and denying access to SCOPE-reports for the other individuals arrested from the same apartment. These claims were considered and rejected by this court on direct appeal. The doctrine of the law of the case prevents further

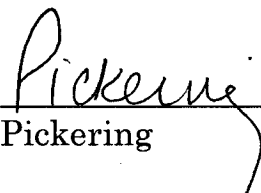
litigation of this issue. See Hall v. State, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975).

Finally, appellant claimed that the prosecutor committed misconduct, an illegal show-up identification was conducted, and there was an unreasonable search and seizure. These claims were waived as they should have been raised on direct appeal, and appellant failed to demonstrate good cause for his failure to do so. NRS 34.810(1)(b). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Donald M. Mosley, District Judge  
Charles Ronell Green  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk