


IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND WHITE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 56075

**FILED**

DEC 10 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY:  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Raymond White's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Abbi Silver, Judge.

White contends that the district court abused its discretion by denying or failing to specifically address his claims that the district court erred by not submitting the habitual criminal allegation to the jury; the police wrongly secured the arrest and search warrants with perjured statements; and the State failed to introduce the "buy" money into evidence, thereby violating Brady v. Maryland, 373 U.S. 83 (1963), and improperly basing its case on hearsay and circumstantial evidence. However, these contentions could have been raised on direct appeal and White did not demonstrate good cause for failing to do so, therefore, these claims were procedurally barred. See NRS 34.810(1)(b). Accordingly, the district court did not err by failing to address the merits of these claims.

White also contends that the district court abused its discretion by denying his claims that defense counsel was ineffective. He claimed that counsel was ineffective for failing to retain experts and conduct tests to challenge the audio recording of the sale, the electronic

equipment used, and the methods and reliability of the police investigation. He further claimed that counsel was ineffective for failing to investigate the confidential informant's background, investigate and develop entrapment and procurer defenses, move to sever the trafficking counts, and address his appearance at trial in jail clothes.

When reviewing the district court's resolution of ineffective-assistance claims, we give deference to the court's factual findings if supported by substantial evidence and not clearly erroneous 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). The district court conducted an evidentiary hearing. Defense counsel testified that challenging the voice on the audio recording would have been frivolous because it was clearly White's voice and the results of any tests would have been contrary to the defense of mistaken identity. Counsel did not interview the confidential informant because White assured him that she would not testify. Counsel considered both an entrapment and procuring agent defense, but did not pursue these defenses because they were contrary to White's unequivocal instructions and inconsistent with his defense. Counsel believed that the information charging White was appropriately pleaded and it would have been futile to file a motion to sever the charges. White refused to wear civilian clothes during the first day of the trial despite the district court's admonition regarding his decision to wear the jail clothes. Based on this testimony, the district court concluded that counsel's performance did not fall below an objective standard of reasonableness and White did not demonstrate that he suffered any prejudice. See Strickland v. Washington, 466 U.S. 668, 687 (1984) (establishing two-part test for ineffective assistance of counsel);

Kirksey v. State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996) (applying the Strickland test). White has not demonstrated that the district court's findings are not supported by the record or that the district court erred as a matter of law. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Cherry, J.  
Cherry

Saitta, J.  
Saitta

Gibbons, J.  
Gibbons

cc: Hon. Abbi Silver, District Judge  
Attorney General/Carson City  
Carmine J. Colucci & Associates  
Clark County District Attorney  
Eighth District Court Clerk