

IN THE SUPREME COURT OF THE STATE OF NEVADA

LOUIS RANDOLPH A/K/A CLYDE
LEWIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56089

FILED

JAN 13 2011

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 a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

In his petition filed on March 3, 2010, appellant claimed that his trial counsel was ineffective. 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

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).

Strickland). Both components of the inquiry must be shown. Strickland, 466 U.S. at 697.

First, appellant claimed that his trial counsel was ineffective for failing to interview and present the testimony of multiple witnesses who would have testified concerning the selective prosecution of appellant. Appellant fails to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Trial counsel attempted to present these witnesses, but was precluded from presenting evidence relating to selective prosecution by the district court. In addition, appellant's underlying claim of selective prosecution was considered and rejected on direct appeal. Lewis v. State, Docket No. 50135 (Order of Affirmance, March 4, 2009). Therefore, the district court did not err in denying this claim.

Second, appellant claimed that his trial counsel was ineffective for failing to present appellant's statements made at a prison disciplinary hearing where he denied ownership of the weapons.² Appellant failed to demonstrate deficiency or prejudice because these statements were inadmissible hearsay. NRS 51.065. Therefore, the district court did not err in denying this claim.


Next, appellant claimed that his appellate counsel was ineffective for failing to "federalize" the arguments on direct appeal. Appellant failed to demonstrate that he was prejudiced because he failed to demonstrate that he would have gained a more favorable standard of

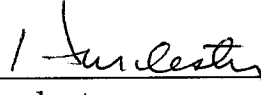
²To the extent that appellant claimed that the State failed to disclose the tape recording of the disciplinary hearing, this claim is belied by the record.

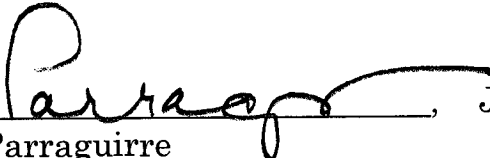
review on direct appeal had his appellate counsel federalized the arguments. See Browning v State, 120 Nev. 347, 365, 91 P.3d 39, 52 (2004); see also Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). Therefore, the district court did not err in denying this claim.

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

ORDER the judgment of the district court AFFIRMED.³


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Douglas W. Herndon, District Judge
Clyde Lewis a/k/a Louis Randolph
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.