

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES H. GREEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56549

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; Stefany Miley, Judge.

In his petition filed on May 1, 2010, appellant raised eleven claims that he received ineffective assistance of counsel.² 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

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).

²To the extent that appellant raised claims independent of his ineffective assistance of counsel claims, these claims were not proper for a post-conviction petition for a writ of habeas corpus absent a demonstration of good cause and prejudice for raising them. NRS 34.810(b); NRS 34.810(3). Appellant failed to demonstrate any good cause or prejudice, and therefore, the district court did not err in denying these claims.

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). To prove prejudice regarding ineffective assistance of appellate counsel, a petitioner must demonstrate prejudice such that the omitted issue would have had a reasonable probability of success on appeal. Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). Both components of the inquiry must be shown, Strickland, 466 U.S. at 697.

First, appellant claimed that trial counsel was ineffective because he failed to do any pretrial investigation. Specifically, appellant claimed that trial counsel should have interviewed the manager of the motel to ascertain that appellant was a resident at the motel in order to bolster his self-defense claim. Appellant failed to demonstrate that he was prejudiced because he failed to demonstrate a reasonable probability of a different outcome at trial had this evidence been presented. Evidence was presented at trial that appellant was the person to whom the motel room was rented. To the extent that appellant raised a general claim that trial counsel failed to investigate, appellant failed to allege specific facts that, if true, entitled him to relief. Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Therefore, the district court did not err in denying this claim.

Second, appellant claimed that trial counsel was ineffective for failing to object to unconstitutional jury instructions. To the extent that appellant appeared to claim that trial counsel was ineffective for failing to object to the jury instructions regarding self-defense and malice, appellant failed to demonstrate that trial counsel was deficient or that he was prejudiced because he failed to demonstrate that these jury instructions

were unconstitutional or that had trial counsel objected there was a reasonable probability of a different outcome at trial. Therefore, the district court did not err in denying this claim.

Third, appellant claimed that trial counsel failed to make contemporaneous objections at trial to the admission of prior bad act evidence. Appellant failed to demonstrate that counsel was deficient or that he was prejudiced. Appellant failed to demonstrate that trial counsel should have made a contemporaneous objection in order to preserve the objection for appeal. We note that on direct appeal, this court reviewed the district court's decision to admit the evidence under the appropriate standard for an issue preserved by an objection in the district court. Green v. State, Docket No. 51963 (Order of Affirmance, May 13, 2009). Therefore, the district court did not err in denying this claim.

Fourth, appellant claimed that trial counsel was ineffective for failing to pursue pretrial motions or discovery. Appellant failed to demonstrate that trial counsel was deficient or that he was prejudiced because he failed to allege what pretrial motions or discovery should have been pursued. Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. Therefore, the district court did not err in denying this claim.

Fifth, appellant claimed that trial counsel was ineffective for failing to object to the justice court judge "Saragosa appoint[ing] John Parris on Nov. 16, 2007 and presid[ing] over the preliminary hearing 2/21/2008." Appellant failed to demonstrate that trial counsel was deficient or that he was prejudiced. Appellant failed to allege specific facts that, if true, entitled him to relief. Id. Therefore, the district court did not err in denying this claim.

Sixth, appellant claimed that trial counsel was ineffective for failing to object to the admission of evidence from his other cases. Specifically, appellant claimed that trial counsel should have objected to the introduction of the box cutters used in the other cases. Appellant failed to demonstrate that he was prejudiced because he failed to demonstrate a reasonable probability of a different outcome at trial had trial counsel objected. Appellant admitted at trial that he used a box cutter in at least one of the prior incidents and admitted that he used a knife with a three-inch blade in the instant offense. Therefore, the district court did not err in denying this claim.

Seventh, appellant claimed that trial counsel was ineffective for failing to convey that the motel room was appellant's residence, that appellant was injured during the incident, and that the victim gave different statements to the detectives regarding what happened. Appellant failed to demonstrate that trial counsel was deficient or that he was prejudiced because trial counsel presented all of this evidence at trial. Therefore, the district court did not err in denying these claims.

Eighth, appellant claimed that trial counsel was ineffective for failing to cross-examine the victim. Appellant failed to demonstrate that trial counsel was deficient or that he was prejudiced because trial counsel did cross-examine the victim. Further, appellant failed to allege how counsel could have cross-examined the victim more effectively. Therefore, the district court did not err in denying this claim.


Ninth, appellant claimed that trial counsel was ineffective for failing to call the detectives in order to impeach the victim's statements. Appellant failed to demonstrate that trial counsel was deficient. The

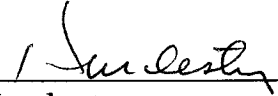
detectives testified at trial and the victim was impeached with his prior statements. Therefore, the district court did not err in denying this claim.

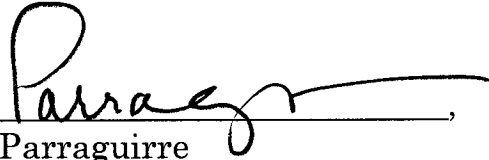
Tenth, appellant claimed that appellate counsel was ineffective for submitting facts in the fast-track statement that were false. Appellant failed to demonstrate that appellate counsel was deficient because appellant failed to allege what facts were false. Therefore, the district court did not err in denying this claim.

Finally, appellant claimed that appellate counsel was ineffective for failing "to file appellant's material issues on appeal" and for failing to raise Anders v. California, 386 U.S. 738 (1967). Appellant failed to demonstrate that appellate counsel was deficient. Appellant failed to allege what claims should have been raised on appeal that were not. Further, appellant failed to explain why Anders should have been raised on appeal. We note that this court opted out of the procedure outlined in Anders. See Ramos v. State, 113 Nev. 1081, 944 P.2d 856 (1997) (holding that counsel could not withdraw from an appeal that he believes had no merit thereby opting out of the procedure required by Anders). Therefore, the district court did not err in denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Stefany Miley, District Judge
James H. Green
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk