

IN THE SUPREME COURT OF THE STATE OF NEVADA


SANTOS PASTOR PEREZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56851

FILED

APR 06 2011

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

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; Valorie Vega, Judge.

In his petition, filed on April 13, 2010, appellant claimed that he received ineffective assistance of 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

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).

To the extent that appellant appealed the denial of his motion for counsel, we conclude the district court did not abuse its discretion in denying the motion. See NRS 34.750(1).

(1984) (adopting the test in Strickland). Both components of the inquiry 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).

First, appellant claimed that trial counsel was ineffective for failing to perform a background investigation on the victims. Appellant claims that this investigation may have shown that the victims had criminal histories or pending criminal charges. Appellant failed to demonstrate that trial counsel was deficient. Appellant's claim is based on mere speculation that the victims may have had criminal histories. Thus, appellant failed to allege specific facts that, if true, entitled him to relief. See 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.

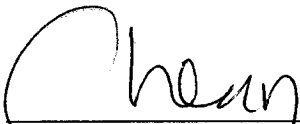
Second, appellant claimed that trial counsel should have cross-examined one of the victims about a head wound he received during the incident and whether that affected his ability to perceive the incident. Appellant failed to demonstrate that he was prejudiced. Two other witnesses testified and corroborated the testimony of the victim, and therefore, appellant failed to demonstrate a reasonable probability of a different outcome at trial had counsel questioned him about his head wound. Therefore, the district court did not err in denying this claim.


Third, to the extent that it appears that appellant claimed that he received ineffective assistance of appellate counsel, appellant failed to allege specific facts that, if true, entitled him to relief. See id. Therefore, the district court did not err in denying this claim.

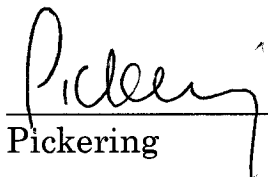
Finally, to the extent it appears that appellant is challenging the jury instructions in this case, this claim should have been raised on

direct appeal and appellant failed to demonstrate good cause and prejudice to overcome the procedural bar. NRS 34.810(1)(b). Further, appellant failed to allege specific facts that, if true, entitled him to relief. See Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. Therefore, the district court did not err in denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Gibbons


_____, J.
Pickering

cc: Hon. Valorie Vega, District Judge
Santos Pastor Perez
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk