

IN THE SUPREME COURT OF THE STATE OF NEVADA

REYNALDO AQUINO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57044

FILED

MAY 09 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Ingersoll*
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; David B. Barker, Judge.

In his petition, filed on May 18, 2010, appellant first claimed that he received ineffective assistance of trial counsel. To prove ineffective assistance of counsel, a petitioner must demonstrate (a) that counsel's performance was deficient in that it fell below an objective standard of reasonableness and (b) resulting prejudice in 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); 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.

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).

Appellant claimed that counsel was ineffective for failing to object to the introduction at trial of photographs of appellant in handcuffs, to an attempted robbery jury instruction, and to the State's characterization of the victim at sentencing. The underlying claims were rejected under the plain error standard on direct appeal. Aquino, Jr. v. State, Docket No. 51605 (Order Affirming in Part, Reversing in Part and Remanding, June 18, 2009). Because this court had already concluded that appellant's underlying claims did not demonstrate prejudice sufficient to warrant reversal, appellant necessarily failed to demonstrate prejudice from counsel's alleged failure to object to the above events. Therefore, the district court did not err in denying these claims.

Appellant next claimed that he received ineffective assistance of trial and appellate counsel for their respective failures to investigate trace physical evidence found on appellant's hands. Appellant failed to support these claims with specific facts that, if true, would have entitled him to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984) (holding that "bare" or "naked" claims are insufficient to grant relief). We therefore conclude the district court did not err in denying these claims.

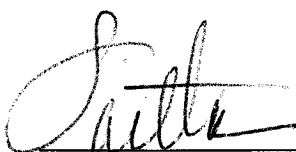
Appellant next claimed that he received ineffective assistance of appellate counsel for failing to challenge on direct appeal the introduction at trial of photographs of appellant in handcuffs, an attempted robbery jury instruction, the State's characterization of the victim at sentencing, and sufficiency of the evidence. Appellant's claims are belied by the record as appellate counsel did raise each of those claims. See id. at 503, 686 P.2d at 225. We therefore conclude the district court did not err in denying these claims.

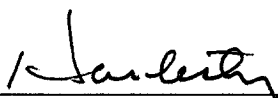
Finally, appellant claimed that his due process rights were violated because the amended judgment of conviction increased his


sentence after he had already begun serving it. This claim could have been raised on direct appeal and was therefore procedurally barred absent a demonstration of good cause and actual prejudice. NRS 34.810(1)(b). Appellant demonstrated good cause because the amended judgment of conviction was filed after issuance of the remittitur on his direct appeal; however, appellant failed to demonstrate actual prejudice because the amended judgment of conviction did not increase his sentence. See Sullivan v. State, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004). We therefore conclude the district court did not err in denying this claim.²

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. David B. Barker, District Judge
Reynaldo Aquino
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²The district court denied this claim for having been previously decided by this court. However, this claim has never been before this court. Further, application of the procedural default rules is mandatory. State v. Dist. Ct. (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). We nevertheless affirm the district court's decision for the reasons stated above. See Wyatt v. State, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (holding that a correct result will not be reversed simply because it is based on the wrong reason).