

IN THE SUPREME COURT OF THE STATE OF NEVADA

THEODORE STEVENS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57837

FILED

JUL 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; Abbi Silver, Judge.

In his petition filed on February 25, 2010, appellant claimed that his counsel was ineffective. Appellant waived his right to counsel, yet claimed that he received ineffective “pro se counsel” relating to numerous proper person motions and testimony regarding the autopsy. As a result of waiving his right to counsel, appellant did not have the right to the effective assistance of counsel in the district court proceedings following the waiver. See Faretta v. California, 422 U.S. 806, 835 (1975); McConnell

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).

v. State, 125 Nev. 243, 252-53, 212 P.3d 307, 314 (2009). Therefore, the district court did not err in denying these claims.

Next, appellant claimed that he received ineffective assistance of counsel before he waived the right to counsel. As appellant had the right to representation of counsel prior to the waiver of his right to counsel, he was entitled to the effective assistance of counsel for the proceedings that occurred prior to the waiver. See Gideon v. Wainwright, 372 U.S. 335, 344 (1963). 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 Strickland). Both components of the inquiry must be shown. Strickland, 466 U.S. at 697.

He first claimed that his pretrial counsel was ineffective for failing to challenge his detainment in a casino and in a police vehicle while in Primm, as well as any statements he made to the police during that time period. Appellant failed to demonstrate that his counsel's performance was deficient or that he was prejudiced. Appellant was properly detained based upon reasonable suspicion, see NRS 171.123(1), and later upon probable cause of child abuse and neglect due to the discovery of the deceased infant, who had multiple bruises and bite marks, see Lyons v. State, 106 Nev. 438, 446, 796 P.2d 210, 215 (1990), abrogated

on other grounds by Vanisi v. State, 117 Nev. 330, 341, 22 P.3d 1164, 1171-72 (2001). Further, appellant's statements during these detentions, that the infant's injuries occurred when she fell off of the bed, were repeated multiple times during trial by appellant. Therefore, appellant failed to demonstrate a reasonable probability of a different outcome had counsel attempted to suppress those statements.

To the extent that appellant alleged that his counsel was ineffective for failing to suppress his confession made at the police station, appellant cannot demonstrate deficiency or prejudice because counsel filed a motion to suppress those statements and this court concluded on direct appeal that those statements were properly admitted. Stevens v. State, Docket No. 50190 (Order of Affirmance, April 8, 2009). Therefore, the district court did not err in denying this claim.

Second, appellant claimed that his counsel was ineffective for failing to argue that appellant was not presented before a magistrate without unnecessary delay. Appellant cannot demonstrate prejudice, as his waiver of his right to remain silent and inculpatory statements "effected a waiver of his right to a timely arraignment." Elvik v. State, 114 Nev. 883, 895, 965 P.2d 281, 288 (1998). Therefore, the district court did not err in denying this claim.

Third, appellant claimed that his counsel was ineffective because counsel forced appellant to waive his right to a speedy trial. Appellant failed to demonstrate that his counsel's performance was deficient or that he was prejudiced. At a pretrial hearing, appellant personally agreed to waive his right to a speedy trial and made no

indication that he was coerced into waiving that right. Further, appellant failed to demonstrate that the start of trial was unreasonably delayed or any resulting prejudice. See Furbay v. State, 116 Nev. 481, 484-85, 998 P.2d 553, 555 (2000). Therefore, the district court did not err in denying this claim.

Next, appellant claimed that his appellate counsel was ineffective. To prove ineffective assistance of appellate 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 the omitted issue would have a reasonable probability of success on appeal. Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). Appellate counsel is not required to raise every non-frivolous issue on appeal. Jones v. Barnes, 463 U.S. 745, 751 (1983). Rather, appellate counsel will be most effective when every conceivable issue is not raised on appeal. Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989). Both components of the inquiry must be shown, Strickland, 466 U.S. at 697.

First, appellant claimed that his appellate counsel was ineffective for failing to challenge his detention and questioning by the police in Primm and his failure to be brought before a magistrate without unnecessary delay. As discussed previously, appellant failed to demonstrate deficiency or prejudice for these claims. He likewise failed to demonstrate that these issues had a reasonable probability of success on appeal. Therefore, the district court did not err in denying these claims.

Second, appellant claimed that his appellate counsel was ineffective for failing to notify him of the denial of his direct appeal with sufficient time for appellant to seek rehearing of that decision. Appellant asserted that this prejudiced him because he was unable to argue that this court failed to consider the totality of the circumstances when concluding that his confession was admissible at trial. Appellant failed to demonstrate that he was prejudiced. All of the circumstances that appellant listed were discussed on direct appeal. Thus, appellant failed to demonstrate that a petition for rehearing of his direct appeal based upon the misapprehension of the facts accompanying his confession would have had a reasonable likelihood of success. Therefore, the district court did not err in denying this claim.


Next, appellant claimed that the State discussed facts not in evidence during closing arguments, the reasonable doubt instruction was unclear, the jury was biased against him, the Faretta canvass was inadequate, media coverage was prejudicial, the recording of his confession played to the jury was edited improperly, the district court was biased, and his confession was false and only given to avoid the death penalty. These claims could have been raised on direct appeal and appellant failed to demonstrate good cause for his failure to do so. See NRS 34.810(1)(b). Therefore, the district court did not err in denying these claims.

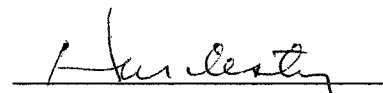
Next, appellant claimed that he should have been allowed to represent himself on direct appeal. Appellant did not have a right to represent himself on direct appeal, Blandino v. State, 112 Nev. 352, 355-

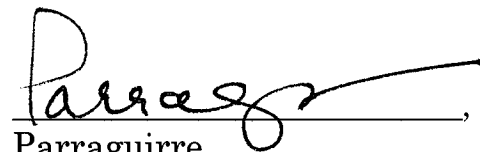
56, 914 P.2d 624, 626-27 (1996), and therefore, the district court did not err in denying this claim.

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

ORDER the judgment of the district court AFFIRMED.²


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Abbi Silver, District Judge
Theodore Stevens
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²We 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.