

IN THE SUPREME COURT OF THE STATE OF NEVADA

LUPE GUSMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 35297

FILED

SEP 06 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus.

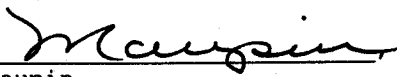
Appellant was convicted, pursuant to a jury verdict, of sexual assault. The district court sentenced appellant to a prison term of 25 years. Appellant filed a direct appeal, which this court dismissed. See Gusman v. State, Docket No. 31733 (Order Dismissing Appeal, July 21, 1998). Appellant then filed a petition for a writ of habeas corpus with the district court asserting he received ineffective assistance of counsel at trial. The district court granted the State's motion to dismiss the petition without an evidentiary hearing, and appellant filed this appeal.

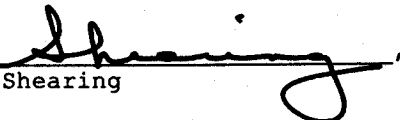
Appellant contends his trial counsel was ineffective for advising him to testify at trial. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a defendant must demonstrate that counsel's performance fell below an objective standard of reasonableness, and that counsel's errors were so severe that they rendered the jury's verdict unreliable. See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).


Here, appellant took the stand and stated that while he did have sexual relations with his step-daughter, she consented to the relationship. Appellant contends his admission of the sexual relationship prejudiced him. However, the record reveals that the sexual relationship had already been established by the victim's testimony and DNA evidence. Therefore, we conclude appellant was not prejudiced by his testimony and need not reach any determination of whether counsel's performance was deficient. See Strickland, 466 U.S. at 697; Homick v. State, 112 Nev. 304, 310, 913 P.2d 1280, 1285 (1996).

Having considered appellant's contention and concluded that it is without merit, we

ORDER this appeal dismissed.


Maupin J.


Shearing J.


Becker J.

cc: Hon. James W. Hardesty, District Judge
Attorney General
Washoe County District Attorney
Scott W. Edwards
Washoe County Clerk