

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM N. SITES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58158

FILED

FEB 24 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *R. Malone*
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; Valorie J. Vega, Judge.

In his petition, filed on March 19, 2010, appellant raised multiple claims of ineffective assistance of counsel. To prove a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate that his 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 of a different outcome but for counsel's errors. See Strickland v. Washington, 466 U.S. 668, 687-88, 694 (1984); Warden v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984). The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one. 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).

First, appellant claimed that counsel failed to prepare a viable defense strategy. Similarly, appellant alleged that counsel failed to subject his case to any meaningful adversarial testing. Appellant failed to demonstrate that counsel was deficient or that he was prejudiced. Beyond his blanket allegations, appellant failed to state with specificity which additional actions counsel should have undertaken to prepare a defense strategy. See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Notably, counsel successfully negotiated a plea agreement in which a charge of first-degree murder was reduced to second-degree murder. Counsel also litigated a detailed pretrial post-conviction petition for a writ of habeas corpus challenging the sufficiency of the evidence presented against appellant. Accordingly, the district court did not err in denying this claim.

Second, appellant claimed that counsel was ineffective for failing to remove certain evidence from his apartment, including a computer containing documentation of the victim's abuse of appellant, recordings of threats made by the victim, and various articles of personal property and cash, which appellant claims would have enabled him to hire a private attorney, rather than rely on the services of the public defender's office. Appellant further claimed that counsel was ineffective for failing to challenge various police searches, which allowed them to seize some of this evidence, including appellant's personal computer. Appellant failed to demonstrate that counsel was deficient or that he was prejudiced. In light of appellant's admission that he struck the victim in the head with a hammer, dismembered her body, and disposed of her remains, appellant failed to demonstrate any reasonable probability that he would have chosen not to enter a guilty plea had counsel removed the aforementioned

evidence, or challenged the police searches.² Appellant failed to allege any specific facts demonstrating how a private attorney could have better represented appellant. See id. Further, evidence seized by the police was available to appellant, and was in no way rendered inadmissible by the fact that it was not seized by appellant's counsel. Accordingly, the district court did not err in denying this claim.

Third, appellant claimed that counsel was ineffective for failing to interview the management of appellant's apartment complex about screaming rages by the victim, and for refusing to request medical records which would have revealed the victim's history of mental illness. Appellant failed to demonstrate that he was prejudiced. As evidenced by various testimony presented at the grand jury hearing and other pretrial investigation, at the time appellant chose to enter his guilty plea, counsel was already in possession of evidence that established that the victim was taking anti-psychotic medications at the time of her death, and was likely a difficult person to live with. Given appellant's own admissions to the police about his involvement in his wife's death, appellant failed to establish any reasonable probability that this additional investigation would have affected his decision to enter a plea in this case. Accordingly, the district court did not err in denying this claim.

Fourth, appellant claimed that counsel failed to file appropriate pretrial motions. Appellant failed to designate with any

²Appellant also provided no specific facts which, if true, would demonstrate that the searches were illegal. See Hargrove, 100 Nev. at 502, 686 P.2d at 225. Counsel cannot be deemed ineffective for failing to file futile motions. Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978).

specificity which pretrial motions counsel failed to file. See id. Accordingly, the district court did not err in denying this claim.

Fifth, appellant claimed that counsel was ineffective for advising appellant to sign an affidavit conceding the victim's death in exchange for the State's cooperation in obtaining outside medical services for appellant while he was confined at the Clark County Detention Center. Appellant failed to demonstrate that he was prejudiced. Even assuming these allegations to be true, appellant failed to demonstrate a reasonable probability of a different result had he not signed the affidavit. It does not appear that the State intended to admit the affidavit at trial; rather, the affidavit was signed to allow the victim's next of kin to proceed with the disbursement of her estate. Further, appellant had already admitted in police interviews that the victim was dead. Therefore, the district court did not err in denying this claim.

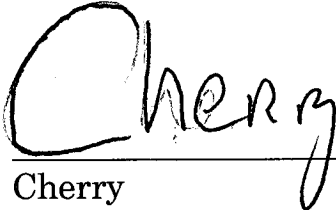
Sixth, appellant claimed that counsel was ineffective for failing to disclose to appellant that counsel had previously been convicted of a felony. Appellant failed to demonstrate that counsel was deficient or that he was prejudiced. Notably, appellant failed to demonstrate with any specificity how counsel's representation of appellant was affected by his status as an ex-felon. See id. Accordingly, the district court did not err in denying this claim.


Finally, appellant claimed that counsel was ineffective for failing to communicate with him and discuss his defense theory, failing to ensure that appellant understood the nature of the sentence he faced and the amount of time he would likely serve, and for withholding from appellant an expert report that supported appellant's theory of defense. Appellant further claimed that his guilty plea was coerced. This court

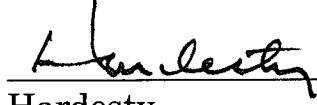
previously considered, and rejected, each of these claims on direct appeal. Sites v. State, Docket No. 51103 (Order of Affirmance, March 4, 2009). Therefore, further consideration of these claims is barred by the doctrine of law of the case, which cannot be avoided by a more detailed or precisely focused argument. See Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975). Accordingly, the district court did not err in denying these claims.

For the reasons stated above, we

ORDER the judgment of the district court AFFIRMED.³


_____, J.
Cherry


_____, J.
Pickering


_____, J.
Hardesty

cc: Hon. Valorie J. Vega, District Judge
William N. Sites
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³We 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.