

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDRICK MARTINEZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 59082

**FILED**

**MAR 07 2012**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *T. 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.<sup>1</sup> Eighth Judicial District Court, Clark County; Jerome T. Tao, Judge.

In his petition filed on January 12, 2011, 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 (1984) (adopting the test in Strickland). Both components of the inquiry must be shown, Strickland, 466 U.S. at 697, and the petitioner must

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<sup>1</sup>This 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).

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 counsel was ineffective for failing to adequately present evidence that would have proven his innocence at preliminary proceedings. Specifically, appellant claimed that counsel should have shown that a witness misidentified appellant because he described appellant as muscular when appellant is skinny. Appellant failed to demonstrate that counsel was deficient or that he was prejudiced. Appellant failed to demonstrate at what preliminary proceeding counsel should have presented this information<sup>2</sup> or that this information would have created a reasonable probability of a different outcome at trial. Therefore, the district court did not err in denying this claim.

Second, appellant claimed that counsel was ineffective for failing to call alibi witnesses. Appellant failed to demonstrate that counsel was deficient or that he was prejudiced because he failed to provide specific facts that, if true, entitled him to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Therefore, the district court did not err in denying this claim.

Third, appellant claimed that counsel was ineffective for failing to object to the State's opening statement and testimony regarding his codefendant's statement that he would punch the victim and that he was going to get his. This claim is belied by the record. Counsel and codefendant's counsel objected to the witness's testimony prior to trial and

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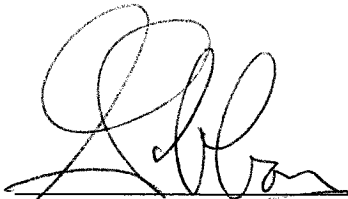
<sup>2</sup>Appellant was arraigned in district court on a grand jury indictment.

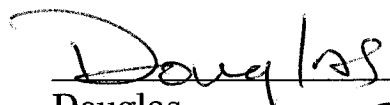
the district court overruled that objection. Therefore, the district court did not err in denying this claim.

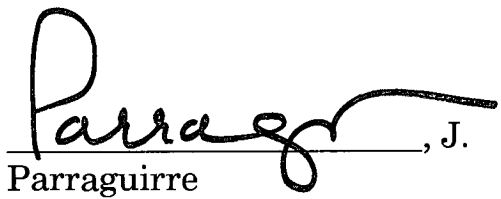
Fourth, appellant claimed that counsel was ineffective for failing to object to autopsy photos which appellant claims were used to inflame the emotions of the jury. This claim is belied by the record. Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. Counsel did object to the autopsy photos and was successful in eliminating one of the photos. Therefore, the district court did not err in denying this claim.

Finally, appellant claimed that he was falsely identified, there was insufficient evidence, there was an illegal search and seizure, and several errors by the district court denied him a fair trial. Appellant failed to raise these claims on direct appeal and failed to demonstrate good cause and prejudice for presenting them in the instant petition. NRS 34.810(1)(b). Therefore, the district court did not err in denying these claims. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>3</sup>

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Parraguirre

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<sup>3</sup>We 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.

cc: Hon. Jerome T. Tao, District Judge  
Fredrick Martinez  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk