

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARENCE EDWARD RAGLAND,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 60165

FILED

SEP 12 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 denying a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

In his petition filed on October 31, 2011, appellant claimed that he received ineffective assistance of trial and appellate 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). To prove prejudice for appellate counsel's failure to raise an issue on appeal, appellant must demonstrate that the omitted issue would have a reasonable probability of

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).

success on appeal. Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). Both components of the inquiry, deficiency and prejudice, must be shown. Strickland, 466 U.S. at 697.

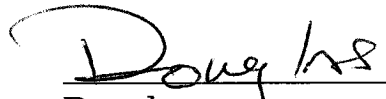
First, appellant claimed that trial counsel was ineffective for failing to move to suppress the identification as unnecessarily suggestive and his appellate counsel was ineffective for failing to raise the issue on appeal. Appellant failed to demonstrate that his counsel's performances were deficient or that he was prejudiced. Without deciding whether the show-up procedure was unnecessarily suggestive, we conclude that appellant failed to demonstrate that the identification was unreliable because the victim had an opportunity to view the man at the glass door, the victim's description matched appellant and the clothing worn by appellant when he was stopped,² and the show-up identification occurred within one hour after the incident. Canada v. State, 104 Nev. 288, 293-94, 756 P.2d 552, 555 (1988). Thus, he failed to demonstrate that his trial counsel was ineffective for failing to challenge the identification. He likewise failed to demonstrate that this issue would have had a reasonable probability of success on appeal. Therefore, we conclude that the district court did not err in denying these claims.


Second, appellant claimed that his trial counsel was ineffective for failing to investigate and adequately cross-examine the fingerprint expert. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. The fingerprint expert testified that the palm prints found on the window belonged to H.

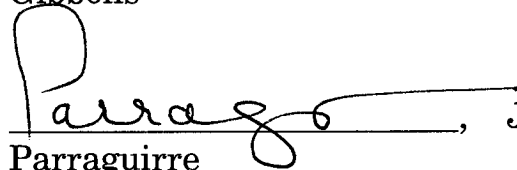
²While trial counsel attempted to impeach the victim about discrepancies in the description of the clothing, the color of the jeans and shoes, the victim's description was accurate in the essentials.

Gallegos, appellant's co-conspirator. No testimony was proffered that any fingerprints belonged to appellant. Appellant failed to identify what evidence further investigation would have uncovered or what questions should have been asked that would have had a reasonable probability of altering the outcome at trial. Therefore, we conclude that the district court did not err in denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Douglas W. Herndon, District Judge
Clarence Edward Ragland
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk