

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARCOS CHALA A/K/A MARCO CHALA
PEREIDA,

No. 35631

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

JUL 06 2001

JANETTE M. BROWN
DEPUTY CLERK
J. Brown
DEPUTY CLERK

ORDER OF AFFIRMANCE

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 originally convicted, pursuant to a jury trial, of conspiracy to commit robbery (count I), attempted robbery with the use of a deadly weapon (count II), and attempted murder with the use of a deadly weapon (count III). The district court sentenced appellant to serve a prison term of 4 years for count I, two consecutive prison terms of 7-1/2 years for count II to be served concurrent with count I, and two consecutive prison terms of 13 years for count III to be served consecutive to count II. Appellant filed a direct appeal alleging numerous instances of error. This court affirmed appellant's conviction concluding, among other things, that appellant's conviction was supported by substantial evidence.¹ Thereafter, appellant filed a post-conviction petition for a writ of habeas corpus.

In the petition, appellant presented claims of ineffective assistance of counsel. Particularly, appellant claimed his trial counsel was ineffective for failing to hire

¹Chala v. State, Docket No. 26719 (Order Dismissing Appeal, July 28, 1998).

an investigator, interview witnesses, and otherwise adequately prepare for trial. Appellant further alleged that had his counsel interviewed witnesses he would have not been surprised by the witness testimony that appellant was seen in the bar prior to the murder, which occurred just outside the bar.

In order to prevail on a claim of ineffective assistance of counsel, a defendant must show: (1) that his counsel's performance fell below an objective standard of reasonableness; and (2) that but for counsel's deficient performance, the outcome of the proceedings would have been different.² Additionally, a defendant claiming ineffective assistance of counsel must set forth a sufficient factual background in support of his claims by identifying prospective witnesses or describing potential testimony that would support his allegation that further investigation or interviews with witnesses was necessary.³

We conclude that the district court did not err in denying appellant's petition and concluding that appellant's claims regarding ineffective assistance of counsel lacked merit. First, appellant's claims of ineffective assistance of counsel lacked specificity because appellant failed to describe or identify any exculpatory witnesses, testimony, or evidence that further investigation would have uncovered. In fact, at the evidentiary hearing, appellant's counsel testified that appellant never identified any alibi witnesses for him to interview and, similarly, the prosecutor testified that all witnesses named in the police reports who observed

²Strickland v. Washington, 466 U.S. 668, 687, 694 (1984); see also Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996).

³Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

the shooting were subpoenaed and testified at trial.

Further, appellant was not prejudiced by his counsel's conduct in failing to hire an investigator and interview witnesses in light of the overwhelming evidence of appellant's guilt, including the testimony of the victim identifying appellant as his attacker,⁴ the testimony of a police officer who caught appellant fleeing from the scene of the shooting, and the testimony of several witnesses placing appellant at or near the scene of the crime. Although appellant alleges that his counsel could have impeached or attacked the credibility of these witnesses had his counsel interviewed them prior to trial, in light of this overwhelming evidence of appellant's guilt, we cannot say that conducting these interviews would have changed the outcome of the proceedings in this case. Accordingly, appellant has failed to establish that the district court erred in concluding that his counsel was deficient or that he was prejudiced by his counsel's deficient performance.

Having considered appellant's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.

Young J.
Young
Leavitt J.
Leavitt
Becker J.
Becker

⁴Although the victim died in a car accident a week prior to trial, transcripts of his preliminary hearing testimony were admitted at trial.

cc: Hon. Sally L. Loehrer, District Judge
Attorney General
Clark County District Attorney
Christopher R. Oram
Clark County Clerk