IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY D. YOUNG,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 35869

FILED

APR 10 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richards
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

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

On September 2, 1998, the district court convicted appellant, pursuant to a jury verdict, of robbery of a victim sixty-five years or older. The district court sentenced appellant to serve two consecutive terms of forty-eight months to one hundred and forty-five months in the Nevada State Prison. This court dismissed appellant's direct appeal.[1]

On December 8, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On March 17, 2000, the district court dismissed appellant's petition. This appeal followed.

In his petition, appellant raised eleven claims of ineffective assistance of trial counsel. To state a claim of ineffective assistance of

[1]Young v. State, Docket No. 33136 (Order Dismissing Appeal, May 12, 1999).

counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness.[2] A petitioner must also demonstrate prejudice-- a reasonable probability that but for counsel's errors the results of the proceedings would have been different.[3] The court need not consider both prongs of the Strickland test if the petitioner makes an insufficient showing on either prong.[4]

First, appellant claimed that his trial counsel was ineffective for improperly waiving the preliminary hearing without verbal or written consent. Appellant claimed that he told his trial counsel that he wanted a preliminary hearing because he was confident that the witnesses would not be able to identify him and because he was innocent. We conclude that appellant failed to demonstrate prejudice. Given the overwhelming evidence of guilt, appellant failed to demonstrate a reasonable probability that the results of the proceedings would have been different had his trial counsel not signed a written waiver of the preliminary hearing on appellant's behalf.[5] Appellant did not allege and there is no indication in the record on appeal that the witnesses that testified at trial would not

---

[2]Strickland v. Washington, 466 U.S. 668, 688 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

[3]Strickland, 466 U.S. at 694.

[4]Id. at 697.

[5]See generally United States v. Mechanik, 475 U.S. 66 (1986) (holding that a jury's verdict of guilty beyond a reasonable doubt demonstrated that there was probable cause to charge the defendants with the offenses for which they were convicted despite a violation of a rule relating to the grand jury proceedings).

have been available for a preliminary hearing. Appellant was identified at trial by Hans Conkel as the man that Conkel chased down Virginia Street and tackled in the Silver Legacy Casino after Conkel observed a commotion involving appellant's dragging of the victim on the ground as appellant wrenched the purse from the victim. A purse that was found moments after appellant's detention at the casino was identified by the victim as her purse. Thus, we conclude that the district court did not err in determining that appellant failed to demonstrate that his counsel was ineffective in this regard.

Second, appellant argued that his trial counsel was ineffective for failing to discover a casino videotape that would have shown the true circumstances of his arrest and the clothing worn by appellant was different from the clothing described by Hans Conkel. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Appellant failed to indicate what clothing he was wearing and how it differed from Conkel's testimony at trial. Conkel testified that he was positive that appellant was the man that he chased from Fitzgerald's Casino, down Virginia Street, and into the Silver Legacy Casino. Thus, we conclude that the district court did not err in denying this claim.

Third, appellant claimed that his trial counsel was ineffective for failing to present at trial that appellant was in the Silver Legacy Casino at the time of the robbery and trying to leave the Silver Legacy Casino when he was chased and tackled by Conkel. Appellant claimed that he possessed Silver Legacy gaming chips at the time of his arrest and that this established his alibi and purpose for being in the casino. Appellant failed to demonstrate that his counsel's performance was

deficient or that he was prejudiced. Again, Conkel testified that he was positive that appellant was the man that he chased from Fitzgerald's Casino to the Silver Legacy Casino. The fact that appellant was in possession of Silver Legacy gaming chips does not conclusively establish an alibi for the time of the robbery. Therefore, the district court did not err in denying this claim.

Fourth, appellant argued that his trial counsel was ineffective for failing to discover that appellant's fingerprints were not found on the victim's purse. Appellant failed to demonstrate that he was prejudiced. Conkel testified that he was hit in the face with the purse by appellant as appellant ran away from the scene of the robbery. Conkel further observed appellant running with the purse as Conkel chased appellant down Virginia Street. Although appellant did not have the purse when tackled, a cocktail waitress gave the purse to security shortly after appellant was detained. The victim identified the purse at trial. Thus, the district court did not err in denying this claim.

Fifth, appellant claimed that his trial counsel was ineffective for failing to present evidence that his clothing and body did not contain traces of pepper spray. Appellant failed to demonstrate that his counsel's performance was deficient. Conkel testified that he sprayed pepper spray at appellant while they were running but that he had missed appellant. Thus, the district court did not err in denying this claim.

Sixth, appellant argued that his trial counsel was ineffective for failing to move to dismiss the charges due to a lack of probable cause to arrest. Appellant noted that he did not possess the purse when he was arrested. Appellant also argued that a racial motive might have prompted the arrest. Appellant failed to demonstrate that his counsel's performance

was deficient or that he was prejudiced because the police had reasonable cause to believe that appellant had committed the crime of robbery.[6] Thus, the district court did not err in determining that this claim lacked merit.

Seventh, appellant claimed that his trial counsel was ineffective for failing to move for dismissal of the charges due to the fact that he was questioned and badgered by the arresting officer without being advised of his Miranda[7] rights. Appellant failed to demonstrate that his counsel's performance was deficient. Appellant did not indicate and the record does not reveal that appellant made any incriminating statements during the questioning at the casino. Appellant did not need to be given Miranda warnings because the questions were routine biographical booking questions.[8] Thus, we conclude that the district court did not err in denying this claim.

Eighth, appellant claimed that his trial counsel was ineffective for failing to file a motion to suppress the purse because there was no chain of evidence linking him to the purse. Appellant failed to demonstrate that his counsel's performance was deficient or that he was prejudiced. Appellant failed to demonstrate that his motion to suppress would have been meritorious and failed to demonstrate that there was a

---

[6]NRS 171.124 provides that a peace officer "may, without a warrant, arrest a person . . . [w]hen a felony or gross misdemeanor has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it."

[7]Miranda v. Arizona, 384 U.S. 436 (1966).

[8]Pennsylvania v. Muniz, 496 U.S. 582 (1990) (Brennan, J., plurality) and (Rehnquist, C.J., concurring and dissenting).

reasonable likelihood that the exclusion of the evidence would have changed the results of the trial.[9] Thus, the district court did not err in determining that this claim lacked merit.

Ninth, appellant claimed that his trial counsel was ineffective for failing to challenge improper prosecutor comments on appellant's right to remain silent. This court considered and rejected appellant's challenge to the prosecutor's comment during closing arguments in appellant's direct appeal. The doctrine of the law of the case prevents further relitigation of this matter.[10] To the extent that appellant challenged any other comments during the trial, appellant failed to support his claim with sufficient factual allegations.[11] Thus, the district court did not err in determining that this claim lacked merit.

Tenth, appellant claimed that his trial counsel was ineffective for not objecting to the Jackson v. Denno hearing being held outside the presence of the jury.[12] Appellant claimed that he was deprived of the ability to present favorable evidence to the jury. Appellant failed to demonstrate that his counsel's performance was deficient or that he was prejudiced. The district court properly conducted the Jackson v. Denno hearing outside the presence of the jury. Appellant further failed to state what favorable evidence he was prevented from presenting to the jury.[13]

---

[9]Kirksey v. State, 112 Nev. 980, 990, 923 P.2d 1102, 1109 (1996).

[10]Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

[11]Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

[12]Jackson v. Denno, 378 U.S. 368 (1964); Criswell v. State, 84 Nev. 459, 443 P.2d 552 (1968).

[13]Hargrove, 100 Nev. 498, 686 P.2d 222.

Thus, the district court did not err in determining that this claim lacked merit.

Eleventh, appellant claimed that his trial counsel was ineffective for failing to impeach Hans Conkel's testimony. Appellant believed that Conkel's testimony was incredible and contradicted by the testimony of other witnesses. Appellant failed to demonstrate that his counsel's performance was deficient or that he was prejudiced. Appellant's trial counsel thoroughly explored contradictions in Conkel's testimony during cross-examination and during examination of other witnesses. Appellant failed to offer what further impeachment trial counsel should have pursued.[14] Thus, we conclude that the district court did not err in determining that this claim lacked merit.

Next, appellant claimed that there was a conflict of interest between appellant and trial counsel due to irreconcilable differences. Appellant failed to demonstrate that an actual conflict of interest adversely affected trial counsel's performance.[15] Thus, the district court did not err in determining that this claim lacked merit.

Finally, appellant claimed that he was unlawfully arrested, that he was improperly denied a preliminary hearing, and that there was insufficient evidence to convict him of the charged offense. Appellant waived these claims by failing to raise them on direct appeal.[16]

---

[14]Id.

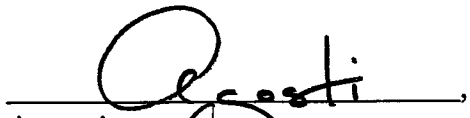
[15]Strickland, 466 U.S. at 692; Cuyler v. Sullivan, 446 U.S. 335 (1980); Leonard v. State, 117 Nev. __, 17 P.3d 397 (2001).

[16]NRS 34.810(1)(b).

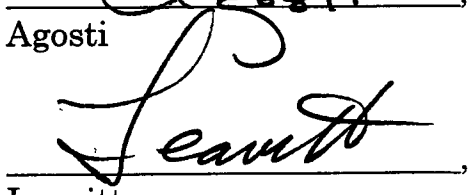
Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.[17] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Maupin



_____, J.
Agosti



_____, J.
Leavitt

cc: Hon. Steven P. Elliott, District Judge
Attorney General/Carson City
Washoe County District Attorney
Anthony D. Young
Washoe District Court Clerk

---

[17]Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).