

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT MARC LEEDS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 65487

FILED

MAR 11 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Robert Marc Leeds' post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge. Leeds raises three contentions on appeal.

First, Leeds argues that his conviction should be reversed because the general verdict does not permit the court to determine whether the jury considered the required elements of first-degree murder. This ground for relief was not raised in Leeds' post-conviction petition for a writ of habeas corpus or argued in the district court below. Therefore, we decline to consider this argument on appeal. *See Davis v. State*, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991) (noting that this court will not consider grounds for relief not raised in the original post-conviction petition), *overruled on other grounds by Means v. State*, 120 Nev. 1001, 103 P.3d 25 (2004).

Second, Leeds argues that the district court erred in denying his claim that trial and appellate counsel were ineffective for failing to challenge Nevada's failure to recognize diminished capacity as a defense. He asserts that the failure to admit evidence related to this defense

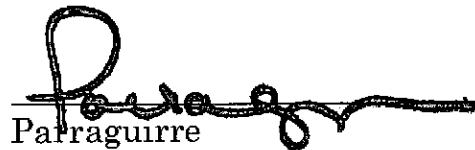
violates the Americans with Disabilities Act as it denies him the ability to present evidence of his disability. We disagree. Although “the technical defense of diminished capacity is not available in Nevada,” *Crawford v. State*, 121 Nev. 744, 757, 121 P.3d 582, 591 (2005), the record indicates that Leeds’ psychiatric expert witness testified that Leeds suffered from “recurrent major depression” and that it was possible that he suffered from bipolar affective disorder. The witness also described the symptoms of withdrawal from anti-depressants. Therefore, Leeds did not demonstrate that the failure to recognize the defense of diminished capacity prevented him from presenting evidence of his disability. Accordingly, the district court did not err in concluding that trial or appellate counsel were ineffective for failing to raise futile arguments. See *Ennis v. State*, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006) (“Trial counsel need not lodge futile objections to avoid ineffective assistance of counsel claims.”).

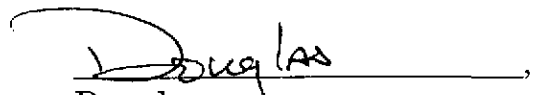
Third, Leeds argues that the district court erred in denying his claim that trial counsel was ineffective for pursuing a defense of self-defense instead of an insanity defense. We disagree. The record indicates that counsel did not solely pursue self-defense but also contended that, given Leeds’ mental condition, there was sufficient provocation by the victim to reduce Leeds’ culpability to voluntary manslaughter. See NRS 200.050(1). Further, the evidence at trial indicates that Leeds understood that he was killing the victim at the time of the crime and his subsequent actions indicated that he appreciated the wrongfulness of his actions. Therefore, he could not demonstrate that he would not have been convicted had counsel argued that he was “in a delusional state such that he cannot know or understand the nature and capacity of his act, or his

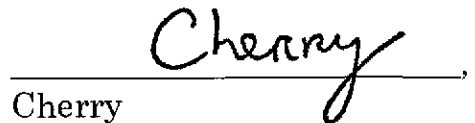
delusion [was] such that he cannot appreciate the wrongfulness of his act.”
Finger v. State, 117 Nev. 548, 576, 27 P.3d 66, 84-85 (2001); NRS
174.035(4).

Having considered Leeds’ contentions and concluded that they
lack merit, we

ORDER the judgment of the district court AFFIRMED.


Parraguirre J.


Douglas J.


Cherry J.

cc: Hon. Michelle Leavitt, District Judge
Michael H. Schwarz
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk