

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM ROPER,

No. 36151

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

**FILED**

DEC 13 2001

JAMETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Bloom*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

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

On January 15, 1997, the district court convicted Roper, pursuant to a jury verdict, of one count each of burglary, first-degree kidnapping of a victim over 65 years of age, and robbery of a victim over 65 years of age. The district court sentenced Roper to serve 48 to 120 months in prison for burglary, a concurrent term of life with the possibility of parole for kidnapping plus an equal and consecutive term for the enhancement, and a consecutive term of 48 to 120 months for robbery plus an equal and consecutive term for the enhancement. This court dismissed Roper's appeal from his judgment of conviction and sentence.<sup>1</sup> The remittitur issued on April 20, 1999.

On February 16, 2000, Roper filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the

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<sup>1</sup>Roper v. State, Docket No. 29953 (Order Dismissing Appeal, March 24, 1999).

district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On April 11, 2000, the district court denied appellant's petition. This appeal followed.

In his petition, Roper alleged various instances of prosecutorial misconduct and trial court errors. These alleged errors should have been raised on direct appeal and are therefore waived unless appellant demonstrates cause for not presenting them before and that failure to review them would result in prejudice.<sup>2</sup> Roper did not offer any justification for failing to present these claims in his direct appeal. Therefore, the district court properly denied relief on these grounds.

Next, Roper argued that his trial counsel provided him with ineffective assistance. To establish a claim of ineffective assistance of counsel, a criminal defendant must demonstrate that: 1) trial counsel's representation fell below an objective standard of reasonableness; and 2) his trial counsel's deficient performance prejudiced the defense to such a degree that, but for counsel's ineffectiveness, there is a reasonable probability that the results of the trial would have been different.<sup>3</sup> In essence, a defendant must show that "counsel's errors were so severe that they rendered the jury's verdict unreliable."<sup>4</sup>

We note that the majority of Roper's allegations of counsel's ineffectiveness are bare and naked claims, unsupported by specific factual allegations. Roper argued that counsel failed to: investigate the State's witnesses; make a timely objection, obtain a limiting instruction, and request admonishment of prosecutor for his "improper remark;" call a

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<sup>2</sup>See NRS 34.810(1)(b).

<sup>3</sup>Strickland v. Washington, 466 U.S. 668 (1984).

<sup>4</sup>Pertgen v. State, 110 Nev. 554, 558, 875 P.2d 361, 363 (1994) overruled on other grounds by Pellegrini v. State, \_\_\_ Nev. \_\_\_, \_\_\_ P.3d \_\_\_ (2001).

fingerprint expert; file a pre-trial motion to suppress evidence, and offer defense instructions. These broad and sweeping allegations do not demonstrate that counsel's performance fell below an objective standard of reasonableness. Moreover, Roper made no attempt to demonstrate that the result of his trial would have been different. Therefore, the district court correctly denied the petition on these claims for relief.

Roper also claimed that counsel provided ineffective assistance by failing to inform the trial court that Roper was incompetent to stand trial and by failing to investigate and present an insanity defense. Although Roper claims to have spent some time in a mental health facility, he does not make any factual assertions that if true would entitle him to relief. A person is incompetent to stand trial if he lacks the ability to understand the nature of his charges and, therefore, is unable to assist counsel in his defense.<sup>5</sup> Roper made no assertions relevant to this inquiry. Roper did not claim that he suffered from any particular mental condition that would render him incompetent to stand trial nor did he claim that he was unable to understand his charges or assist in his defense. Moreover, it is not unreasonable for counsel to not challenge Roper's competency unless counsel had reason to suspect that Roper was incompetent. Roper did not allege that counsel was aware of his alleged incompetence. Our review of the record on appeal does not reveal any indication of Roper's alleged incompetence. Because Roper failed to assert any factual allegations that if true would entitle him to relief, the district court properly denied this claim without an evidentiary hearing.<sup>6</sup>

Roper finally argued that the State adduced insufficient evidence to support the first-degree kidnapping conviction. We considered and rejected this argument on direct appeal. Our previous decision is now

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<sup>5</sup>NRS 178.400.

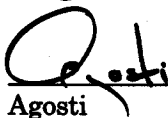
<sup>6</sup>Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).


law of the case.<sup>7</sup> The law of the case doctrine "cannot be avoided by a more detailed and precisely focused argument."<sup>8</sup> The district court properly denied the petition on this ground.

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.<sup>9</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>10</sup>

  
\_\_\_\_\_. J.  
Young

  
\_\_\_\_\_. J.  
Agosti

  
\_\_\_\_\_. J.  
Leavitt

cc: Hon. Donald M. Mosley, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
William Roper  
Clark County Clerk

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<sup>7</sup>Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

<sup>8</sup>Id.

<sup>9</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>10</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.