

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM S. BLETCHER,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36579

**FILED**

NOV 20 2001

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. R. [Signature]*  
CHIEF 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 convicted, pursuant to a jury verdict, of one count of second-degree murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of life in prison with the possibility of parole. Appellant's direct appeal from his conviction and sentence was dismissed by this court.<sup>1</sup>

On March 14, 2000, appellant filed a post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On July 12, 2000, the district court denied appellant's petition. This timely appeal followed.

First, appellant contends the district court erred in determining without holding an evidentiary hearing that he did not receive ineffective assistance of counsel at trial. More specifically, appellant contends his trial counsel failed to investigate the facts surrounding the allegedly collusive testimony of three State witnesses, inform the district court, move for a mistrial, or adequately cross-examine the witnesses about the collusion. We disagree.

"A defendant seeking post-conviction relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the

<sup>1</sup>Bletcher v. State, Docket No. 29840 (Order Dismissing Appeal, March 24, 1999). In dismissing the appeal, this court affirmed the district court's denial of appellant's motion for a new trial. Id. at 2.

01-9488

record."<sup>2</sup> A claim of ineffective assistance of counsel presents a mixed question of law and fact and is subject to independent review.<sup>3</sup> A district court's factual finding regarding a claim of ineffective assistance of counsel is entitled to deference so long as it is supported by substantial evidence and is not clearly wrong.<sup>4</sup>

To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a defendant must demonstrate that counsel's performance fell below an objective standard of reasonableness, and that counsel's errors were so severe that they rendered the jury's verdict unreliable.<sup>5</sup> There is a presumption that counsel provided effective assistance unless petitioner demonstrates "strong and convincing proof to the contrary."<sup>6</sup> Further, the tactical decisions of defense counsel are virtually unchallengeable absent extraordinary circumstances.<sup>7</sup>

Our review of the record reveals that the district court did not err in denying appellant's claim of ineffective assistance of counsel. The district court's factual findings are supported by the record and are not clearly wrong. A review of the motion for new trial hearing transcript reveals that appellant's contention is belied by the record. During the trial, the district court was, in fact, informed by counsel about the alleged witness collusion, and the court determined that the witnesses were not talking about the case or their testimony. Additionally, it was a reasonable strategy for appellant's trial counsel to not cross-examine the witnesses about the alleged collusion or move for a mistrial after the district court had already determined that it had not occurred. Therefore, appellant failed to demonstrate that his counsel's performance was unreasonable or that he was prejudiced by counsel's performance.

---

<sup>2</sup>Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

<sup>3</sup>State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

<sup>4</sup>Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

<sup>5</sup>Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).


<sup>6</sup>Davis v. State, 107 Nev. 600, 602, 817 P.2d 1169, 1170 (1991) (quoting Lenz v. State, 97 Nev. 65, 66, 624 P.2d 15, 16 (1981)).

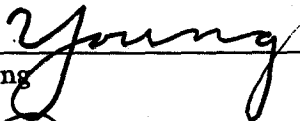
<sup>7</sup>Strickland, 466 U.S. at 691.

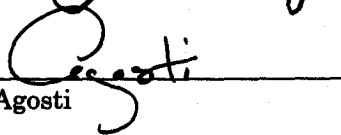
Second, appellant contends that the prosecutor committed misconduct by not adequately informing the district court about what had occurred in regard to the witnesses involved in the alleged collusion. Appellant waived this claim by failing to assert it at trial or on direct appeal, absent a showing of cause and prejudice for his failure to assert it.<sup>8</sup> We conclude that appellant failed to demonstrate cause or prejudice.

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

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_. C.J.  
Maupin

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

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

cc: Hon. Jeffrey D. Sobel, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Kirk T. Kennedy  
Clark County Clerk

---

<sup>8</sup>See NRS 34.810(1)(b), (3).