

IN THE SUPREME COURT OF THE STATE OF NEVADA

RON BRYCE CHALMERS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36710

**FILED**

**MAY 08 2001**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Roberts*  
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.

On February 19, 1999, the district court convicted appellant, pursuant to a guilty plea, of three counts of lewdness with a child under the age of 14 years. The district court sentenced appellant to serve three concurrent terms of life in prison with the possibility of parole after 10 years. Appellant did not pursue a direct appeal.

On November 16, 1999, appellant filed a post-conviction petition for a writ of habeas corpus with the assistance of counsel. The State opposed the petition. The district court conducted an evidentiary hearing. On August 8, 2000, the district court denied the petition. This timely appeal followed.

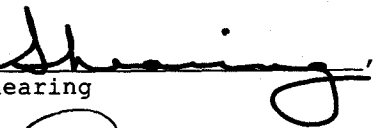
In the petition, appellant presented claims of ineffective assistance of counsel. The district court found that counsel was not ineffective. The district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal.<sup>1</sup> Appellant has not demonstrated that the district court's

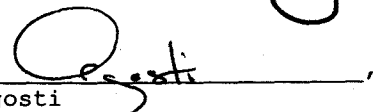
<sup>1</sup>See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

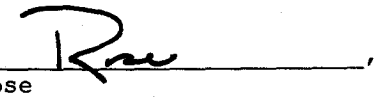
findings of fact are not supported by substantial evidence or are clearly wrong. Moreover, appellant has not demonstrated that the district court erred as a matter of law.

Accordingly, for the reasons stated in the attached order of the district court, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_  
Shearing J.

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

  
\_\_\_\_\_  
Rose J.

cc: Hon. Steven P. Elliott, District Judge  
Attorney General  
Washoe County District Attorney  
Scott W. Edwards  
Washoe County Clerk

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF WASHOE

\* \* \*

RON BRYCE CHALMERS,

Petitioner,

v.

Case No. CR98P2401

THE STATE OF NEVADA,

Dept. No. 10

Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND JUDGMENT

On July 21, 2000, the parties, by and through their respective counsel, Joseph R. Plater, for the State of Nevada, and Marc Picker, for the petitioner, appeared before the court on petitioner's Petition for Writ of Habeas Corpus (Post-Conviction). After having heard and considered the evidence, the court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Petitioner was charged in September 1998, with sixteen counts of lewdness with a child under the age of fourteen

103

1 years.

2           2. Petitioner retained Lewis Taitel to represent him.  
3 During the first meeting between Mr. Taitel and petitioner,  
4 petitioner told Mr. Taitel that he wanted to plead guilty, and  
5 did not want to go to trial.

6           3. Accordingly, petitioner and the State entered into  
7 a plea agreement whereby petitioner agreed to plead guilty to  
8 three counts of lewdness with a minor under the age of fourteen  
9 years, and the State agreed to dismiss the other counts.

10           4. Petitioner and Mr. Taitel then discussed and agreed  
11 on a sentencing strategy. Petitioner and Mr. Taitel agreed that  
12 petitioner would admit that he had committed the crimes, and take  
13 responsibility for them.

14           5. Although there was evidence that petitioner was  
15 experiencing stress and anxiety before he committed his crimes,  
16 petitioner agreed that he would not focus in depth on that type  
17 of mitigating evidence at sentencing. Instead, petitioner  
18 decided that he would present numerous letters in support of him  
19 and the favorable psychiatric report from Dr. Jerry Howle.  
20 Petitioner and Mr. Taitel agreed that presenting the court with  
21 letters and reports in lieu of live testimony would have the  
22 benefit of presenting mitigating evidence that petitioner had  
23 done many good things with his life and for the community,  
24 without giving undue emphasis on the idea that petitioner was not  
25 responsible for his actions.

26           6. Petitioner had claimed that the character

1 witnesses and certain mental health professionals should have  
2 been presented as live witnesses at his sentencing hearing. He  
3 argues that testimony from Dr. Howle and Mr. William Denney would  
4 have explained why petitioner committed his crimes. At the  
5 evidentiary hearing, petitioner conceded that it was not  
6 deficient to not present the live testimony of character  
7 witnesses.

8           7. In addition to petitioner's concession regarding  
9 the live testimony of the character witnesses, the Court finds  
10 that the decision to rely on written letters and reports, as  
11 opposed to live testimony at sentencing, was a sound strategic  
12 reason. First, submitting only letters and reports precluded the  
13 State from cross-examining the authors of the documents. Second,  
14 such a procedure allowed petitioner to present mitigating  
15 evidence in a way that did not dilute petitioner's primary  
16 contention that he was willing to take responsibility for his  
17 actions. Third, the court was aware at sentencing of the  
18 evidence and testimony that petitioner presented at the habeas  
19 hearing.

20           8. The Court finds that the tactic used by counsel at  
21 sentencing was not only reasonable, but quite prudent. A number  
22 of witnesses who testified at the habeas hearing undermined  
23 petitioner's sentencing strategy of taking full responsibility  
24 for his crimes. The witnesses said that petitioner had told them  
25 that he had done nothing wrong, and that he was only pleading  
26 guilty on the advice of his lawyer because petitioner expected to

1 receive probation.

2           9. Mr. Taitel was aware of the possibility before  
3 sentencing that certain witnesses, if cross-examined, could  
4 damage petitioner's claim that he had completely accepted  
5 responsibility for his crimes. Accordingly, the decision to  
6 submit letters only was a reasonable one.

7           10. The decision not to present the live testimony of  
8 other people as to petitioner's mental state, such as Dr. Howle  
9 or Mr. Denney, was also reasonable. Petitioner's contention is  
10 that the live testimony as to his mental state would have  
11 informed the court that because of a head injury, petitioner's  
12 mental state was impaired in such a way as to make him more  
13 susceptible to commit the present crimes.

14           11. The Court rejects this contention. The court was  
15 aware from Dr. Howle's report that Dr. Howle attached signifi-  
16 cance to petitioner's head injury insofar as it may have affected  
17 petitioner's decision to commit his crimes. In addition, any  
18 further explanation of the nexus between petitioner's crimes and  
19 his head injury could have been effectively diluted by other  
20 evidence.

21           12. For example, several of petitioner's own witnesses  
22 at the habeas hearing testified that they noticed little or no  
23 difference about petitioner after his injury. Further, Mr.  
24 Denney testified, and Dr. Skewis stated in her report, that  
25 petitioner experienced stress and anxiety not only from the head  
26 injury, but from a number of other sources, such as his marriage,

1 his new business, and his disappointment over not receiving a  
2 position within his church. The evidentiary hearing also  
3 demonstrated that petitioner's previous life experiences rendered  
4 him susceptible to committing sexual acts against children:  
5 petitioner's father had verbally and physically abused him,  
6 petitioner has battled alcoholism in the past, and petitioner had  
7 been sexually molested when he was a boy.

8           13. Accordingly, the court finds that counsel wisely  
9 submitted reports and letters, since examination of petitioner's  
10 proposed witnesses would have diluted the idea that petitioner's  
11 acts were merely the result of a single head injury, and were,  
12 thus, entirely aberrant acts. Further, as mentioned above, focus  
13 on the live testimony that petitioner presented would have  
14 significantly eroded the idea that petitioner himself had agreed  
15 should be the focus of the sentencing hearing: that he was  
16 guilty, that he knew what he had done was wrong, and that he was  
17 responsible for his actions. Thus, counsel's and petitioner's  
18 sentencing strategy allowed petitioner to present petitioner as a  
19 remorseful defendant, but also to present credibly some  
20 mitigating evidence about his mental state as well.

21           14. Based on the foregoing, the court finds that Mr.  
22 Taitel was not deficient in representing petitioner. Moreover,  
23 petitioner failed to prove that Mr. Taitel's sentencing approach  
24 was objectively unreasonable considering prevailing professional  
25 norms and the totality of the circumstances.

26           15. The Court also finds that petitioner suffered no

1 prejudice. Even if petitioner had conducted the sentencing as he  
2 now proposes, the Court would not have issued a different  
3 sentence. The Court sentenced petitioner to prison because  
4 petitioner committed a significant number of sexual crimes  
5 against minor females over a significant period in a  
6 premeditated, surreptitious, and calculated manner.

7 CONCLUSIONS OF LAW

8 1. Petitioner received the effective assistance of  
9 counsel as set forth in Strickland v. Washington, 466 U.S. 668  
10 (1984).

11 2. Mr. Taitel was not deficient in representing  
12 petitioner at sentencing, and nor did petitioner suffer any  
13 prejudice from Mr. Taitel's representation.

14 JUDGMENT

15 It is therefore the order and judgment of this court  
16 that petitioner's Petition for Writ of Habeas Corpus (Post-  
17 Conviction) is hereby DENIED.

18 DATED this 8 day of <sup>August</sup>~~July~~, 2000.

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22 DISTRICT JUDGE



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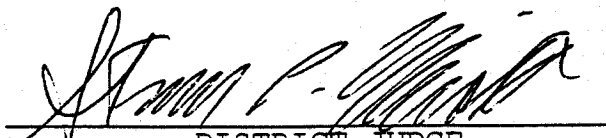
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14 JUDGMENT

15 It is therefore the order and judgment of this court  
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18 DATED this 8 day of <sup>August</sup>~~July~~, 2000.

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22 DISTRICT JUDGE