

IN THE SUPREME COURT OF THE STATE OF NEVADA

TYRONE THOMAS NALL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 36720

FILED

NOV 08 2000

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

ORDER OF AFFIRMANCE

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

On October 22, 1997, the district court convicted appellant, pursuant to jury verdicts, of five counts of robbery with the use of a deadly weapon and one count of using and/or being under the influence of a controlled substance. The district court sentenced appellant to various consecutive and concurrent prison terms. This court dismissed appellant's direct appeals. See Nall v. State, Docket Nos. 31429 and 31430 (Order Dismissing Appeals, September 24, 1998).

On June 4, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus. The district court appointed counsel, conducted an evidentiary hearing, and denied the petition. This appeal followed.

Appellant contends that the district court erred in rejecting his claim that trial counsel provided ineffective assistance. In particular, appellant argues that trial counsel provided ineffective assistance by conceding appellant's guilt on four of the charges without appellant's consent.

A claim of ineffective assistance of counsel presents "a mixed question of law and fact and is thus subject to independent review." *State v. Love*, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). However, a district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference so long as they are supported by substantial evidence and are not clearly wrong. See *Riley v. State*, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994). Moreover, "[o]n matters of credibility this court will not reverse a trial court's finding absent a clear showing that the court reached the wrong conclusion." *Howard v. State*, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990).

To state a claim of ineffective assistance of counsel, a defendant must demonstrate that counsel's performance fell below an objective standard of reasonableness, and that, but for counsel's errors, there is a reasonable probability that the outcome of the proceedings would have been different. See *Strickland v. Washington*, 466 U.S. 668 (1984); *Warden v. Lyons*, 100 Nev. 430, 683 P.2d 504 (1984). The court need not consider both prongs of the Strickland test if the defendant makes an insufficient showing on either prong. See Strickland, 466 U.S. at 697.

We previously have held that a trial strategy of conceding a client's guilt without the client's consent falls below an objective standard of reasonableness. See *Jones v. State*, 110 Nev. 730, 737-38, 877 P.2d 1052, 1056-57 (1994). However, such a tactic may be perfectly legitimate where the client's acquiescence is obtained. See *Wiley v. Sowders*, 669 F.2d 386, 389 (6th Cir. 1982). In such cases, a court reviewing a claim of ineffective assistance of counsel "must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance."

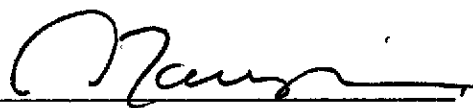
Strickland, 466 U.S. at 689; see also United States v. Simone, 931 F.2d 1186, 1197 (7th Cir. 1991). "[T]he defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" Strickland, 466 U.S. at 689 (quoting Michel v. Louisiana, 350 U.S. 91, 101 (1955)).

The district court found that appellant's trial counsel testified credibly that appellant was aware of counsel's strategy and agreed to it. The district court further determined that under the circumstances of this case, where counsel faced overwhelming evidence of appellant's guilt on the counts to which he conceded guilt, the trial strategy employed by counsel did not fall below an objective standard of reasonableness.

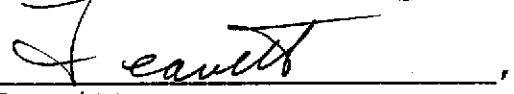
Based on our review of the record on appeal, we conclude that the district court did not err. The record supports the district court's findings of fact and credibility determinations. Moreover, appellant has not demonstrated that the district court's findings of fact and credibility determinations are erroneous as a matter of law. While we agree with appellant that the better practice would be to obtain an on-the-record consent to the type of trial strategy employed in this case, we conclude that such an inquiry is not required as a matter of due process. See Wiley, 669 F.2d at 389. Furthermore, we conclude that the lack of an on-the-record inquiry or a written consent form to corroborate the testimony of appellant's trial counsel does not render that testimony insufficient to support the district court's findings in this case. Finally, we conclude that the district court did not err in concluding that under the circumstances of this case, the trial strategy employed by counsel did not fall below an objective standard of reasonableness.

Accordingly, we affirm the district court's order denying appellant's post-conviction petition for a writ of habeas corpus.

It is so ORDERED.


Maupin J.


Shearing J.


Leavitt J.

cc: Hon. Jerome M. Polaha, District Judge
Attorney General
Washoe County District Attorney
Scott W. Edwards
Washoe County Clerk