

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN LANE STUDLEY,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36758

FILED

NOV 22 2000

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

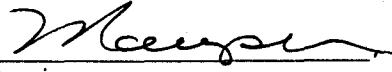
ORDER OF AFFIRMANCE


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


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. See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994). Appellant has not demonstrated that the district court's 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, the order of the district court is affirmed.

It is so ORDERED.¹


Maupin J.


Shearing J.


Leavitt J.

cc: Hon. Jerome M. Polaha, District Judge
Attorney General
Washoe County District Attorney
Ian E. Silverberg
Washoe County Clerk

¹On appeal, appellant contends that he did not knowingly and intelligently waive his "right" to remain in the juvenile system because trial counsel used an outdated waiver form and the district court did not canvass appellant as to the waiver of this "right." This issue was not raised below. We therefore decline to consider it. See Davis v. State, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991).

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

* * *

KEVIN L. STUDLEY,

Petitioner,

v.

Case No. CR97P1873

JACKIE CRAWFORD, WARDEN,
LOVELOCK CORRECTIONAL CENTER,
Respondent.

Dept. No. 3

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND JUDGMENT

This matter came before the court on a Petition for Writ of Habeas Corpus (Post-Conviction). This court, having had the benefit of an evidentiary hearing, is now fully advised of the premises, and hereby denies the relief requested.

FINDINGS OF FACT

1. On May 22, 1997, Kevin L. Studley, Jr., hereinafter Studley, committed the following felony offenses: Two counts of robbery with the use of a deadly weapon, two counts of false imprisonment, aiming a firearm at another, grand larceny, and possession of stolen property.

1 a. It is undisputed that, at the time of the crimes,
2 Studley was sixteen years of age.

3 b. It is also undisputed that Studley was a principal
4 actor in the crimes and was armed with a firearm when
5 the crimes were committed.

6 c. It is undisputed that the State's case enjoyed
7 prosecutive merit.

8 2. Following Studley's arrest in California and extradition to
9 Nevada, the juvenile division of the Washoe County District
10 Attorney's office, on June 5, 1997, filed a "Petition" in the
11 juvenile department of the Second Judicial District Court,
12 charging Studley with the crimes noted above. Along with the
13 Petition, the prosecutor filed a motion for adult certification
14 with accompanying points and authorities and a supporting
15 affidavit.

16 3. On the same date, June 5th, the Honorable Scott Jordan
17 entered an order requiring the Washoe County Department of
18 Juvenile Services to conduct a full investigation and submit a
19 report to the court with respect to Studley's suitability for
20 certification into the adult criminal court. Studley's case was
21 assigned to his current probation officer, Michael Healy.

22 4. Meanwhile, the Washoe County Public Defender's Office was
23 appointed to represent Studley, but, owing to an actual conflict
24 of interest - the representation of Studley's co-offender - Debby
25 Lumkes, a local private attorney was appointed to represent
26 Studley in the juvenile court proceedings.

1 a. Lumkes' appointment took effect on or about June
2 11, 1997.

3 b. Owing to her training and experience, Lumkes was
4 well-qualified to represent Studley throughout the
5 juvenile court proceedings, and particularly a defense
6 to the requested adult certification.

7 5. Following her appointment, Lumkes met with Studley on at
8 least three occasions.

9 a. Lumkes testified credibly that she met with
10 Studley on June 13, 16 and 19 of 1997. Studley's
11 testimony to the contrary is not credible.

12 b. Lumkes testified credibly that, in each of these
13 meetings, she discussed with Studley the nature of the
14 alleged crimes, Studley's version, the fact that the
15 State sought adult certification, and the consequences
16 of adult certification if ordered.

17 c. Lumkes testified credibly that, upon going over
18 the consequences of adult certification, she believed
19 the certification requested should be challenged even
20 though the crimes alleged were very serious in nature
21 and Studley had suffered a prior adjudication already.
22 Lumkes believed Studley's age, immaturity, character,
23 personality, and family relationships, among other
24 defenses, could be cited alone or in conjunction to
25 defeat the certification request.

26 d. Lumkes testified credibly that, as of the June 13th

1 meeting, and despite her repeated efforts to change
2 Studley's mind, Studley wanted to stipulate to adult
3 certification, and waive any hearing on the
4 certification question. Studley's testimony to the
5 contrary is not credible.

6 e. Lumkes testified credibly that, when she was unable
7 to convince Studley to contest adult certification, she
8 prepared a five-page document entitled "Waiver of
9 Hearing for Transfer (Certification to Adult Court)."

10 i. It is undisputed that Studley signed this
11 waiver on June 19, 1997 and that Officer
12 Healy witnessed it.

13 ii. Both Lumkes and Healy testified credibly
14 that Lumkes went over this document in great
15 detail with Studley and repeatedly.

16 Studley's testimony to the contrary is not
17 credible.

18 iii. Both Lumkes and Healy testified credibly
19 that Studley understood the contents of the
20 document. Studley's testimony to the
21 contrary is not credible.

22 6. After Studley executed the waiver, his case was submitted to
23 the Honorable Charles McGee, who, on June 26, 1997, entered an
24 order certifying Studley as an adult with respect to two counts
25 of robbery with the use of a deadly weapon.

26 7. After Judge McGee entered his order, Studley appeared in

1 district court with new counsel and entered his plea to the two
2 charges. Studley was later sentenced accordingly.

3 8. Following the entry of the judgment of conviction, Studley
4 appealed to the Nevada Supreme Court, claiming that the district
5 court abused its discretion in imposing sentence. Studley v.
6 State, Case No. 31424. The Nevada Supreme Court rejected
7 Studley's contention and affirmed his sentence.

8 9. In February of 1999, Studley filed the present petition,
9 claiming that Lumkes rendered ineffective assistance of counsel.

10 a. In the evidentiary hearing on his petition,
11 Studley presented the testimony of Dr. William Danton,
12 a local clinical psychologist, who concluded Studley
13 suffered from emotional and behavioral problems
14 stemming from a troubled family life.

15 i. At the time the State sought adult
16 certification for Studley, Dr. Danton was
17 practicing in Washoe County.

18 ii. It is undisputed that Lumkes did not
19 consult with Dr. Danton, or any other mental
20 health professional and use such information
21 gained through such a consultation to
22 convince Studley to contest adult
23 certification.

24 b. Lumkes' failure to consult with Dr. Danton was not
25 unreasonable under prevailing professional norms.

26 i. Studley's insistence on waiving an adult

1 certification hearing rendered this line of
2 investigation by Lumkes unnecessary.

3 ii. No prevailing professional norm requires
4 a reasonably competent criminal defense
5 attorney to seek out experts to convince a
6 juvenile client that waiving adult
7 certification is not in his or her best
8 interest, where, as here, counsel had gone to
9 reasonable lengths to convince the client
10 already to contest the adult certification
11 finding.

12 c. Had Lumkes consulted with Dr. Danton and presented
13 Dr. Danton's findings to Studley regarding Studley's
14 behavioral and emotional problems, no reasonable
15 probability exists that Studley would have changed his
16 mind about waiving the adult certification hearing,
17 even in light of this information.

18 d. Had Lumkes consulted with Dr. Danton and presented
19 Dr. Danton's findings to Studley and Studley did in
20 fact change his mind about contesting the adult
21 certification, no reasonable probability exists that
22 the adult certification request would have been
23 denied.¹

24
25 ¹It was not established convincingly, during the habeas
26 Anthony Lee R. v. State, 113 Nev. 1406, 1416, 952 P.2d. 1 (1997),

1 10. Studley has had a full and fair opportunity to plead and
2 litigate any and all claims, in this proceeding, and his
3 conviction or sentence was not obtained or imposed in violation
4 of the State or Federal Constitutions, or the laws of the State
5 of Nevada.

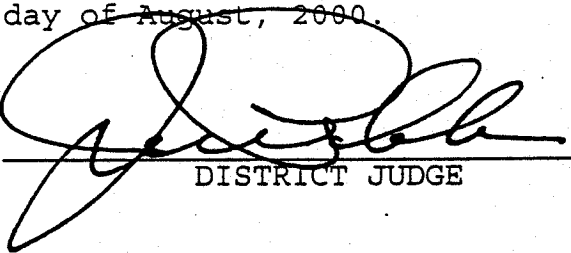
6 CONCLUSIONS OF LAW

7 Studley received the effective assistance of counsel
8 within the contemplation of Strickland v. Washington, 466 U.S.
9 668 (1984), Hill v. Lockhart, 474 U.S. 52 (1985), and their local
10 progeny.

11 JUDGMENT

12 It is hereby the Judgment and Order of this court that
13 Studley's Petition for Writ of Habeas Corpus (Post-Conviction) is
14 DENIED.

15 DATED this 18th day of August, 2000.

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18 _____
19 DISTRICT JUDGE

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26 substantially contributed to or influenced the commission of these
offenses alleged against Studley.