

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE GALLIMORT,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 33289

FILED

AUG 07 2001

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

36826

JOSE A. GALLIMORT,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

ORDER OF AFFIRMANCE

Docket No. 33289 is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Docket No. 36826 is a proper person appeal from an order of the district court denying appellant's second post-conviction petition for a writ of habeas corpus. We elect to consolidate these appeals for disposition.¹

On May 26, 1998, the district court convicted appellant, after a bench trial, of first degree kidnapping with the use of a deadly weapon (count I) and battery with the use of a deadly weapon (count II). The district court sentenced appellant to serve the following terms in the Nevada State Prison: for count I, two consecutive terms of life with the possibility of parole; for count II, two consecutive terms of a maximum of 96 months with minimum parole eligibility in

¹See NRAP 3(b).

24 months, to be served consecutively to count I. This court affirmed his judgment of conviction.²

Docket No. 33289

On September 30, 1998, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On October 14, 1998, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that his counsel was ineffective for various reasons. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner 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 court's verdict unreliable.³

Appellant first claimed that his counsel was ineffective for failing to call two witnesses to testify at trial. Appellant argued that these witnesses would have testified regarding the truthfulness of the victim's testimony, and regarding the past behavior and drug addiction of the victim. He claimed that this testimony would have had a "chilling effect on the victim's credibility and would have possibly established a degree of reasonable doubt." We conclude that the district court did not err in denying this claim. At trial, appellant testified to the victim's alleged alcohol and drug addiction. Also at the trial, the victim

²Gallimort v. State, 116 Nev. 315, 997 P.2d 796 (2000).

³See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984), cert. denied, 471 U.S. 1004 (1985).

admitted that she had been drinking on the day the crime occurred. Thus, appellant failed to demonstrate that his counsel's performance was unreasonable or that he was prejudiced by the performance of counsel.⁴

Next, appellant claimed that his counsel was ineffective for failing to investigate his client's charges. Appellant argued that if his counsel would have investigated, he would have learned of the victim's past behavioral problems and drug addiction. We conclude that the district court did not err in denying this claim. Appellant did not specify what behavioral problems existed or how discovering the behavioral problems would have been beneficial to appellant's case. Moreover, the victim's alleged drug addiction was revealed at trial. Thus, appellant failed to demonstrate that his counsel was ineffective for allegedly failing to investigate.⁵

Next, appellant claimed that his counsel: (1) failed to perform to his client's best interest to resolve all arguments brought against appellant; and (2) failed to supply appellant with the records in his possession after the court ordered him to supply them to the appellant. We conclude that the district court did not err in denying these claims. Appellant failed to support these claims with sufficient factual allegations that would entitle him to relief.⁶

Appellant's last two claims are moot. He claimed: (1) that his counsel failed to inform him of his right to appeal after being found guilty and failed to file a direct appeal on appellant's behalf; and (2) that the district court

⁴See Strickland, 466 U.S. 668.

⁵See Strickland, 466 U.S. 668; see also Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

⁶See Hargrove, 100 Nev. 498, 686 P.2d 222.

failed to appoint an attorney for his direct appeal pursuant to a Nevada Supreme Court order. The district court appointed appellant an attorney for his direct appeal on December 18, 1998. Moreover, appellant had a direct appeal.⁷

Therefore, we conclude that the district court did not err in denying appellant's petition and we affirm the order of the district court.

Docket No. 36826

On June 15, 1998, appellant filed a second 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 district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On September 14, 2000, the district court denied appellant's petition. This appeal followed.

Appellant's petition was successive because he had previously filed a proper person post-conviction petition for a writ of habeas corpus in the district court.⁸ Therefore, appellant's petition was procedurally barred absent a demonstration of good cause and actual prejudice.⁹ Appellant failed to argue that his procedural defect should be excused. Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's petition, and we affirm the order of the district court.

⁷See Gallimort v. State, 116 Nev. 315, 997 P.2d 796 (2000).

⁸See NRS 34.810(1)(b)(2).

⁹See NRS 34.810(1)(b); NRS 34.810(3).

Conclusion

Having reviewed the records 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.¹⁰ Accordingly, we

ORDER the judgments of the district court AFFIRMED.¹¹

Young J.
Young

Leavitt J.
Leavitt

Becker J.
Becker

cc: Hon. Donald M. Mosley, District Judge
Attorney General
Clark County District Attorney
Jose A. Gallimort
Clark County Clerk

¹⁰See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

¹¹We have considered all proper person documents filed or received in these matters, and we conclude that the relief requested is not warranted.