

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATTHEW A. HUTCHINSON,

No. 37110

Appellant,

vs.

FILED

WARDEN, LOVELOCK CORRECTIONAL
CENTER, JACKIE CRAWFORD,

MAR 23 2001

Respondent.

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.

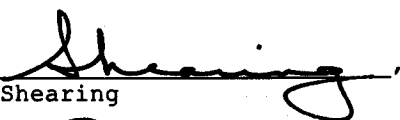
In the petition, appellant presented claims of ineffective assistance of counsel. The district court found that counsel was not ineffective. The district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal.¹ Appellant has not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

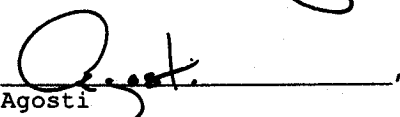
¹See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

01-05107

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. Connie J. Steinheimer, District Judge
Attorney General
Washoe County District Attorney
Dean R. Heidrich
Washoe County Clerk

FILED
SEP 21 2000
BY *[Signature]*

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

* * *

MATTHEW A. HUTCHINSON,
Petitioner,

v.

Case No. CR97P0787
Dept. No. 4

WARDEN JACKIE CRAWFORD,
Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND JUDGMENT

On September 15, 2000, the parties, by and through their respective counsel, Joseph R. Plater, for the State of Nevada, and Dean Heidrich, for the petitioner, appeared before the court on petitioner's Petition for Writ of Habeas Corpus (Post-Conviction) and concluded the evidentiary hearing on the petition. After having heard and considered the evidence, the court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. By way of a criminal complaint, petitioner was charged in May

1 of 1997, with ten counts of lewdness with a minor under the age
2 of 14 and three counts of indecent or obscene exposure.
3 Petitioner retained Robert Fry, Esq. and Annabelle Hall, Esq. to
4 represent him.

5 2. Petitioner proceeded to a preliminary hearing in Reno Justice
6 Court, where Egan Walker represented the State. After two
7 witnesses, including petitioner's daughter, testified against
8 petitioner, petitioner and his counsel jointly decided to
9 terminate the preliminary hearing for several reasons. First, it
10 appeared to Ms. Hall from the testimony presented at the hearing,
11 and her review of the discovery, that there was significant
12 evidence of petitioner's guilt. Accordingly, Ms. Hall approached
13 Mr. Walker about negotiating the case. Mr. Walker told Ms. Hall
14 that if petitioner terminated the preliminary hearing, the State
15 would permit petitioner to plead guilty to two of the lewdness
16 counts and the State would dismiss the remaining charges;
17 however, the State's offer would be withdrawn if petitioner
18 continued with the preliminary hearing.

19 3. Based on the advice of counsel, petitioner decided to
20 terminate the preliminary hearing to keep the plea offer open.
21 Petitioner also terminated the hearing because he was distressed
22 about his daughter having to testify.

23 4. Ms. Hall hired an investigator to investigate the allegations
24 of the minor victims. The investigator talked to some people,
25 but most of the parents of the children refused to talk to the
26 investigator. Based on her review of the evidence against

1 failed to put his client on the stand. These claims are denied.
2 The outcome of the trial would have been no different had counsel
3 performed as petitioner suggests. Further, petitioner failed to
4 present the testimony of his niece. The court also finds that
5 petitioner voluntarily decided not to testify. During trial, the
6 court explained to petitioner that he had the right to testify,
7 and that it was petitioner's sole right to decide whether to
8 testify. Petitioner acknowledged his understanding, and
9 voluntarily chose not to testify (Trial Transcript, June 25,
10 1998, 713-715; June 26, 1998, 858-862). The court rejects
11 petitioner's claim that his counsel forced him not to testify.
12 Finally, counsel did present a contamination defense through the
13 testimony of Dr. O'Donohue.

14 CONCLUSIONS OF LAW

15 1. Ms. Hall provided effective assistance of counsel in all
16 respects to her representation of petitioner as set forth in
17 Strickland v. Washington, 466 U.S. 668 (1984), and its Nevada
18 progeny.

19 2. Mr. Fry provided effective assistance of counsel to
20 petitioner as set forth in Strickland v. Washington, 466 U.S. 668
21 (1984), and its Nevada progeny. Although Mr. Fry may have made
22 certain mistakes in his approach to the case and in trial and/or
23 evidentiary procedure, petitioner suffered no prejudice from
24 these deficiencies.

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JUDGMENT

For the foregoing reasons, petitioner's Petition for Writ of Habeas Corpus (Post-Conviction) is denied.

DATED this 26 day of October, 2000.

Conrad J. Steinheimer
DISTRICT JUDGE

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