

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN LOREN KEGEL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 37131

**FILED**

MAR 05 2001

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. R. [Signature]*  
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.<sup>1</sup> 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, we

ORDER the judgment of the district court AFFIRMED.

*Young*  
\_\_\_\_\_  
Young, J.

*Rose*  
\_\_\_\_\_  
Rose, J.

*Becker*  
\_\_\_\_\_  
Becker, J.

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

cc: Hon. Peter I. Breen, 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

\* \* \*

JOHN LOREN KEGEL,

Petitioner,

v.

Case No. CR97P0925

WARDEN, E.K. McDANIEL,  
et al.,

Dept. No. 7

Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND JUDGMENT

This matter came for before the court on Kegel's  
Petition for Writ of Habeas Corpus (Post-Conviction). The court,  
having had the benefit of an evidentiary hearing, denies the  
relief requested.

FINDINGS OF FACT

1. On March 9, 1997, Kegel shot and killed Terre Lee. The  
homicide was particularly brutal and completely unjustified.  
Kegel was arrested subsequently, and charged with one count of  
murder in the first degree with the use of a deadly weapon, and  
several counts of dissuading witnesses.

1 2. Following Kegel's arrest, the Washoe County Public Defender's  
2 Office was appointed.

3 a. At all relevant times, Kegel was defended by Steven  
4 Gregory and Vaun Hall.

5 b. Owing to their training and experience, both  
6 Gregory and Hall were well qualified to represent  
7 Kegel.

8 3. During the course of their representation, Gregory and Hall  
9 met with Kegel several times and learned his version of what  
10 occurred on the night of the shooting, and then they conducted a  
11 reasonably complete investigation of the facts which might  
12 support either a complete defense to the first degree murder  
13 charge, or might support a theory for reducing the degree of  
14 culpability from first degree to a lesser degree of homicide.

15 4. Following this reasonably complete investigation, Gregory and  
16 Hall concluded that the available defenses, particularly  
17 voluntary intoxication, were very unlikely to persuade a  
18 reasonable jury that Kegel was either not guilty, or merely  
19 guilty of a lesser degree of homicide.

20 a. Hall testified credibly that he went over the  
21 results of this investigation with Kegel, and that  
22 Kegel understood why these defenses were not likely to  
23 succeed, and Hall testified credibly that Kegel agreed  
24 to forego these defenses.

25 b. Kegel's testimony to the contrary is not credible.

26 5. In addition, Gregory and Hall were in receipt of discovery

1 from the State and were aware that the State had a very strong  
2 case against Kegel for murder in the first degree, on either a  
3 theory of premeditated and deliberate murder or murder under the  
4 felony murder rule. (Both theories of murder were pleaded in the  
5 charging document.)

6 a. Hall testified credibly that he went over his  
7 findings respecting the strength of the State's case  
8 with Kegel, and Kegel understood the State's case was  
9 very strong, if not overwhelming.

10 b. To the extent that Kegel's testimony draws Mr.  
11 Hall's testimony into question, Kegel's testimony is  
12 not credible.

13 6. Meanwhile, the Washoe County District Attorney's Office  
14 extended a plea bargain for Kegel. The plea bargain stipulated  
15 the following: That in exchange for Kegel's plea to murder in  
16 the first degree with the use of a deadly weapon, the State would  
17 dismiss or not pursue any other charges, but both sides would be  
18 free to argue for the appropriate sentence.

19 7. Given the prospects of Kegel's proposed defenses in contrast  
20 to the overall strength of the State's case, and being mindful  
21 that sentencing would now be imposed by the district court judge  
22 instead of the jury, Gregory and Hall recommended that Kegel  
23 accept the plea bargain.

24 a. Counsel's advice, under the circumstances of this  
25 case, was objectively reasonable under prevailing  
26 professional norms.

1 b. Both Gregory and Hall testified credibly that had  
2 Kegel rejected the plea bargain, they would have gone  
3 forward and taken Kegel's case to trial.

4 c. There is no reasonable probability that, had Kegel  
5 rejected counsel's advice and gone to trial, he would  
6 have been acquitted of murder in the first degree with  
7 the use of a deadly weapon, or been found guilty of a  
8 lesser degree of homicide at trial.

9 8. After counsel communicated the terms of the plea bargain to  
10 Kegel, Kegel, after consultation with counsel, accepted the plea  
11 bargain.

12 a. In recommending the plea bargain, counsel did not,  
13 in any way, coerce Kegel's agreement, nor did they  
14 promise him anything to induce his agreement.

15 b. Hall testified credibly that, long before the plea  
16 negotiations were entered into, he learned that the  
17 State would not seek the death penalty against Kegel,  
18 and he communicated this information directly to Kegel.

19 c. At no time did counsel state or imply that, if  
20 Kegel went to trial, he would receive the death  
21 penalty.

22 d. To the extent that Kegel's testimony draws any of  
23 these findings into question, his testimony is not  
24 credible.

25 e. Kegel's decision to accept the plea bargain and  
26 plead guilty was not the result of any threat, promise,

1 or the like, but rather his desire to accept and  
2 acknowledge his responsibility and manifest his desire  
3 to atone for what he had done.

4 9. In anticipation of the change of plea proceeding, counsel  
5 acquired a guilty plea memorandum, and Kegel executed it.

6 a. Gregory testified credibly that, before Kegel  
7 executed the memorandum, he went through the entire  
8 guilty plea memorandum with Kegel line by line.

9 b. Gregory testified credibly that, upon completing  
10 his review of the guilty plea memorandum with Kegel,  
11 Kegel did not express any concern with the contents of  
12 the memorandum, nor did Kegel ask any questions  
13 suggesting a lack of understanding respecting the  
14 contents of the memorandum.

15 c. To the extent that Kegel's testimony draws these  
16 findings into question, his testimony is not credible.

17 10. On October 24, 1997, Kegel entered his plea of guilty to  
18 murder in the first degree with the use of a deadly weapon.

19 a. Prior to the formal entry of Kegel's plea, he and  
20 Gregory went through the questions the district judge  
21 would likely ask - and ultimately did ask - in the  
22 change of plea proceeding.

23 b. Gregory testified credibly that he did not, at any  
24 time, tell Kegel how to answer any of these questions.

25 c. Gregory testified credibly that, during the plea  
26 canvass itself, Kegel did not look for direction

