

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUAN CARLOS LUNA,

No. 37144

Appellant,

FILED

vs.

APR 20 2001

THE STATE OF NEVADA,

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

Respondent.

ORDER OF AFFIRMANCE

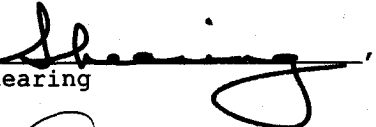
This is an appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus.

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).

Accordingly, for the reasons stated in the attached order of the district court, we

ORDER the judgment of the district court AFFIRMED.²



Shearing J.



Agosti J.



Rose J.

cc: Hon. Peter I. Breen, District Judge
Attorney General
Washoe County District Attorney
Calvert & Wilson
Washoe County Clerk

²We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.

FILED

1 CODE: 2840

2 NOV 28 2000

3 AMY HARVEY, CLERK

4 By: *[Signature]*
DEPUTY

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

7 *****

8 JUAN CARLOS LUNA,
Petitioner,

9 v.

10 DAVE MELIGAN,
Respondent.

Case No. CR99-P1961
Dept. No. 7

11 _____ /
12 **ORDER**

13 JUAN CARLOS LUNA petitions for Writ of Habeas Corpus. Petitioner
14 makes various claims of error at trial and on appeal. Petitioner's claims are addressed
15 individually below.

16 In his initial Petition, filed June 1, 2000, Petitioner makes two claims of
17 error. First, he asserts that he was denied the protections of the United States and
18 Nevada Constitutions and state and federal statutory requirements. Petitioner does
19 not specify which of his constitutional or statutory protections were violated, nor does
20 Petitioner support his claims with specific facts that, if true, would entitle him to relief.
21 Pangallo v. Nevada, 112 Nev. 1533, 1536, 930 P.2d 100, 102 (1996). Therefore he
22 fails to state a claim for which relief can be granted on this claim of error.

23 Second, Petitioner claims that his appellate counsel was ineffective for
24 failure to raise the State's violation of reciprocal discovery statutes. Claims of
25 unconstitutionally ineffective assistance of counsel require a two-pronged argument.
26 First, a petitioner must show that counsel's performance fell below an objective

1 standard of reasonableness. Crump v. Worden, 113 Nev. 293, 304, 934 P.2d 247, 254
2 (1997), citing Strickland v. Washington, 466 U.S. 668, 690, 104 S. Ct. 2052, 2066, 80
3 L. Ed. 2d 674 (1984). Second, he must demonstrate he was actually prejudiced in that
4 there is a reasonable probability that, but for counsel's unprofessional errors, the
5 result of the proceeding would have been different. Id., citing Strickland, 466 U.S. at
6 694, 104 S. Ct. at 2068. In the present case, Petitioner has not specified any facts
7 specifying how the State violated discovery rules, nor does he indicate whether and
8 how he was prejudiced, if such violations actually existed and his appellate attorney
9 failed to raise them on appeal. Therefore, Petitioner does not establish a claim for
10 ineffective assistance with regard to his appellate counsel's performance.

11 On August 14, 2000, Petitioner filed a supplemental Petition for Writ of
12 Habeas Corpus. In his first supplemental claim of error, Petitioner asserts that an
13 informant who was a trial witness may have received a benefit in the form of a job
14 recommendation in exchange for his testimony. Again, Petitioner does not support his
15 claims with specific facts that if true would entitle him to relief. Pangallo, 112 Nev. at
16 1536, 930 P.2d at 102 (1996). Accordingly, Petitioner has not established a claim for
17 relief in regard to the informant's testimony.

18 Petitioner next asserts that trial counsel was ineffective for failure to
19 request an entrapment instruction at trial. To establish an entrapment defense, a
20 defendant must show that he was induced by the government to commit a crime that
21 he was not otherwise predisposed to commit. Hill v. Nevada, 95 Nev. 327, 332, 594
22 P.2d 699, 703 (1979). Because the evidence presented at trial (cutting agent, scale,
23 plastic baggies, security equipment, and methamphetamine confiscated from storage
24 at Petitioner's home) clearly indicated that Petitioner was an active drug dealer prior to
25 his arrest, he most likely would not have been able to establish a viable lack of
26 predisposition defense. Therefore, trial counsel was not deficient in failing to raise the

1 defense at trial.

2 In his next supplemental claim for relief, Petitioner claims that his trial
3 counsel was ineffective for failure to object to references by the informant at trial to a
4 prior relationship with Petitioner. Petitioner's trial counsel objected to the subject
5 testimony, which was sustained by the Court. The Court also instructed the jury to
6 disregard the evidence. (Trial Tr. at 19-20.) Petitioner also asserts that the Court
7 failed to conduct a Petrocelli hearing before hearing evidence about Petitioner's prior
8 drug crimes. The record indicates that the Court held such a hearing. (Trial Tr. at 95-
9 103.) Because both of these claims are repelled by the record, the claims fail.

10 Pangallo, 112 Nev. at 1536.

11 In his remaining ineffective assistance claims, Petitioner asserts that his
12 trial counsel failed to subpoena witnesses, failed to object to the testimony of the
13 informant and expert witnesses, failed to object to hearsay testimony at trial, and failed
14 to put on Petitioner as a witness, thereby crippling his "procuring agent" defense.
15 Petitioner also argues that the Court should have permitted defense counsel's closing
16 argument to be read back to the jury, asserting that the jury was confused about the
17 "procuring agent" defense. Petitioner here attempts to relitigate issues presented and
18 lost on appeal through an ineffective assistance claim: his contention that the State
19 did not prove that he was a "procuring agent." Because the Nevada Supreme Court
20 found that the State presented sufficient evidence to prove beyond a reasonable doubt
21 that Petitioner was not the procuring agent, but the seller in the prosecuted
22 transaction, this issue may not be litigated again. Valerio v. State, 112 Nev. 383, 387,
23 915 P.2d 874, 876 (1996).

24 Accordingly, Petitioner's Petition for Writ of Habeas Corpus is
25 DISMISSED.

26 IT IS SO ORDERED.

Dated This 21 Day of November, 2000.

Peter Breen

DISTRICT JUDGE

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