

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDRES RODRIGUEZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 37205

FILED

OCT 22 2002

ORDER OF AFFIRMANCE

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

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

On July 29, 1998, the district court convicted appellant, pursuant to a jury verdict, of one count of attempted murder with the use of a deadly weapon in order to promote or further assist a criminal gang. The district court sentenced appellant to serve two consecutive terms of sixty to two hundred forty months in the Nevada State Prison. This court dismissed appellant's direct appeal.<sup>1</sup>

On July 25, 2000, appellant filed a 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 December 13, 2000, the district court denied appellant's petition. This appeal followed.

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<sup>1</sup>Rodriguez v. State, Docket No. 32852 (Order Dismissing Appeal, March 2, 2000).

In his petition, appellant first claimed his trial counsel was ineffective for failing to argue that the district court did not have jurisdiction over his case because the information did not state (1) a specific time or place that the incident occurred, (2) what type of firearm was used, and (3) what specific gang activities were promoted.<sup>2</sup> Appellant's contention that the information was defective lacks merit. In this case, the opening paragraph of the information clearly alleged that all of the charged crimes were committed in Clark County, Nevada on or about May 30, 1997. This allegation is sufficient to confer jurisdiction upon the district court.<sup>3</sup> Additionally, the information was sufficient to place appellant on notice that the State intended to prove the charge of attempted murder with the use of a deadly weapon in order to promote or further assist a criminal gang.<sup>4</sup> Moreover, appellant failed to demonstrate that he suffered any prejudice from any of the alleged defects in the information.<sup>5</sup> Thus, we conclude that the district court properly denied this claim of ineffective assistance of counsel.

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<sup>2</sup>To the extent that appellant also raised this claim as an independent constitutional violation, we conclude it lacks merit.

<sup>3</sup>Nevada's district courts have jurisdiction over crimes that are punishable under Nevada law and committed within the State of Nevada. See NRS 171.010.

<sup>4</sup>Pursuant to NRS 173.075, the "information must be a plain, concise and definite written statement of the essential facts constituting the offense charged."; see also Sheriff v. Spagnola, 101 Nev. 508, 515, 706 P.2d 840, 844 (1985) (stating that the purpose of NRS 173.075 is to put defendants on notice of the charges they are facing so as to allow them to prepare a defense).

<sup>5</sup>See Kirksey v. State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996); Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

Next, appellant claimed that the prosecutor committed misconduct at trial by (1) making reference to the past criminal conduct of appellant's alibi witness, (2) eliciting hearsay information about the vehicle used in the shooting, and (3) introducing a prior altercation between the victim and appellant. Appellant should have brought his claim of prosecutorial misconduct on direct appeal.<sup>6</sup> Further, the issues underlying these claims of prosecutorial misconduct were substantially raised in appellant's direct appeal and rejected by this court. The doctrine of the law of the case prevents relitigation of these issues.<sup>7</sup> On direct appeal, this court also determined that there was overwhelming evidence of appellant's guilt presented at trial. Where evidence of guilt is overwhelming, even aggravated prosecutorial misconduct may constitute harmless error.<sup>8</sup> Thus, we conclude that the district court did not err in denying this claim.

Finally, appellant claimed he was actually innocent. Appellant's claim of actual innocence is based on an argument that the investigation of the crime and evidence presented at trial did not sufficiently demonstrate that he was the perpetrator. As discussed above, overwhelming evidence of appellant's guilt was presented at trial. Thus, we conclude that the district court properly denied relief on this claim.

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<sup>6</sup>See Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) ("claims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be considered waived in subsequent proceedings"), overruled in part on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

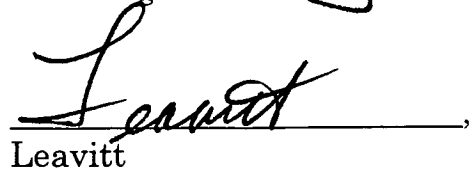
<sup>7</sup>See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

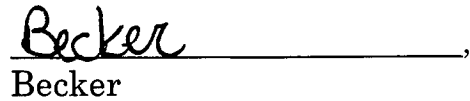
<sup>8</sup>See King v. State, 116 Nev. 349, 356, 998 P.2d 1172, 1176 (2000).

Having reviewed the record 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.<sup>9</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>10</sup>

 \_\_\_\_\_, J.  
Shearing

 \_\_\_\_\_, J.  
Leavitt

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

cc: Hon. Donald M. Mosley, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Andres Rodriguez  
Clark County Clerk

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<sup>9</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>10</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.