IN THE SUPREME COURT OF THE STATE OF NEVADA

STERLING ATKINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 37293

FILED

MAY 14 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a post-conviction petition for a writ of habeas corpus in a death penalty case.

On June 8, 1995, the district court convicted Atkins, pursuant to a jury verdict, of first-degree murder, conspiracy to commit murder, first-degree kidnapping, and sexual assault. Atkins received a death sentence for the murder. On direct appeal, we reversed Atkins' conviction for sexual assault, but affirmed the remaining convictions and sentence of death.[1] Atkins subsequently filed a timely petition for habeas relief in the district court. The district court appointed counsel to represent Atkins, and subsequently denied the petition without conducting an evidentiary hearing. This appeal followed.

Atkins argues that trial and appellate counsel rendered constitutionally ineffective assistance.[2] Claims of ineffective assistance of counsel are evaluated under the two-part test enunciated in Strickland v.

[1]Atkins v. State, 112 Nev. 1122, 1137, 923 P.2d 1119, 1129 (1996).

[2]To the extent that Atkins raises independent constitutional claims, they are waived because they were not raised on direct appeal. See NRS 34.810(1)(b).

Washington.[3] Under Strickland, a petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness, and that counsel's deficient performance prejudiced the defense.[4] To establish prejudice based on trial counsel's deficient performance, a petitioner must show that but for counsel's errors there is a reasonable probability that the verdict would have been different.[5] To establish prejudice based on appellate counsel's deficient performance, a petitioner must show that the omitted issues would have had a reasonable probability of success on appeal.[6] The court need not consider both prongs of the Strickland test if the petitioner makes an insufficient showing on either prong.[7] Further, a petitioner is not entitled to an evidentiary hearing on claims that are belied or repelled by the record or are not sufficiently supported by specific factual allegations that would, if true, entitle the petitioner to relief.[8]

Atkins first claims that his trial counsel failed to adequately investigate Atkins' mental status. Atkins also alleges that his trial attorneys erred by failing to introduce evidence of his mental infirmities at the guilt phase of his trial to defend against premeditation. Atkins is not entitled to relief on these claims. First, pursuant to defense counsel's request, Atkins met with clinical psychologist Dr. Philip Colosimo six

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[3]466 U.S. 668 (1984).

[4]Id. at 687-88.

[5]Id. at 694.

[6]Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996).

[7]Id. at 987, 923 P.2d at 1107.

[8]Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

times. Dr. Colosimo conducted psychological testing of Atkins on three of those occasions, and estimated that he spent a total of nine hours with him. Dr. Colosimo provided defense counsel with his written report and testified at Atkins' penalty hearing in mitigation of punishment. Atkins has not indicated what material evidence would have been discovered through additional investigation into his mental status or how that evidence would have affected the outcome of his trial. Second, Dr. Colosimo explicitly concluded in his report that Atkins was competent at the time he committed the crimes. We therefore conclude that the record repels Atkins' claims that his trial counsel's investigation or use of psychological evidence was objectively unreasonable and that he was prejudiced.

Next, Atkins contends that his trial counsel failed to timely move for a competency hearing and thereafter improperly withdrew the allegedly untimely motion. In support of these claims, Atkins states that his trial attorneys filed their motion two days prior to trial and cites (1) a letter received by defense counsel from Dr. Colosimo stating that Atkins suffers from various psychological infirmities; (2) Atkins' belief that a second death sentence could not be imposed for the murder of the single victim in this case;[9] and (3) his summary rejection of a proffered plea bargain involving a sentence less than death. We conclude that Atkins has failed to establish that he was incompetent, or that a competency

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[9]In a severed trial that preceded Atkins', co-defendant Anthony Lavon Doyle was found guilty of, inter alia, first-degree murder and was sentenced to death. See Doyle v. State, 112 Nev. 879, 884, 921 P.2d 901, 905 (1996).

hearing would have been required had the issue been maintained.[10] First, Dr. Colosimo's letter preceded his report in which he concluded that Atkins was competent at the time of the crimes. Atkins presents no evidence to suggest that his competency deteriorated in the approximately nine months between the crimes and trial. Further, Atkins presented a defense of "mere presence." Thus, his rejection of a guilty plea does not appear irrational. Finally, two days prior to trial defense counsel told the district court that Atkins had been disabused of his erroneous belief that two death sentences could not be imposed for the murder of one individual. Because the record belies Atkins' claim of incompetency, we conclude that his claims of ineffective assistance related to that claim lack merit. Similarly, Atkins' contentions that his appellate counsel should have argued that the district court erred in failing to grant Atkins a competency hearing, that Atkins was incompetent to be sentenced, and that he is or will be incompetent to be executed are not supported by the record and are without merit.

Next, Atkins contends that his trial counsel were ineffective in failing to argue that the State presented insufficient evidence to support Atkins' first-degree kidnapping conviction. The record belies this claim. First, Atkins' counsel argued in a pretrial habeas petition that insufficient evidence supported the kidnapping charge. Also, in her closing argument, defense counsel contended that the evidence showed that Atkins did not participate in the victim's abduction. We conclude that Atkins' trial counsel did make the allegedly omitted argument and that his claim of ineffective assistance of counsel therefore lacks merit.

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[10]See Melchor-Gloria v. State, 99 Nev. 174, 180, 660 P.2d 109, 113 (1983) (competency hearing required where substantial evidence shows that a defendant may be mentally incompetent to stand trial).

Next, Atkins contends that his trial and appellate counsel were ineffective in failing to challenge the district court's excusal of a prospective juror because it was not "unmistakably clear" that he would automatically vote against the imposition of death. We disagree. At the end of a lengthy voir dire, the prospective juror indicated that he could not, under any circumstances, vote for the death penalty. We conclude that the district court properly excused the prospective juror[11] and that Atkins' trial and appellate counsel were not ineffective for failing to object to the excusal.

Next, Atkins contends that his trial counsel failed to discover and present corroborating evidence of the physical and emotional abuse that Atkins suffered throughout his childhood. The record belies this claim. To develop such evidence, defense counsel called Atkins' father and sister to testify at Atkins' penalty hearing. Both of these witnesses testified to the repeated physical and emotional abuse Atkins received from his formerly alcoholic father and otherwise established that Atkins grew up in a very dysfunctional environment and was at one point removed from his parents' home and placed in foster care. Further, Atkins has failed to explain how additional testimony would have altered the outcome of his trial. We therefore conclude that Atkins has failed to articulate how his counsel's performance was objectively unreasonable or how he was prejudiced.

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[11]See Wainwright v. Witt, 469 U.S. 412, 424 (1985) (holding that "the proper standard for determining when a prospective juror can be excluded because of his or her views on capital punishment . . . [i]s whether the juror's views would 'prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath.'") (quoting Adams v. Texas, 448 U.S. 38, 45 (1980).

Next, Atkins claims that his trial counsel failed to conduct adequate discovery to mitigate Atkins' culpability as to his 1992 conviction for assault with use of a deadly weapon. This prior felony conviction provided the basis for an aggravator pursuant to NRS 200.033(2)(b).[12] Atkins provides nothing in support of this claim. Instead, he asserts in a footnote that "[a]dditional information as to this offense is in the process of being uncovered." We conclude that this claim is speculative and, therefore, lacks merit.[13]

Next, Atkins claims that his trial counsel were ineffective for failing to recall State witness Shawn Atkins ("Shawn") to rebut testimony of Mark Wattley. At trial, Shawn minimized Atkins' involvement in the murder, but Wattley testified to a prior inconsistent statement made to him by Shawn that Atkins had in fact actively participated in the murder.[14] In Atkins' direct appeal, this court determined that the State's failure to confront Shawn with the prior inconsistent statement violated NRS 50.135(2)(b).[15] We concluded, however, that the error was harmless because the defense thoroughly cross-examined Shawn regarding the extent of his brother's involvement.[16] Thus, this court has already determined that the failure to recall Shawn was not prejudicial. Although

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[12]NRS 200.033(2)(b) establishes an aggravating circumstance when the defendant has been previously convicted "of a felony involving the use or threat of violence to the person of another."

[13]See Lozada v. State, 110 Nev. 349, 353 n. 3, 871 P.2d 944, 947 n.3 (1994) ("Petitioners for post-conviction relief have the burden of establishing factual allegations in support of their petitions.").

[14]See Atkins, 112 Nev. at 1130-31, 923 P.2d at 1125.

[15]Id. at 1131-32, 923 P.2d at 1125-26.

[16]Id. at 1132, 923 P.2d at 1126.

Atkins now presents his argument as a claim of ineffective assistance of trial counsel, the substance of his argument remains the same. The doctrine of the law of the case prevents further litigation of this issue.[17] Also barred by the doctrine are Atkins' claims (1) that the district court improperly admitted hearsay testimony at the guilt phase of Atkins' trial; (2) that the district court improperly admitted evidence relating to the death of the victim's child at Atkins' penalty hearing; and (3) that the prosecutor's comments during closing argument of the penalty phase amounted to prosecutorial misconduct.[18]

Next, Atkins claims that trial counsel were ineffective in failing to call an expert witness to rebut the State's contention that three different shoe prints were recovered from the area surrounding the victim and from the victim herself. This claim lacks merit. First, Atkins has failed to articulate how the rebuttal testimony of an expert witness would have affected the outcome of Atkins' trial. Second, in her cross-examination of the State's expert, defense counsel established (1) that the expert could not identify who was wearing the shoes leaving marks on and around the victim's body, and (2) that although three distinct footwear patterns were recovered from the crime scene, one shoe could have left multiple patterns. Further, defense counsel reiterated in her closing argument that three footwear patterns did not necessarily indicate the presence of three different shoes. Thus, the record repels Atkins' claim that his trial counsel's performance was objectively unreasonable or that he was prejudiced by their failure to call the suggested expert witness.

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[17]See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

[18]See Atkins, 112 Nev. at 1127-32, 1133-34, 1135-37, 923 P.2d at 1123-26, 1126-27, 1127-29.

Next, Atkins contends that his trial counsel failed to file appropriate requests compelling prosecutors to divulge alleged inducements provided to State witnesses Michael E. Smith and Jerry Anderson. The record belies this claim. On April 18, 1994, defense counsel issued a subpoena to the custodian of records for the LVMPD specifically requesting production of documents pertaining to Anderson's robbery arrest and a missing persons case in which he may have been involved. Defense counsel subsequently filed a discovery motion requesting "any and all Brady and Giglio material"[19] with respect to both Smith and Anderson. In this motion, defense counsel indicated that Anderson had provided his statement to police concerning the instant murder incident to his arrest on traffic ticket bench warrants, and that he was thereafter released from custody. Also, in her cross-examination of Smith, defense counsel elicited that he had provided his statement to LVMPD officers incident to his arrest for offenses unrelated to the instant crimes, but that no charges were ever filed against him. Finally, to the extent that Atkins premises this allegation of ineffective assistance "[o]n information and belief . . . that confidential informants and/or cooperating witnesses were offered incentives by the prosecution to provide evidence against [Atkins]," such speculation is insufficient to support Atkins' claim of ineffective assistance. We conclude that the record repels the claim that defense counsel's investigation into possible State-sponsored inducements to its witnesses fell below an objective standard of reasonableness or that Atkins was prejudiced.

Next, Atkins claims the ineffective assistance of trial and appellate counsel for their failure to challenge the following four jury

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[19]See Brady v. Maryland, 373 U.S. 83 (1963); Giglio v. United States, 405 U.S. 150 (1972).

instructions: (1) the one defining the elements of premeditation and deliberation; (2) the one defining implied malice; (3) the statutorily-mandated one on reasonable doubt; and (4) the one calling for "equal and exact justice." This claim has no merit. We have repeatedly upheld identical instructions against identical attacks.[20]

Atkins also claims the ineffective assistance of trial and appellate counsel with regard to their failure to challenge the guilt phase instruction on "guilt or innocence of any other party."[21] Atkins contends that this instruction "improperly minimized the state's burden of proof, and tacitly endorsed a conviction on the theory of 'guilt by association.'" We disagree. First, Atkins fails to cite any relevant authority in support of this claim.[22] Further, the instruction reiterates that to convict Atkins the jurors must be convinced of his guilt beyond a reasonable doubt. Thus, the instruction neither vitiates the State's burden of proof, nor endorses a theory of guilt by association. For these reasons, Atkins' counsel's failure to challenge the instruction was not objectively unreasonable.

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[20]See, e.g., Garner v. State, 116 Nev. 770, 787-89, 6 P.3d 1013, 1025 (2000), cert. denied, 121 S. Ct. 1376 (2001); Doyle, 112 Nev. at 901-02, 921 P.2d at 916; Bollinger v. State, 111 Nev. 1110, 1115 & n.2, 901 P.2d 671, 674 & n.2 (1995); Leonard v. State, 114 Nev. 1196, 1209, 969 P.2d 288, 296-97.

[21]The instruction reads as follows:

> You are here to determine the guilt or innocence of the defendant from the evidence in this case. You are not called upon to return a verdict as to the guilt or innocence of any other person. So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of the defendant, you should so find, even though you may believe that one or more persons are also guilty.

[22]See Maresca v. State, 103 Nev. 669, 673, 748 P. 2d 3, 6 (1987).

Next, Atkins contends that his appellate counsel was ineffective for failing to challenge the constitutionality of the death penalty in general, Nevada's death penalty statutory scheme in particular, and the imposition of a death sentence with respect to Atkins because he suffers from mental impairments. First, we reject Atkins' underlying constitutional challenges to the death penalty in general. We have repeatedly upheld the general constitutionality of the death penalty under the Eighth Amendment and the Nevada Constitution.[23] Further, this court has repeatedly upheld Nevada's death penalty scheme against similar challenges.[24] Finally, as discussed above, we are not persuaded that Atkins suffers from any mental illness that renders him legally incompetent in any regard. Accordingly, Atkins' appellate counsel was not ineffective for failing to raise these issues.

Next, Atkins alleges that his appellate attorney failed to contend that the district court erred in denying Atkins' pretrial motion for continuance. Approximately one month before the scheduled start of Atkins' trial, lead defense attorney Anthony P. Sgro filed a motion for continuance due to a conflict that had developed with another capital case in which he was also defense counsel. Approximately eleven days before Atkins' trial, the district court denied the motion. The following day, Atkins filed a motion to allow substitution of attorneys in which he requested the reappointment of former co-counsel Laura Melia, who had

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[23]See, e.g., Colwell v. State, 112 Nev. 807, 814-15, 919 P. 2d 403, 407-08 (1996); Bishop v. State, 95 Nev. 511, 517-18, 597 P.2d 273, 276-77 (1979).

[24]See, e.g., Gallego v. State, 117 Nev. __, __, 23 P.3d 227, 242 (2001); Leonard v. State, 117 Nev. __, __, 17 P.3d 397, 416 (2001); Middleton v. State, 114 Nev. 1089, 1116-17, 968 P.2d 296, 314-15 (1998).

withdrawn from the case following Atkins' preliminary hearing. The district court granted this motion approximately one week prior to the commencement of Atkins' trial. On March 20, 1995, after jury voir dire had begun, Atkins expressed concern to the district court that Ms. Melia was not adequately prepared to defend him. Then, at the close of the guilt phase of his trial, Atkins stated that he felt rushed to trial.

Based upon our review of the record, we conclude that the district court's denial of Mr. Sgro's motion to continue Atkins' trial did not constitute an abuse of discretion.[25] First, the record indicates that Ms. Melia was qualified to represent a capital defendant and that Mr. Sgro endorsed her return to Atkins' case. Also, in response to Atkins' statement of March 20, the district court stated that Ms. Melia was familiar with the case, having performed as co-counsel through Atkins' preliminary hearing. In response to Atkins' comment at the close of the guilt phase of his trial, the district court stated that Ms. Melia never indicated that she was not adequately prepared to proceed with Atkins' defense but had she so indicated "this court would not have excused Mr. Sgro." Ms. Melia then interjected that she continued to believe that she was adequately prepared to represent Atkins. Thus, the record indicates that the district court properly acted within its discretion, and we conclude that appellate counsel was not ineffective for failing to challenge the district court's denial of Mr. Sgro's motion for continuance.

Next, Atkins argues that his appellate counsel was ineffective for failing to contend that insufficient evidence supported the aggravator

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[25]See Wesley v. State, 112 Nev. 503, 511, 916 P.2d 793, 799 (1996) ("The decision to grant or deny trial continuances is within the sound discretion of the district court and will not be disturbed absent a clear abuse of discretion.").

that Atkins committed the murder while engaged in the commission of or an attempt to commit sexual assault. On direct appeal, this court held that insufficient evidence supported Atkins' sexual assault conviction because the State adduced insufficient evidence to show that the victim was alive at the time a twig was inserted into her rectum.[26] Atkins concludes that the evidence is therefore similarly insufficient to support the sexual assault aggravator. For purposes of this aggravator, however, "[w]hether or not sexual intercourse occurred post-mortem is irrelevant" because the aggravator "only requires a showing of an attempted sexual assault."[27] Thus, where sufficient evidence supports that the assault resulting in the victim's death was sexual in nature, sufficient evidence supports the sexual assault aggravator.[28] The evidence is sufficient to support such a finding here: the victim was found dead, unclothed, and with a twig protruding from her rectum. For these reasons, we conclude that appellate counsel was not ineffective for failing to raise this issue on direct appeal.

Next, Atkins claims that his appellate counsel failed to allege that his death sentence is invalid because Atkins was absent "during critical stages of the capital proceedings," namely "in-chambers meetings and bench conferences between the court and counsel." We conclude that Atkins' claim lacks merit because he has failed to specifically identify any

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[26]Atkins, 112 Nev. at 1126-27, 923 P.2d 1122-23.

[27]Parker v. State, 109 Nev. 383, 394, 849 P.2d 1062, 1069 (1993), cited with approval in Doyle, 112 Nev. at 899, 921 P.2d at 914.

[28]Id.

in-chambers meetings and bench conferences from which he was excluded or to explain how he was prejudiced.[29]

Next, Atkins contends that his appellate counsel failed to raise the issue of an alleged instance of prosecutorial misconduct. The State elicited testimony from a defense witness, a retired prison warden, that the Pardons Board could commute a sentence of life without the possibility of parole to a sentence of life with the possibility of parole. Atkins characterizes this as a "misstatement of the powers" of the Pardons Board that "may have convinced the jury that the only way to keep [Atkins] off the street was to kill him."[30] We conclude that Atkins has failed to identify a "misstatement" of the Pardons Board's powers. NRS 213.085, which precludes the Pardons Board from commuting a sentence of death or of life imprisonment without possibility of parole to a sentence that would allow parole, became effective on July 1, 1995, and this court has held that a retroactive application of the statute is unconstitutional.[31] Atkins was convicted in June 1995. Accordingly, had Atkins' jury sentenced him to life without the possibility of parole, he would have been eligible for commutation of his sentence by the Pardons Board to a sentence of life with the possibility of parole.[32] We therefore conclude that Atkins' claim of ineffective assistance of appellate counsel lacks merit.

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[29]See Hargrove, 100 Nev. at 502-03, 686 P.2d at 225.

[30]Atkins also appears to object to another portion of the State's cross-examination of this witness; however, he fails to specifically identify any impropriety. See Maresca, 103 Nev. at 673, 748 P.2d at 6.

[31]Miller v. Warden, 112 Nev. 930, 921 P.2d 882 (1996).

[32]See Smith v. State, 106 Nev. 781, 802 P.2d 628 (1990) (holding that pursuant to NRS 213.1099(4) and Nev. Const. art 5, §4(2) the Board of Pardons may commute a sentence of life without parole to a sentence allowing for parole).

Next, Atkins contends that his appellate counsel failed to argue that Atkins' conviction and sentence are invalid pursuant to the rights and protections afforded him under the International Covenant on Civil and Political Rights ("ICCPR"), a treaty ratified by the United States Senate in 1992.[33] Atkins alleges that the Covenant provides any person charged with a criminal offense a number of guarantees, which he lists. Atkins then concludes that all of the listed guarantees "were violated in his case, and are pleaded elsewhere throughout this petition." It is Atkins' responsibility to present relevant authority and cogent argument, and we need not address issues that are not so presented.[34] On this basis, we conclude that Atkins is not entitled to relief on this claim.

Next, Atkins claims that his appellate counsel was ineffective for failing to argue that Atkins' death sentence is unconstitutional "due to the finding of the duplicative aggravating circumstances that (1) the murder was committed by a person who was previously convicted of a felony involving the use or threat of violence; and (2) that the murder was committed by a person under sentence of imprisonment." Atkins contends that these aggravators are duplicative because they are both based upon his prior conviction for assault with use of a deadly weapon.[35] Atkins' claim is without merit. The fact that these two aggravators arise out of the same prior conviction does not render the aggravators duplicative because they "could, hypothetically, be based upon completely different

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[33]See ICCPR, opened for signature Dec. 19, 1966, U.N.T.S. 171.

[34]Maresca, 103 Nev. at 673, 748 P.2d at 6; see generally Hargrove, 100 Nev. 498, 686 P.2d 222.

[35]Atkins committed the instant crimes while on parole from this conviction.

circumstances and . . . they address different state interests."[36] Thus, Atkins' claim of ineffective assistance of appellate counsel must fail because the issue did not have a reasonable probability of success on appeal.

Next, Atkins alleges that appellate counsel should have asserted a double jeopardy violation based on the State's use of Atkins' prior assault conviction as an aggravating factor. We conclude that Atkins' claim lacks merit.[37]

Next, Atkins claims that his appellate counsel was ineffective for failing to raise on direct appeal that Atkins was denied his constitutional right to be tried by a jury composed of a fair cross-section of the community and for failing to challenge the district court's denial of a motion for discovery to develop this claim. In support of this contention, Atkins alleges that "the master list from which his petit jury was selected . . . under represented black persons and other constitutionally cognizable groups that make up Clark County." He also asserts that "there were only three black Americans in the entire pool."

To demonstrate a prima facie violation of the fair cross-section requirement, a defendant must demonstrate

> (1) that the group alleged to be excluded is a 'distinctive' group in the community; and (2) that the representation of this group in venires from

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[36]Geary v. State, 112 Nev. 1434, 1448, 930 P.2d 719, 728 (1996).

[37]See McKenna v. State, 114 Nev. 1044, 1048, 1058-59, 968 P.2d 739, 742, 748 (1998) (concluding that evidence of six prior convictions to prove aggravating circumstances did not violate the Double Jeopardy Clause); see also Witte v. United States, 515 U.S. 389, 400 (1995) (reiterating that the Double Jeopardy Clause is generally not implicated where a defendant's prior criminal conduct is used to enhance a defendant's present sentence).

> which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury-selection process.[38]

Atkins has failed to carry the burden of establishing a prima facie violation of this doctrine.[39] Although he has sufficiently identified a distinctive group, he has failed to carry his burden of establishing either underrepresentation or systematic exclusion. First, although he states that only three members of his jury panel appeared to be African-American, Atkins fails to otherwise provide the statistical data necessary for determining relative underrepresentation as required by the second prong of the Duren tripartite test. Second, Atkins has failed to demonstrate that the alleged underrepresentation was due to systematic exclusion of African-Americans in the jury selection process as required by the third prong.[40] Because Atkins has failed to establish a prima facie violation of the fair cross-section doctrine, we conclude that Atkins' appellate counsel was not ineffective for failing to raise this issue. We further conclude that Atkins failed to demonstrate that the district court abused its discretion in denying his motion for discovery.

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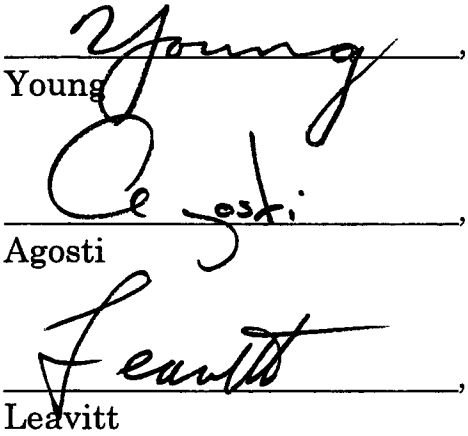
[38]Duren v. Missouri, 439 U.S. 357, 364 (1979).

[39]See Evans v. State, 112 Nev. 1172, 1186, 926 P.2d 265, 275 (1996).

[40]It appears that Atkins attempts to meet this third prong by suggesting that the State improperly used a peremptory challenge to exclude a potential juror based on his race. This is not the kind of evidence that supports a finding of systematic exclusion; rather, it is a separate and distinct issue requiring a different analysis than that required under Duren. See Batson v. Kentucky, 476 U.S. 79 (1986) (providing the basis for evaluating race-based objections to peremptory challenges).

Finally, Atkins alleges that the effects of cumulative error mandate vacation of his conviction and sentence. Atkins' claim of cumulative error is without merit because he has repeatedly failed to demonstrate that either his trial or appellate counsel provided ineffective assistance. We therefore conclude that Atkins was not entitled to an evidentiary hearing.[41] Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Young

_____, J.
Agosti

_____, J.
Leavitt

cc: Hon. Kathy A. Hardcastle, District Judge
Attorney General/Carson City
Clark County District Attorney
Michael V. Cristalli
Clark County Clerk

[41]Hargrove, 100 Nev. at 502-03, 686 P.2d at 225.