

IN THE SUPREME COURT OF THE STATE OF NEVADA

MELVIN LEON JACKSON, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 37454

**FILED**

FEB 15 2002

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *Richard*  
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 30, 1998, the district court convicted appellant, after a jury trial, of one count of burglary and one count of robbery. The district court adjudicated appellant a habitual criminal and sentenced appellant to serve two concurrent terms of life in the Nevada State Prison with the possibility of parole. This court affirmed appellant's conviction.<sup>1</sup>

On October 5, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Appellant supplemented his 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

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<sup>1</sup>Jackson v. State, 116 Nev. 334, 997 P.2d 121 (2000).

January 8, 2001, the district court denied appellant's petition. This appeal followed.<sup>2</sup>

In his petition, appellant raised two claims of ineffective assistance of trial counsel. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness, and that counsel's errors were so severe that they rendered the jury's verdict unreliable.<sup>3</sup> The court need not consider both prongs of the Strickland test if the petitioner makes an insufficient showing on either prong.<sup>4</sup>

First, appellant contended that his trial counsel was ineffective in failing to submit evidence that appellant did not commit a robbery. Appellant noted that a polygraph examination that he took prior to trial revealed that he did not inflict any injuries on the security guard.

Based upon our review of the record on appeal, we conclude that appellant failed to demonstrate that his counsel's performance was deficient in this regard.<sup>5</sup> Appellant's trial counsel filed a pre-trial motion to have the polygraph examination results admitted, and the district court denied the motion. On direct appeal, this court determined that the

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<sup>2</sup>To the extent that appellant challenged the district court's denial of his request for trial transcripts at state expense, we conclude that the district court did not err.

<sup>3</sup>See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984), cert. denied, 471 U.S. 1004 (1985).

<sup>4</sup>Strickland, 466 U.S. at 697.

<sup>5</sup>See Strickland, 466 U.S. 668; Lyons, 100 Nev. 430, 683 P.2d 504.

district court properly denied the motion because the State had refused to stipulate to the results of the polygraph examination.<sup>6</sup> Appellant testified at trial in support of his defense theory. Appellant failed to name or describe what other evidence his trial counsel should have presented at trial in support of his defense theory.<sup>7</sup>

Second, appellant argued that his trial counsel was ineffective in failing to challenge the prior convictions relied upon in adjudicating him a habitual criminal. Appellant argued that when he entered guilty pleas in the prior convictions he was not informed that the convictions could later be used against him in subsequent proceedings.

We conclude that appellant failed to demonstrate that counsel's performance was deficient.<sup>8</sup> "[O]nce the state produces certified copies of prior judgments of conviction which do not, on their face, raise a presumption of constitutional infirmity, the district court is entitled to rely on those prior convictions for enhancement purposes unless the defendant is able to prove by a preponderance of the evidence that the prior convictions are constitutionally infirm."<sup>9</sup> At the sentencing hearing, the State presented certified copies of four judgments of conviction. Appellant did not argue that the prior convictions were constitutionally infirm on their face. Appellant failed to demonstrate by a preponderance of the

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<sup>6</sup>See Jackson, 116 Nev. at 336, 997 P.2d at 122 (citing Domingues v. State, 112 Nev. 683, 917 P.2d 1364 (1996) (holding that polygraph evidence may be excluded absent a written stipulation of the parties)).

<sup>7</sup>See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

<sup>8</sup>See Strickland, 466 U.S. 668; Lyons, 100 Nev. 430, 683 P.2d 504.

<sup>9</sup>McAnulty v. State, 108 Nev. 179, 181, 826 P.2d 567, 569 (1992).

evidence that the prior convictions were constitutionally infirm. There is no requirement that a criminal defendant be informed at entry of a guilty plea that a conviction may later be used in subsequent proceedings for enhancement purposes. Thus, appellant failed to demonstrate that his trial counsel was ineffective for failing to challenge the validity of the prior convictions.

Finally, appellant argued that his appellate counsel was ineffective for failing to argue prosecutorial misconduct on appeal. Specifically, appellant argued that the State's refusal to stipulate to the polygraph examination results was a matter of racial discrimination. Appellant argued that "Blacks in the State of Nevada, in and for the County of Clark, City of Las Vegas are selectively excluded from the use of polygraph examinations to be admitted at trial which establishes their innocence to a charged crime."

A claim of ineffective assistance of appellate counsel is reviewed under the "reasonably effective assistance" test set forth in Strickland v. Washington, 466 U.S. 668 (1984).<sup>10</sup> Under this test, the petitioner must demonstrate (1) that counsel's performance fell below an objective standard of reasonableness, and (2) that counsel's errors prejudiced the defense--i.e., that the omitted issue would have a reasonable probability of success on appeal.<sup>11</sup>

Based upon our review of the record on appeal, we conclude that appellant failed to demonstrate that he was prejudiced by appellate

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<sup>10</sup>See Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1113 (1996).

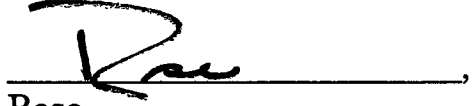
<sup>11</sup>Id. at 998, 923 P.2d at 1113-14.

counsel's failure to raise the issue of prosecutorial misconduct on appeal. In affirming his conviction, this court rejected appellant's argument that the State must provide a justifiable reason for refusing to stipulate to the admission of a polygraph examination. Appellant failed to support his allegation that racial discrimination influenced the State's decision relating to the polygraph examination results.

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>12</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
Shearing, J.

  
Rose, J.

  
Becker, J.

cc: Hon. Mark W. Gibbons, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Melvin Leon Jackson, Jr.  
Clark County Clerk

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<sup>12</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).