

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT SAWYER,

No. 37627

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

OCT 12 2001

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

ORDER OF AFFIRMANCE

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

On July 16, 1996, appellant was convicted, pursuant to a jury verdict, of two counts of possession of a controlled substance. The district court sentenced appellant to a prison term of 19 to 48 months for count I and to a prison term of 12 to 32 months for count II. The district court suspended execution of the sentence and placed appellant on probation for a period not to exceed five years.

Appellant filed a direct appeal, contending that the district court erred in denying his motion to suppress because the warrantless search of the attic where appellant resided violated his Fourth Amendment rights. This court affirmed appellant's conviction, concluding that the district court's finding that appellant had no legitimate expectation of privacy in the attic because he had moved out of the attic was supported by substantial evidence.¹

On March 6, 2000, appellant filed a post-conviction petition for a writ of habeas corpus. After conducting a hearing, the district court denied appellant's petition. Appellant filed the instant appeal, contending that the district court erred in denying his petition.


¹Sawyer v. State, Docket No. 29400 (Order Dismissing Appeal, March 1, 1999).

In the petition, appellant presented claims of ineffective assistance of counsel. In particular, appellant claimed that his counsel should have objected to the State's evidence and arguments concerning appellant's dominion and control over the attic where the drugs were found because this position was inconsistent with the State's earlier contention that appellant had no Fourth Amendment privacy interest in the attic.

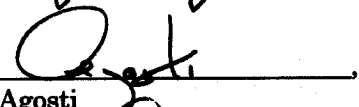
The district court found that counsel was not ineffective because trial counsel had no basis to object since the State's arguments were neither inconsistent nor mutually exclusive. The district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal.² 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.³



Young J.



Agosti J.



Leavitt J.

²See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

³On August 8, 2001, this court ordered counsel for appellant, Jeffrey D. Morrison, to pay a sanction of five hundred dollars (\$500.00) to the Supreme Court Law Library and provide the clerk of this court with proof of said payment within twenty (20) days. To date, Morrison has not paid this sanction. Accordingly, we order Morrison to pay the sanction imposed on August 8, 2001, and provide proof of said payment to the clerk of this court within ten (10) days or show cause why he should not be sanctioned further for failing to comply with this court's order.

cc: Hon. Archie E. Blake, District Judge
Attorney General
Churchill County District Attorney
Jeffrey D. Morrison
Churchill County Clerk

FILED

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CLERK OF DISTRICT COURT
COUNTY OF CLERK
SHELLIE
BY HOOTEN DEPUTY

1 Case No. 23198A
2 Department No. II
3
4

5 IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6 IN AND FOR THE COUNTY OF CHURCHILL

7 * * *

8 ROBERT SAWYER,
9 Petitioner,

10 vs.

11 THE STATE OF NEVADA,
12 Respondent.

ORDER DISMISSING PETITION
FOR WRIT OF HABEAS CORPUS

13
14 Petitioner filed a post-conviction petition for writ of
15 habeas corpus on March 6, 2000. Petitioner was convicted, pursuant
16 to a jury verdict, of two counts of possession of a controlled
17 substance. At a December 19, 2000 hearing, the issues presented
18 were narrowed and the parties were instructed to file briefs
19 addressing the question of whether trial counsel was ineffective by
20 failing to object to the State's attempts to link Petitioner to the
21 attic in which the subject narcotics were found. These representa-
22 tions came after this Court denied Petitioner's motion to suppress
23 the narcotic evidence since the Petitioner had no legitimate
24 expectation of privacy by not living in the attic at the time of
25 the search.

26 "To establish ineffective assistance of counsel, a
27 defendant must show that counsel's representation fell below an
28 objective standard of reasonableness and that counsel's deficient

1 performance prejudiced the defense." Strickland v. Washington, 466
2 U.S. 668, 687-88, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). "To
3 establish prejudice, the defendant must show that but for counsel's
4 mistakes, there is a reasonable probability that the result of the
5 proceeding would have been different." Id. at 694, 104 S.Ct. 2052.
6 "Judicial review of a lawyer's representation is highly deferen-
7 tial, and a defendant must overcome the presumption that a
8 challenged action might be considered sound strategy." Id. at 689,
9 104 S.Ct. 2052.

10 After reviewing the pleadings, transcript and evidence
11 presented, this Court finds that the petition is without merit.
12 Petitioner relies solely upon Steagald v. United States, 68 L.Ed.2d
13 38, 451 U.S. 204 (1981). Referring to the appellant's contention
14 that the government alleged that the house in question was in fact
15 the defendant's residence despite a contrary ruling by the lower
16 court, the Court held that the government "may lose its right to
17 raise factual issues of this sort before this Court when it has
18 made contrary assertions in the courts below, when it has acqui-
19 esced in contrary findings by those courts, or when it has failed
20 to raise such questions in a timely fashion during the litigation."
21 Id. at 44, 451 U.S. at 209.


22 While the law Petitioner cites may be correct, his
23 stretch to apply it to this case is belied by the record.
24 Petitioner had paid rent and lived in the attic of a criminal
25 probationer during the month of January, 1996. A lawful search of
26 the probationers home, including the attic, was conducted on
27 February 20, 1996. Petitioner did not pay rent for February and
28 had left the attic for three weeks prior to the search. Ulti-

1 mately, the State argued and the jury found that the narcotics
2 found in the attic were left there by Petitioner before he vacated
3 the attic. As the search of the attic had already been found to be
4 lawful at the motion to suppress, Petitioner had no standing to
5 object to the State's argument. In addition, Petitioner fails to
6 direct this Court to any part of the record to support his argument
7 that the State was asserting contrary legal positions at trial.

8 Since counsel had no standing to object to the State's
9 arguments regarding Petitioner's degree of control over the subject
10 narcotics there is no reasonable probability that the outcome of
11 the case would have been different. Based upon a consideration of
12 the totality of evidence and documents on file in this case, this
13 Court concludes that the assistance of Petitioner's counsel was not
14 ineffective.

15 Petitioner's writ of habeas corpus is **DISMISSED**.

16 DATED: This 6 day of March 2001.

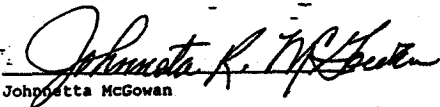
17 
18 ARCHIE E. BLAKE
DISTRICT JUDGE

19 I hereby certify that I, Johneta McGowan, am an employee of the Honorable Archie E.
20 Blake, District Judge, and that on this date pursuant to NRCF 5(b), I deposited for mailing at
Yerington, Nevada, a true copy of the foregoing document addressed to:

21 Jeffery D. Morrison, Esq.
22 Attorney at Law
401 Court Street, Suite 1
23 Reno, Nevada 89501

24 Thomas L. Stockard, Esq.
25 Deputy District Attorney
District Attorney's Office
365 South Maine Street
26 Fallon, Nevada 89406

27 DATED: This 6 day of March 2001.

28 
Johneta McGowan

FILED

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GLORIA YEE CLERK
COUNTY CLERK
SHELLIE
BY HOOTEN DEPUTY

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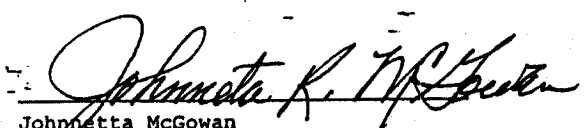
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18 ARCHIE E. BLAKE
19 DISTRICT JUDGE

20 I hereby certify that I, Johnneta McGowan, am an employee of the Honorable Archie E.
21 Blake, District Judge, and that on this date pursuant to NRCF 5(b), I deposited for mailing at
22 Yerington, Nevada, a true copy of the foregoing document addressed to:

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25 401 Court Street, Suite 1
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