

IN THE SUPREME COURT OF THE STATE OF NEVADA

LLOYD ASKINS,

No. 37677

Appellant,

vs.

THE STATE OF NEVADA,

FILED

Respondent.

3 8 2002  
JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

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

Askins was originally convicted, pursuant to a jury verdict, of first-degree murder with the use of a deadly weapon. The district court sentenced Askins to two consecutive prison terms of life without the possibility of parole. Askins filed a direct appeal. This court affirmed Askins' conviction, but vacated the sentence imposed and remanded for a new penalty hearing because the prosecutor misstated the law with regard to the possible sentences during the penalty phase.<sup>1</sup> After the second penalty hearing, on July 11, 2000, Askins was again sentenced to two

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<sup>1</sup>Askins v. State, Docket No. 33207 (Order of Remand, January 26, 2000).

consecutive terms of life in prison without the possibility of parole. Askins filed a direct appeal. This court affirmed his conviction.<sup>2</sup>

On February 12, 2001, Askins filed a proper person post-conviction petition for a writ of habeas corpus. Without conducting an evidentiary hearing, the district court denied the petition. Askins filed the instant appeal.

Askins contends that the district court erred in denying his petition without conducting an evidentiary hearing or appointing counsel. Askins' petition, consisting of three sentences, alleged that his trial counsel was ineffective because: (1) counsel did not allow Askins to testify at trial; and (2) counsel "neglected to ask questions of witnesses that [Askins] thought were important." We conclude that the district court did not err in denying the petition without appointing counsel or conducting an evidentiary hearing.

With respect to Askins' first allegation, the record reveals that Askins knew that the decision whether to testify was a decision that he personally had to make. At trial, the district court informed appellant that he had the right to testify and that "[o]ne of the most important things that [he had] to decide personally . . . is whether or not [he would] testify as a witness." The district court further explained to Askins the consequences arising from that decision. Askins represented to the court that he had discussed the decision to testify with his counsel, and that he had not yet decided whether he would testify. Askins did not express, on

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<sup>2</sup>Askins v. State, Docket No. 36568 (Order of Affirmance, November 13, 2001).

the record, a desire to testify nor did his counsel interject or coerce Askins into stating that he was not going to testify. Accordingly, we conclude that the record belies Askins' claim that his counsel prevented him from testifying.

In a related argument, Askins contends that his counsel was ineffective with respect to Askins' right to testify because the record does not reflect that Askins knowingly waived this right. This court has held, however, that an express waiver of the right to testify is not required for a valid conviction.<sup>3</sup> Accordingly, Askins' claim that counsel acted ineffectively with respect to Askins' waiver of his right to testify lacks merit.

Second, Askins claims that his counsel was ineffective for "failing to ask questions that [Askins] thought were important." It is generally recognized that an evidentiary hearing is not required to resolve a claim that fails to allege sufficient facts to establish that the claimant was prejudiced by counsel's allegedly deficient performance.<sup>4</sup> Here, Askins has failed to both delineate the particular witnesses the questions should have been directed to or the type of "important" questions that counsel should have asked. Additionally, Askins has failed to allege that, had counsel asked such questions, it would have changed the outcome of

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<sup>3</sup>Phillips v. State, 105 Nev. 631, 633, 782 P.2d 381, 382 (1989) (holding that while "it is good practice" for a trial court to advise a defendant of his right to testify, an advisement of the right to testify is not mandatory for purposes of a valid conviction).


<sup>4</sup>Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984); see also Strickland v. Washington, 466 U.S. 668 (1984).


the trial. Accordingly, the district court did not err in denying Askins' claim for lack of specificity.

Having considered Askins' contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.

 J.  
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Young

 J.  
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Agosti

 J.  
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Leavitt

cc: Hon. Steven P. Elliott, District Judge  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe County Public Defender  
Washoe County Clerk