

IN THE SUPREME COURT OF THE STATE OF NEVADA

CRAIG HILL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 37910

FILED

MAY 03 2002

JANE TTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

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

On July 11, 1997, Hill was convicted, pursuant to a guilty plea, of two counts of aiding and abetting sexual assault on a child under the age of 16 years and one count of using a minor in producing pornography. The district court sentenced Hill to serve two consecutive prison terms of life with parole eligibility after 20 years for the aiding and abetting count and a consecutive life term with parole eligibility after 5 years for the child pornography count. Hill filed a direct appeal, and this court affirmed his conviction.¹ On April 18, 2000, Hill filed a proper person post-conviction petition for a writ of habeas corpus, contending that his counsel was ineffective. The State opposed the petition. The district court appointed counsel, and Hill filed a supplemental petition. After conducting an evidentiary hearing, the district court denied the petition. Hill filed the instant appeal, contending that the district court erred in finding that his counsel was not ineffective.

¹Hill v. State, Docket No. 29810 (Order Dismissing Appeal, April 29, 1999).

To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a defendant must demonstrate that: (1) counsel's performance fell below on objective standard of reasonableness, and (2) but for counsel's errors, there is a reasonable probability that the outcome of the proceedings would have been different.² The court need not consider both prongs of the Strickland test if the defendant makes an insufficient showing on either prong.³

Hill first contends that his counsel was ineffective at sentencing for failing to object to the State's presentation of a videotape he filmed depicting his two sons, ages 6 and 8, engaged in sexual acts with his wife and a male friend. The district court found that counsel was not ineffective for failing to object to the presentation of the videotape because that objection would have been "frivolous." Specifically, the district court found that it would have overruled an objection to the playing of the videotape because it was relevant to the charged crimes for which sentence was to be imposed. In fact, the crimes that Hill pleaded guilty to arose from the events recorded on the videotape, and Hill admitted filming the videotape at his plea canvass. Because the videotape was relevant to Hill's sentencing, and because the district court has broad discretion in admitting evidence at sentencing, we conclude that the district court did not err in finding that counsel was not ineffective in failing to object to the admission of the videotape.⁴

²Strickland v. Washington, 466 U.S. 668 (1984); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

³Strickland, 466 U.S. at 697.

⁴See NRS 176.015; Castillo v. State, 114 Nev. 271, 956 P.2d 103 (1998), modified on other grounds by McKenna v. State, 114 Nev. 1044, 968 P.2d 739 (1998).

Hill next contends that his counsel was ineffective at sentencing for failing to argue that Hill should receive probation on the child pornography count. The district court found that counsel was not prejudiced by his counsel's failure to argue for probation because it would not have affected Hill's sentence. We conclude that the district court's finding is supported by substantial evidence.⁵ The record of the sentencing hearing reveals that Hill's counsel argued for concurrent prison terms of 5-15 years. Despite defense counsel's request, the district court imposed consecutive life prison terms with parole eligibility. The district court commented on its reason for doing so, describing Hill's crimes as one of "the most egregious sexual conduct [cases] involving children and involving family members that [the] court had ever seen." Because Hill's sentence would not have been different had his counsel requested probation, we conclude that the district court did not err in finding that his counsel was not ineffective.

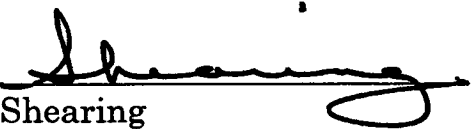
Finally, Hill contends that his counsel was ineffective for failing to request a motion to sever the sentencing proceedings. Specifically, Hill contends that he was prejudiced by the fact that he was sentenced with his co-defendant/wife because she committed a more heinous crime in that she actually engaged in the sexual assault, while Hill merely aided and abetted it. The district court found that Hill was not prejudiced by his counsel's failure to file a motion to sever because at all stages of the proceedings the court and all parties were aware of the nature of the charges against Hill. We conclude that the district court's findings are supported by substantial evidence. The record of Hill's plea canvass reveals that he admitted to "aid[ing] [his wife] to commit the

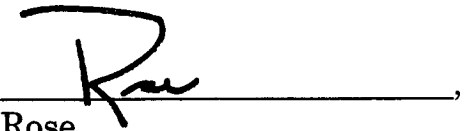
⁵See Riley v. State, 110 Nev. 638, 947, 878 P.2d 272, 278 (1994).

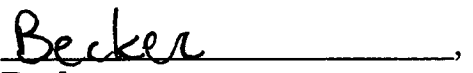
sexual assault" and videotaping that assault. Likewise, at Hill's sentencing, the court acknowledged Hill's role in the sexual assault was aiding and abetting by filming his wife and friend engaging in sexual acts with his minor children. Accordingly, the district court did not err in finding that counsel was ineffective for failing move to sever the sentencing proceedings.

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

ORDER the judgment of the district court AFFIRMED.

 J.
Shearing

 J.
Rose

 J.
Becker

cc: Hon. Archie E. Blake, District Judge
Attorney General/Carson City
Lyon County District Attorney
Lane R. Mills
Lyon County Clerk