IN THE SUPREME COURT OF THE STATE OF NEVADA

SONTHRAHT SENGSUWAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38069

FILED

JUL 11 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

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 September 18, 1997, the district court convicted appellant, pursuant to a jury verdict, of first degree murder with the use of a deadly weapon (count I), attempted murder with the use of a deadly weapon (count II), robbery with the use of a deadly weapon (count III), and robbery (count IV). The district court sentenced appellant to serve the following terms in the Nevada State Prison: for count I, a term of life without the possibility of parole plus an equal and consecutive term of life without the possibility of parole; for count II, a term of two hundred and forty months with a minimum parole eligibility of ninety-six months plus an equal and consecutive term of two hundred and forty months with a minimum parole eligibility of ninety-six months, to be served consecutively to the sentence for count I; for count III, a term of one hundred and fifty-six months with a minimum parole eligibility of thirty-five months, to be served concurrently with the sentence for count I; for count IV, a term of one hundred and

fifty-six months with a minimum parole eligibility of thirty-five months, to be served concurrently with the sentence for count I. This court dismissed appellant's direct appeal.[1]

On February 14, 2001, appellant filed a proper person post-conviction petition for a writ of habeas corpus and a motion for appointment of counsel in the district court. The State opposed the petition and the motion. 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 June 4, 2001, the district court denied appellant's petition. This appeal followed.

In his petition, appellant first raised several claims of ineffective assistance of trial counsel.[2] 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 but for counsel's errors, the

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[1]Sengsuwan v. State, Docket No. 31002 (Order Dismissing Appeal, March 2, 2000).

[2]To the extent that appellant attempted to raise any of the same issues underlying his ineffective assistance of trial counsel claims as ineffective assistance of appellate counsel claims, we conclude that since there is no merit to these underlying issues, they would not have a reasonable probability of success on direct appeal if raised as independent constitutional violations, and therefore appellate counsel was not ineffective for failing to raise them. See Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1113-14 (1996); Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989).

result of the proceeding would have been different.[3] There is a presumption that counsel provided effective assistance unless petitioner demonstrates "'strong and convincing proof to the contrary.'"[4] Further, this court need not consider both prongs of the Strickland test if the petitioner makes an insufficient showing on either prong.[5]

First, appellant claimed his trial counsel was ineffective for failing to prepare a defense and failing to prepare for trial. Appellant failed to provide specific facts indicating how counsel was deficient in preparing a defense and preparing for trial.[6] At trial, appellant's counsel argued the theory of defense that appellant did not act with the intent to rob or kill the victims and that appellant's acts were spontaneous, provoked, and not premeditated. Appellant, testifying on his own behalf, stated that he went to the home of the murder victim, Ubolrat Dawong, to collect money from her but that a struggle ensued and he stabbed her to death. Appellant further testified that when the murder victim's husband, Jim Dawong, arrived home, appellant stabbed him multiple times, took Mrs. Dawong's purse, a cellular telephone, and car keys, and attempted to flee in the Dawongs' car. In light of the substantial evidence supporting

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[3]See Strickland v. Washington, 466 U.S. 668 (1984); Riley v. State, 110 Nev. 638, 646, 878 P.2d 272, 277-78 (1994).

[4]Davis v. State, 107 Nev. 600, 602, 817 P.2d 1169, 1170 (1991) (quoting Lenz v. State, 97 Nev. 65, 66, 624 P.2d 15, 16 (1981)).

[5]Strickland, 466 U.S. at 697.

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

appellant's convictions, we conclude that appellant failed to demonstrate that his counsel was ineffective or that he suffered any prejudice.

Second, appellant claimed his trial counsel was ineffective for failing to interview or call any witnesses. Specifically, appellant claimed that his counsel should have interviewed and called Mr. Oak, Mrs. Dang, Mrs. Rawan, and Mr. Pream as witnesses. Appellant failed to provide any facts indicating what these witnesses would have testified to with regard to the facts of the case.[7] Further, appellant failed to demonstrate that any positive testimony these witnesses may have been able to give regarding appellant's character would have produced a different result at trial.[8] Thus, appellant failed to demonstrate that counsel was ineffective in this regard.

Third, appellant claimed his trial counsel was ineffective for failing to present a diary allegedly written by the murder victim as evidence of the debt she owed to appellant. Appellant failed to provide sufficient facts demonstrating how presenting the diary would have assisted the defense or produced a different result at trial.[9] Thus, appellant failed to demonstrate that his counsel was ineffective in this regard.

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[7]Id.

[8]See Strickland, 466 U.S. 668.

[9]See Hargrove, 100 Nev. 498, 686 P.2d 222; Strickland, 466 U.S. 668.

Fourth, appellant claimed his trial counsel was ineffective for failing to challenge the reasonable doubt jury instruction. After reviewing the jury instructions given at trial, we determine that the jury was properly instructed on reasonable doubt pursuant to NRS 175.211.[10] Therefore, appellant failed to demonstrate that his counsel was ineffective in this regard.

Fifth, appellant claimed his trial counsel was ineffective for failing to request that the court answer several questions from the jury. We note that a "trial judge has wide discretion in the manner and extent he answers a jury's questions during deliberation."[11] Appellant failed to specify what questions from the jury counsel should have requested the court to answer. Further, the record indicates that the court did answer some questions from the jury after conferring with counsel, but declined to answer certain questions about matters not in evidence. Thus, we conclude that appellant failed to demonstrate that his counsel was ineffective in this regard.

Finally, appellant claimed that he was denied his right to a fair trial when (1) the court denied his request to dismiss his appointed counsel, and (2) the court used an interpreter at trial who was allegedly related to the victim and had an interest in the outcome of the proceeding. We conclude that the district court did not err in dismissing these claims. Appellant waived these claims by failing to raise them in a direct appeal

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[10]See Noonan v. State, 115 Nev. 184, 980 P.2d 637 (1999).

[11]Tellis v. State, 84 Nev. 587, 591, 445 P.2d 938, 941 (1968).

and failing to demonstrate good cause and prejudice for failing to present these claims earlier.[12]

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.[13] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Young, J.
Young

Agosti, J.
Agosti

Leavitt, J.
Leavitt

cc: Hon. Mark W. Gibbons, District Judge
Attorney General/Carson City
Clark County District Attorney
Sonthraht Sengsuwan
Clark County Clerk

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[12]See NRS 34.810(1)(b)(2).

[13]See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).