

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN FLOYD VOSS,

No. 38373

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

**FILED**

JAN 17 2002

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

ORDER OF AFFIRMANCE

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

On November 27, 1996, Voss was convicted, pursuant to a jury verdict, of one count of burglary, one count of attempted theft, two counts of uttering a forged instrument, and two counts of forgery. The district court sentenced Voss to serve a prison term of 48 to 120 months for the burglary count and to five consecutive prison terms of 16 to 48 months for the remaining counts. Voss filed a direct appeal, arguing that: (1) there was insufficient evidence to support his convictions; and (2) the district court erred in denying his motion to dismiss the attempted theft count.

This court concluded that Voss' contentions lacked merit and affirmed his conviction.<sup>1</sup>

Thereafter, Voss filed a post-conviction petition for a writ of habeas corpus. After conducting an evidentiary hearing, the district court denied the petition. Voss filed the instant appeal.

Voss contends that the district court erred in denying his petition because his trial counsel was ineffective. Specifically, Voss claims that his counsel was ineffective for failing to: (1) adequately investigate his case; (2) object when the jury saw him in jail attire; and (3) file a motion to suppress. We conclude that Voss' contentions lack merit.

To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a defendant 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>2</sup>

Voss first contends that his trial counsel was ineffective for failing to investigate his case. Particularly, Voss contends that had his counsel conducted an adequate investigation, he would have discovered Anthony Villardi's secret witness report. Villardi reported to the police that he had seen the victim alive twelve hours after she was observed with Voss. We conclude that counsel was not ineffective for failing to uncover

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<sup>1</sup>Voss v. State, Docket No. 29783 (Order Dismissing Appeal, March 11, 1999).

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

the Villardi report. The Villardi report was not material to Voss' trial on the theft counts<sup>3</sup> because the pivotal issue in that proceeding was whether the victim had consented to Voss cashing a check in her name, and whether she had also written a check to Voss for \$5,000.00. Accordingly, even if counsel had discovered the Villardi report, we conclude that its discovery and Villardi's testimony would not have changed the outcome of the proceeding.

Voss next contends that both his trial and appellate counsel were ineffective for failing to raise the issue of whether his conviction should be reversed because the jurors saw him jail attire and overheard conversations between court personnel about Voss' "in custody" status. We conclude that Voss' contention lacks merit.

There is sufficient evidence in support of the district court's finding that Voss was not seen by the jury while wearing jail attire. In particular, Deputy Sheriff Gary Clifford testified that Voss was always dressed in plain clothes while the jury was present. Likewise, Voss' trial counsel testified that Voss never told him that he had been seen by the jurors wearing jail attire. Finally, prior to trial, the district court granted Voss' motion in limine, ordering that Voss was not to be seen by the jury in jail attire. Accordingly, we conclude that trial and appellate counsel were

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<sup>3</sup>Defense counsel used the Villardi report in Voss' subsequent murder trial involving the same victim. The Villardi report was highly relevant to the issues involved in that trial because it rebutted the State's theory that Voss was the last person with whom the victim was seen with before her demise. Despite Villardi's testimony at the murder trial, Voss was convicted of murdering the victim.

not ineffective for failing to raise this issue because the district court found that that the jurors had not seen Voss in jail attire.

Voss next contends that his counsel was ineffective for failing to file a motion to suppress statements made in violation of his Miranda<sup>4</sup> rights. We disagree.

The district court's finding that counsel was not ineffective for failing to file a motion to suppress is supported by substantial evidence. Specifically, Deputy Sheriff Stacy Hill testified that, before Voss was arrested, Hill interviewed Voss for ten to fifteen minutes and that he voluntarily cooperated. Hill also testified that Voss gave him permission to search his truck and that he was "very cooperative."

Likewise, Washoe County Sheriff's Detective Larry Canfield testified that Voss consented to a thirty minute interview regarding the disappearance of the victim in this case. Canfield further testified that Voss was not under arrest, fully cooperative, and that both Voss and his mother consented to the officer's subsequent search of their motel room. Moreover, Canfield testified that he interviewed both Voss and his mother the following day at the Sheriff's station for approximately forty minutes and that it was scheduled in advance, voluntary, and conversational in nature.

Finally, defense counsel Conway testified that he reviewed Voss' police statements and discussed them with Voss and had no basis to file a motion to suppress. Conway further stated that Voss expressed "no

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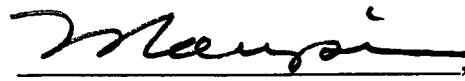
<sup>4</sup>Miranda v. Arizona, 384 U.S. 436 (1966).

dissatisfaction” with Conway’s decision not to file a suppression motion. Because the record reveals that Voss’ statements to police were consensual and voluntary in nature, we conclude that counsel was not ineffective in failing to file a motion to suppress.

Even assuming counsel’s performance fell below an objective standard of reasonableness, we note that the alleged deficiency would not have changed the outcome of the proceeding. Indeed, Voss was essentially caught in the midst of the commission of the crime at a Reno bank as he attempted to cash the victim’s forged personal check. Although Voss alleged that he had consent from the victim, there was sufficient evidence to support the jury’s finding to the contrary.

Having considered Voss’ contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C. J.  
Maupin

  
\_\_\_\_\_, J.  
Young

  
\_\_\_\_\_, J.  
Leavitt

cc: Hon. Steven P. Elliott, District Judge  
Attorney General/Carson City  
Washoe County District Attorney  
Scott W. Edwards  
Washoe County Clerk