

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALAN LEE RUEGAMER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 38412

FILED

NOV 21 2002

ORDER OF AFFIRMANCE

JENNIFER M. LUCAS  
CLERK OF THE SUPREME COURT  
BY *J. Richard*  
CHIEF DEPUTY CLERK

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 August 20, 1998, the district court convicted appellant, pursuant to a jury verdict, of conspiracy to commit murder and attempted murder. The district court sentenced appellant to serve concurrent terms of four and twelve years in the Nevada State Prison. This court dismissed appellant's direct appeal.<sup>1</sup>

On March 5, 2001, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. 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 July 12, 2001, the district court denied appellant's petition. This appeal followed.

In his petition, appellant raised seven claims of ineffective assistance of counsel. To establish ineffective assistance of counsel, a

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<sup>1</sup>Ruegamer v. State, Docket No. 32929 (Order Dismissing Appeal, March 2, 2000).

petitioner must show both that counsel's performance fell below an objective standard of reasonableness and that the deficient performance prejudiced the defense.<sup>2</sup> To show prejudice, a petitioner must show a reasonable probability that but for counsel's errors the result of the trial would have been different.<sup>3</sup> "Tactical decisions are virtually unchallengeable absent extraordinary circumstances."<sup>4</sup> A court may consider the two test elements in any order and need not consider both prongs if an insufficient showing is made on either one.<sup>5</sup>

First, appellant claimed that counsel was ineffective for failing to investigate. Specifically, appellant argued that counsel should have investigated an e-mail which would have corroborated appellant's alibi defense. Appellant failed to specify how additional "investigation" by counsel of the e-mail would have changed the result of the trial. Counsel sought to have testimony regarding the e-mail admitted, and the district court excluded it. Moreover, this court has previously held that the district court did not abuse its discretion in excluding evidence of the e-mail and further litigation regarding this issue is prohibited by the doctrine of the law of the case.<sup>6</sup> Appellant cannot avoid the doctrine of the

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<sup>2</sup>Strickland v. Washington, 466 U.S. 668, 687 (1984); Warden v. Lyons, 100 Nev. 430, 431, 683 P.2d 504, 505 (1984).

<sup>3</sup>Strickland, 466 U.S. at 694.

<sup>4</sup>Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990) (citing Strickland, 466 U.S. at 691), abrogated on other grounds by Harte v. State, 116 Nev. 1054, 13 P.3d 420 (2000).

<sup>5</sup>Strickland, 466 U.S. at 697.

<sup>6</sup>See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

law of the case "by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings."<sup>7</sup> Therefore, appellant failed to demonstrate that counsel was ineffective in this regard, and the district court did not err in denying this claim.

Second, appellant claimed that counsel was ineffective for failing to interview potential witnesses. The only witness named by appellant that he claimed should have been interviewed was Ms. Deon Epperson. Appellant argued that Ms. Deon Epperson "would have directly contradicted" the testimony of the victim and "[i]t is highly probable that the witness would be found to be reliable, credible and trustworthy in which case would cast serious doubt on [the victim's testimony] by directly explaining away all allegations against defendant." This claim is not sufficiently supported by factual allegations which would, if true, entitle appellant to relief.<sup>8</sup> Therefore, appellant failed to demonstrate that counsel was ineffective in this regard, and the district court did not err in denying this claim.

Third, appellant claimed that counsel was ineffective for failing to form a trial strategy. This claim is belied by the record.<sup>9</sup> At trial the defense pursued the theory that the victim was confused as to who his attackers were due to his head injuries, argued that there was no physical evidence tying appellant to the crime, and argued that the State had focused on appellant from the beginning to the exclusion of other possible suspects due to appellant's acrimonious business relationship with the

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<sup>7</sup>Id. at 316, 535 P.2d at 799.

<sup>8</sup>See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

<sup>9</sup>See id.

victim. Therefore, appellant failed to demonstrate that counsel was ineffective in this regard, and the district court did not err in denying this claim.

Fourth, appellant claimed that counsel was ineffective for coercing appellant to waive his right to a speedy trial. This claim is without merit. There is nothing in the record which indicates that appellant was coerced into waiving his right to a speedy trial.<sup>10</sup> In addition, appellant failed to state what counsel did to coerce him; appellant merely stated that had he known that any delay would have been longer than "a few weeks" he would not have agreed to the waiver.<sup>11</sup> Therefore, appellant failed to show that counsel was ineffective in this regard, and the district court did not err in denying this claim.

Fifth, appellant claimed that counsel was ineffective or failing to object to "delaying and stalling tactics" by the State. The record reflects that many of the delays were either at the request of the defense, the result of the defense failing to notify the State in a timely manner of a possible expert witness, and the untimely filing by the defense of a notice of alibi. In fact, the court minutes reveal that at one point the State requested that the district court find that the defense had acted in bad faith in delaying the start of the trial. Therefore, appellant failed to show that counsel was ineffective in this regard, and the district court did not err in denying this claim.

Sixth, appellant claimed that counsel was ineffective for wasting time. Specifically, appellant argued that counsel failed to

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<sup>10</sup>See id.

<sup>11</sup>See id.

investigate the facts in a timely manner resulting in "hazy recall; forgetfulness; blurring of specific times, dates and places; memory acuity loss; waffling of fact; [l]oss or damage of evidence; witness attrition; diminution and muddying of people, places and things and order of events." Appellant failed to specify which evidence was lost, which witnesses were forgetful, or what was forgotten.<sup>12</sup> Therefore, appellant failed to show that counsel was ineffective in this regard, and the district court did not err in denying this claim.

Seventh, appellant claimed that counsel was ineffective for failing to impeach the victim's testimony by presenting evidence of "prior faulty acts." Specifically, appellant claimed that the Nevada State Board of Veterinary Medical Examiners possessed records including ethics violations and consumer complaints against the victim which could have been used to impeach the victim's testimony, call into question his character, credibility and competency, and show that he had "ulterior motives" for accusing appellant. Appellant failed to specify how the victim's professional record as a veterinarian would have undermined the victim's testimony.<sup>13</sup> Therefore, appellant failed to show that counsel was ineffective in this regard, and the district court did not err in denying this claim.

Finally, appellant claimed the district court abused its discretion in denying the appointment of co-counsel, and that the

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<sup>12</sup>See id.

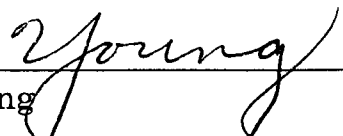
<sup>13</sup>See id.

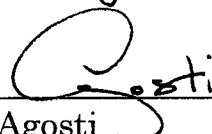
prosecution withheld favorable evidence. Appellant waived these claims by failing to raise them on direct appeal.<sup>14</sup>

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.<sup>15</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Rose

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

  
\_\_\_\_\_, J.  
Agosti

cc: Hon. Kathy A. Hardcastle, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Alan Lee Ruegamer  
Clark County Clerk

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<sup>14</sup>See NRS 34.180(1)(b); Franklin v. State, 110 Nev. 750, 877 P.2d 1058 (1994), disapproved of on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

<sup>15</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).