

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK J. BERALDO,  
Appellant,  
vs.  
WARDEN, LOVELOCK  
CORRECTIONAL CENTER, JACKIE  
CRAWFORD,  
Respondent.

No. 38461

FILED

NOV 05 2002

ORDER OF AFFIRMANCE

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

This is an appeal from a district court order denying Frank J. Beraldo's post-conviction petition for a writ of habeas corpus. Beraldo asserts that he was provided ineffective assistance of counsel in various instances at trial. We conclude that each of Beraldo's allegations of ineffective assistance of counsel lacks merit.

Under Strickland v. Washington,<sup>1</sup> to prevail on a claim of ineffective assistance of counsel, a petitioner must demonstrate (1) that counsel's performance was deficient, i.e., that it fell below an objective standard of reasonableness, and (2) that counsel's deficient performance prejudiced the defense to such a degree that, but for counsel's ineffectiveness, the result of the trial would have been different.

First, Beraldo contends that his trial counsel was ineffective for failing to object to the admission of prior bad act evidence, namely, the testimony of Elysse Marie Johnson. But such an objection would have failed because the district court held a Petrocelli hearing and ruled the evidence admissible. In any event, we addressed this issue of prior bad act

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<sup>1</sup>466 U.S. 668, 687 (1984); see also Doyle v. State, 116 Nev. 148, 154, 995 P.2d 465, 469 (2000).

evidence on direct appeal and concluded that any error was not “patently prejudicial.” Thus, we conclude that Beraldo’s trial counsel did not provide ineffective assistance on this issue.


Next, Beraldo argues that his trial counsel provided ineffective assistance by failing to challenge alleged instances of prosecutor misconduct that occurred during trial. We disagree. We conclude that none of the alleged instances amounted to prosecutor misconduct.

Beraldo next argues that his trial counsel provided ineffective assistance by failing to object to the admission of evidence demonstrating that Beraldo was in custody—pictures and a letter. First, regarding the pictures, trial counsel testified that the pictures were admitted for the purpose of showing Beraldo’s injuries. Because, as the district court noted, neither picture showed Beraldo in jail garb or in handcuffs, we conclude that an objection on this issue would have failed. Second, regarding the letter, we conclude that it was admissible as a party admission and that trial counsel’s absent objection was reasonable because it would have failed. Therefore, we conclude that trial counsel was not ineffective on this issue.

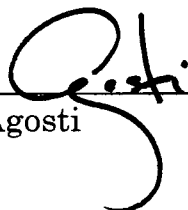
Finally, Beraldo contends that trial counsel provided ineffective assistance by failing to investigate and present evidence of the victim’s mental health history. Notably though, trial counsel testified at the post-conviction hearing that he tried to obtain some records from the Nevada Mental Health Institute, but he could not get them without the victim’s consent. In addition, trial counsel stated that he would have been reluctant to use the records, as they would have made the victim more sympathetic. Having reviewed the record on post-conviction appeal, we

conclude that trial counsel's conduct did not fall below an objective standard of reasonableness.

Having concluded that Beraldo's contentions lack merit, we  
ORDER the judgment of the district court AFFIRMED.

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

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

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

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