

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALAN D. DANIELS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38512

FILED

SEP 12 2002

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
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 January 14, 2000, the district court convicted appellant, pursuant to a jury verdict, of two counts burglary while in possession of a firearm, and two counts of robbery with the use of a deadly weapon.¹ The district court sentenced appellant to serve terms totaling 72 months to 270 months in the Nevada State Prison. This court dismissed appellant's appeal from his judgment of conviction.²

On June 12, 2001, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The

¹On April 10, 2000, the district court entered an amended judgment of conviction.

²See Daniels v. State, Docket No. 35594 (Order Dismissing Appeal, June 7, 2000).

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 September 13, 2001, the district court denied appellant's petition. This appeal followed.

In his petition, appellant raised several claims of ineffective assistance of trial counsel. 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 counsel's errors were so severe that they rendered the jury's verdict unreliable.³ The court need not consider both prongs of the Strickland test if the petitioner makes an insufficient showing on either prong.⁴

First, appellant claimed that his trial counsel was ineffective for failing to file a motion to suppress the line-up identification based upon the dissimilarities between line-up subjects. Appellant claimed that the subjects were not similar in height, weight, or general appearance. We conclude that the district court did not err in denying this claim. Evidence was presented at trial that the line-up consisted of men with features very similar to appellant. Moreover, appellant failed to provide sufficient facts demonstrating that a motion to suppress the line-up identification would

³See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

⁴See Strickland, 466 U.S. at 697.

have been meritorious and that there was a reasonable likelihood that the exclusion of the evidence would have changed the result of the trial.⁵

Next, appellant claimed that his counsel failed to vigorously cross-examine and impeach witness James Casey (one of the victims) regarding his failure to identify appellant on two occasions prior to trial. We conclude that the district court did not err in denying this claim. Trial counsel did cross-examine Mr. Casey regarding the identification process including Casey's description of appellant on the day the crime was committed and on the fact that Casey did not choose appellant at the line-up. Although counsel did not cross-examine Mr. Casey exactly as appellant would have liked him to, appellant was not prejudiced by counsel's cross-examination because the result of the trial would not have been different. Mr. Casey identified appellant at the trial. In addition, the other victim in this case positively identified appellant at the line-up, during the preliminary hearing, and at trial. There was ample evidence presented at trial that the same person committed both robberies. Thus, trial counsel was not ineffective in this regard.

Next, appellant claimed that his counsel failed to cross-examine the fingerprint analyst regarding: (1) the chain of custody of evidence; (2) the reason other latent fingerprints were not identified; (3) the fact that the prints found at PePe Muldoon's were not AFIS quality;

⁵See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984); Kirksey v. State, 112 Nev. 980, 990, 923 P.2d 1102, 1109 (1996).

(4) the fact that the pictures depicting the location of the sugar packet were inaccurate and inconsistent with the officer's testimony that the sugar packet was actually found under the napkin; (5) the failure of the officer to account for the other napkin, sugar packet, creamers and cups located at the scene of both robberies and why there were no discernible prints lifted from any of this other evidence; and (6) "the extent to which the bare factual similarities between the crimes affected the finding by the latent print analyst that the print on the sugar packet. . . belonged to the petitioner." We conclude that the district court did not err in denying this claim. Appellant failed to demonstrate that but for counsel's alleged errors in cross-examining this witness the result of the trial would have been different. Thus, counsel was not ineffective in this regard.

Next, appellant claimed that his counsel failed to: (1) conduct meaningful cross-examination of any witness, including the victims and the crime scene analyst; (2) establish and present any coherent theory of defense; and (3) impeach prosecution witnesses regarding their initial descriptions of the perpetrator of the crime. We conclude that the district court did not err in denying these claims. These claims are belied by the record.⁶ Thus, appellant failed to demonstrate that his counsel was ineffective.

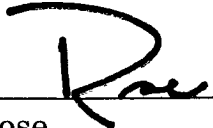
Lastly, appellant claimed that his counsel failed to properly prepare witnesses for testimony. We conclude that the district court did


⁶See Hargrove, 100 Nev. 498, 686 P.2d 222.

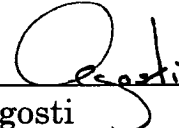
not err in denying this claim. Appellant failed to state what witnesses his counsel failed to prepare and how such preparation would have changed the result of the trial.⁷

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.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Young


_____, J.
Agosti

cc: Hon. Joseph T. Bonaventure, District Judge
Attorney General/Carson City
Clark County District Attorney
Alan D. Daniels
Clark County Clerk

⁷See id.

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).