

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN ANTHONY STONE A/K/A  
KEVIN ANTHONY ROBINSON,  
Appellant,  
vs.  
WARDEN, ELY STATE PRISON, E.K.  
MCDANIEL,  
Respondent.

No. 38610

FILED

NOV 06 2002

CLERK OF SUPREME COURT  
BY *J. R. R. R.*  
CHIEF 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 December 20, 2000, the district court convicted appellant, pursuant to a jury verdict, of one count of attempted murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of 96 to 240 months in the Nevada State Prison. This court affirmed appellant's conviction on direct appeal.<sup>1</sup>

On August 31, 2001, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State did not oppose the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to

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<sup>1</sup>Stone v. State, Docket No. 37276 (Order of Affirmance, March 23, 2001).

conduct an evidentiary hearing. On September 21, 2001, the district court denied appellant's petition. This appeal followed.

In his petition, appellant claimed his trial counsel was ineffective for failing to (1) argue that the district court lacked jurisdiction because the information did not inform appellant that the State would pursue the lesser included offenses of battery with a deadly weapon and assault with a deadly weapon, and (2) object when the prosecution allegedly committed misconduct by offering jury instructions on the lesser included offenses of battery with a deadly weapon and assault with a deadly weapon when those offenses were not charged in the information. We conclude that the district court did not err in denying appellant's petition.<sup>2</sup> Appellant was charged in the information with attempted murder with the use of a deadly weapon and the jury found appellant

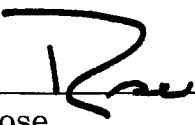
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<sup>2</sup>To the extent that appellant raised any of the issues underlying his claims of ineffective assistance of counsel as independent constitutional violations, they are waived. Franklin v. State, 110 Nev. 750, 877 P.2d 1058 (1994) overruled in part on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999). Further, to the extent that appellant attempted to raise any of the 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 had a reasonable probability of success on direct appeal, 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).

guilty of that charge. Therefore, we conclude that appellant failed to demonstrate that he suffered any prejudice.<sup>3</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>4</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Brent T. Adams, District Judge  
Attorney General  
Washoe County District Attorney  
Kevin Anthony Stone  
Washoe District Court Clerk

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<sup>3</sup>See Strickland v. Washington, 466 U.S. 668 (1984).

<sup>4</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).