

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTONIO SANCHEZ-FRANCO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39341

FILED

JAN 26 2003

ORDER OF AFFIRMANCE

J. Richard

This is an appeal from an order of the district court denying appellant Antonio Sanchez-Franco's post-conviction petition for a writ of habeas corpus.

In his petition and again on appeal, Sanchez-Franco presented claims of ineffective assistance of trial counsel. The district court found that counsel was not ineffective. The district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal.¹ Sanchez-Franco has not demonstrated that the district court's findings of fact are not supported by substantial evidence or are clearly wrong.² Moreover, Sanchez-Franco has not demonstrated that the district court erred as a matter of law.


¹See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).


²Id.

Accordingly, for the reasons stated in the attached order of the district court, we

ORDER the judgment of the district court AFFIRMED.

 J.
Shearing

 J.
Leavitt

 J.
Becker

cc: Hon. Peter I. Breen, District Judge
Scott W. Edwards
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

1 found him guilty of second-degree murder. Sanchez-Franco
2 appealed but the judgment was affirmed. He then filed a petition
3 for writ of habeas corpus asserting generally that he was
4 deprived of the effective assistance of counsel. The court
5 appointed attorney Mary Lou Wilson who filed a supplemental
6 petition and corrections to the supplement. Subsequently, Ms.
7 Wilson was disqualified as it appeared that she was a potential
8 witness in the action. The court then appointed Scott Edwards to
9 represent petitioner. Mr. Edwards elected not to raise any
10 additional claims.

11 The cause was set for a hearing on February 15, 2002.
12 At the outset Petitioner abandoned most of his claims and
13 announced that he would be going forward only on the claim that
14 counsel was ineffective in failing to present certain alibi
15 witnesses at the trial.

16 The court heard testimony from trial counsel, from
17 Petitioner, and from two proposed alibi witnesses. Upon
18 consideration of the relative credibility of the witnesses, the
19 court finds as follows.

20 Trial counsel testified credibly that he had thoroughly
21 investigated the proposed alibi and was prepared to present that
22 testimony if necessary. However, he felt that the alibi
23 witnesses were weak due to inconsistent statements and vagueness
24 about the time frames at issue. He and Petitioner discussed the
25 strategy at length and jointly decided not to weaken the case by
26 adding the testimony of his friends. Even Sanchez-Franco

1 conceded that the decision not to present any alibi witnesses was
2 a tactical decision with which he concurred.

3 One would assert a claim of ineffective assistance of
4 counsel bears the burden of demonstrating by strong and
5 convincing evidence that the conduct of his attorney fell below
6 an objective standard of reasonableness and that but for the
7 failings of counsel, the result would likely have been different.
8 Reviewing courts must give great deference to the decisions of
9 counsel and the decisions must not be viewed with the benefit of
10 hindsight. Strategic and tactical decisions especially are
11 virtually unassailable absent extraordinary circumstances. See
12 Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80
13 L.Ed.2d 674 (1984).

14 This Court finds that trial counsel was not
15 unreasonable. The decision to focus the attention of the jury on
16 the flaws in the government's case and not to distract from that
17 with weak alibi witnesses was reasonable. Presenting the weak
18 alibi would lead to the risk that if the jury believed the alibi
19 witnesses were lying, they would pay no heed to the problems with
20 the identification testimony. Furthermore, the court finds that
21 Sanchez-Franco was a full participant in the decision making
22 process and agreed to forego the additional witnesses and agreed
23 to decline to testify himself. Accordingly, the court finds that
24 Sanchez-Franco has failed to prove that his counsel acted
25 unreasonably.

26 The court also finds no prejudice stemming from the

1 lack of the additional witnesses.

2 One proposed witness was the vice principal of a high
3 school. While Sanchez-Franco testified that he was at a dance at
4 the school but left sometime before the killing in downtown Reno,
5 the witness could not even confirm that there was a dance that
6 evening let alone that Sanchez-Franco was there.

7 The other witness, Rodrigo Flores, was noticeably
8 hostile and combative. His intent to help his friend by means
9 fair or foul was apparent to this Court as the observer of his
10 demeanor. He was not a credible witness and the court has no
11 reason to believe that any juror would find otherwise. The court
12 also notes that he was a dangerous witness. In his effort to
13 help his friend, he managed to place Petitioner in the vicinity
14 of the killing very near to the time of the killing. Reasonable
15 counsel would not lightly present that sort of testimony to a
16 jury.

17 Of course Sanchez-Franco could have testified at trial
18 that he was elsewhere at the time of the killing, but the court
19 finds that he voluntarily decided not to subject himself to
20 cross-examination at trial.

21 The court finds that counsel did not act unreasonably
22 in failing to present at trial the testimony that was ultimately
23 adduced at the habeas corpus hearing. The court also finds that
24 the new testimony would not have affected the outcome of the

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1 trial. Accordingly, the petition for writ of habeas corpus
2 (post-conviction) is denied.

3 DATED this 21 day of February, 2002.

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7 DISTRICT JUDGE

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