

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROME RICHARD CHACON A/K/A
RICHARD CHACON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39384

FILED

FEB 27 2003

ORDER OF AFFIRMANCE

JANETTE FLORES
CLERK OF SUPREME COURT
BY *J. Richards*
DEPUTY CLERK

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.

On December 19, 1992, the district court convicted appellant Rome Richard Chacon, pursuant to a jury verdict, of first degree murder with the use of a deadly weapon and burglary with the use of a deadly weapon. The district court sentenced Chacon to serve a term of life in the Nevada State Prison without the possibility of parole for the murder, plus an equal and consecutive term for the deadly weapon enhancement, and five years for the burglary plus an equal and consecutive term for the deadly weapon enhancement. The district court ordered the sentences to be served concurrently. This court dismissed Chacon's direct appeal.¹ The remittitur issued on February 8, 1994.

On January 26, 1995, Chacon 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 NRS 34.770, the district court declined to appoint counsel to represent Chacon or to conduct an evidentiary hearing. Chacon refiled the same petition on

¹Chacon v. State, Docket No. 24085 (Order Dismissing Appeal, January 20, 1994).

February 2, 1999, because the district court had not ruled on his first petition. On January 10, 2001, the district court denied Chacon's petition. This appeal followed.

In his petition, Chacon raised five claims of ineffective assistance of trial counsel. To establish ineffective assistance of counsel, a petitioner must show both that counsel's performance fell below an objective standard of reasonableness and that the deficient performance prejudiced the defense.² 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.³ "Tactical decisions are virtually unchallengeable absent extraordinary circumstances."⁴ 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.⁵

First, Chacon claimed that trial counsel was ineffective for making "mistakes of omission and commission." Chacon does not state precisely what those mistakes were, nor does he allege any specific facts that would, if true, entitle him to relief.⁶ Therefore, Chacon failed to show that counsel was ineffective in this regard, and the district court did not err in denying this claim.

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

³Strickland, 466 U.S. at 694.

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

⁵Strickland, 466 U.S. at 697.

⁶See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

Second, Chacon claimed that trial counsel was ineffective for failing to call defense witnesses. Chacon did not state what witnesses should have been called and what their testimony would have been.⁷ Therefore, Chacon failed to show that counsel was ineffective in this regard, and the district court did not err in denying this claim.

Third, Chacon claimed that counsel was ineffective for failing to call "Ken" as a witness, who according to Chacon would have corroborated Chacon's testimony. Chacon did not provide a last name or state how "Ken" would have corroborated his testimony.⁸ If the "Ken" referred to is Ken Yahv, then this claim is without merit.⁹ Yahv's voluntary statement, given to the police the day after the incident, corroborated the other eyewitness accounts.¹⁰ Accordingly, Chacon failed to show a reasonable probability that had Yahv been called as a defense witness, the result of the trial would have been different. Therefore, the district court did not err in denying this claim.

Fourth, Chacon claimed that trial counsel was ineffective for failing to file a motion to suppress a video surveillance tape from the 7-Eleven store where the stabbing took place. Chacon failed to specify on what grounds such a motion should have been based.¹¹ Additionally, there were numerous eyewitnesses, and Chacon told several of his friends that he had stabbed the victim. Chacon did not show a reasonable probability that the outcome of the trial would have been different in light of the

⁷See id.

⁸See id.

⁹See id.

¹⁰The record shows that Yahv had since left the country.

¹¹See Hargrove, 100 Nev. 498, 686 P.2d 222.

overwhelming evidence of his guilt.¹² Therefore, the district court did not err in denying this claim.

Fifth, Chacon claimed that he received ineffective assistance of trial counsel because when the deputy public defender who had been representing him prior to trial resigned from the Clark County Public Defender's Office the case was reassigned to a deputy public defender unfamiliar with the case. Chacon argued that this "jeopardized" his right to a speedy trial. Chacon was arrested on January 30, 1992. His trial began on September 21, 1992. In his petition, Chacon failed to allege that this was not an "ordinary" delay, but rather "presumptively prejudicial."¹³ To the extent that Chacon challenged NRS 178.556,¹⁴ his challenge is without merit. Chacon did not object to the original trial date of June 15, 1992, approximately four and one half months after his arrest. The court minutes show that Chacon did object to his attorney's motion to continue the trial to September of that year. Nevertheless, the district court granted the motion because the deputy public defender representing Chacon was leaving the Public Defender's Office, and the new attorney assigned to the case needed time to familiarize himself with the case and

¹²See Ford v. State, 105 Nev. 850, 852, 784 P.2d 951, 952 (1989) ("[O]verwhelming evidence of guilt is relevant to the question of whether a client had ineffective counsel.") (citing Strickland, 466 U.S. at 697).

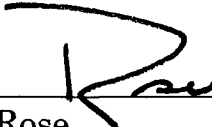
¹³See Doggett v. United States, 505 U.S. 647, 651-52 (1992) ("[T]o trigger a speedy trial analysis, an accused must allege that the interval between accusation and trial has crossed the threshold dividing ordinary from 'presumptively prejudicial' delay.") (citing Barker v. Wingo, 407 U.S. 514, 530-31 (1972)).

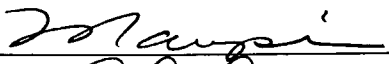
¹⁴NRS 178.556(1) states in relevant part that "[i]f a defendant whose trial has not been postponed upon his application is not brought to trial within 60 days after the arraignment on the indictment or information, the district court may dismiss the indictment or information."


prepare a defense.¹⁵ We conclude that the district court did not abuse its discretion in determining that the State had established good cause for the delay. Moreover, Chacon failed to show how the defense was prejudiced. Therefore, Chacon failed to show that counsel was ineffective in this regard, and the district court did not err in denying this claim.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Chacon is not entitled to relief and that briefing and oral argument are unwarranted.¹⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹⁷


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

¹⁵See Meegan v. State, 114 Nev. 1150, 1154, 968 P.2d 292, 294 (1998) ("Determining whether to dismiss a case which has exceeded the sixty-day time period falls within the sound discretion of the trial court. . . . A dismissal is mandatory only if the State cannot show good cause for the delay." (citations omitted)), abrogated on other grounds by Vanisi v. State, 117 Nev. 330, 22 P.3d 1164, cert. denied, 534 U.S. 1024 (2001).

¹⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹⁷We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.

cc: Hon. Kathy A. Hardcastle, District Judge
Attorney General/Carson City
Clark County District Attorney
Rome Richard Chacon
Clark County Clerk