

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARK RONALD PRAY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 39909

**FILED**

AUG 20 2003

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 a post-conviction petition for a writ of habeas corpus.

On April 25, 1996, appellant Mark Ronald Pray was convicted, pursuant to a jury verdict, of one count of first-degree murder with the use of a deadly weapon. The district court sentenced Pray to serve two consecutive prison terms of life with the possibility of parole. Pray appealed, and this court affirmed the judgment of conviction.<sup>1</sup>

On August 3, 1998, Pray filed a proper person post-conviction petition for a writ of habeas corpus. The State opposed the petition. The district court appointed counsel to represent Pray, and counsel supplemented the petition. The district court heard arguments on the petition, but did not conduct an evidentiary hearing. On June 2, 1999, the district court denied Pray's petition.

Pray appealed, and this court affirmed the order of the district court in part and reversed and remanded in part.<sup>2</sup> Specifically, this court concluded that the district court did not err in denying most of Pray's

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<sup>1</sup>Pray v. State, 114 Nev. 455, 959 P.2d 530 (1998).

<sup>2</sup>Pray v. State, Docket No. 34359 (Order of Remand and Dismissing Appeal, July 7, 2000).

claims of ineffective assistance of counsel because, even if true, Pray was not entitled to relief.<sup>3</sup> However, this court concluded that Pray raised one claim that, if true, would entitle him to relief; namely, that his trial counsel was ineffective for failing to seek a mistrial due to juror misconduct. Accordingly, this court remanded Pray's case to the district court with instructions to hold an evidentiary hearing on the claim involving the alleged juror misconduct.

On May 25, 2001, the district court conducted an evidentiary hearing. At the evidentiary hearing, the district court heard testimony from numerous witnesses including Pray, Pray's brother-in-law, Pray's sister, the victim's mother, the victim's sister, and six of the twelve jurors.<sup>4</sup> On June 21, 2002, the district court denied the petition, finding trial counsel was not ineffective for failing to move for a mistrial on the grounds of juror misconduct. Specifically, the district court found no credible evidence of juror misconduct because the six jurors who testified each stated that he or she: (1) did not have communications with anyone outside the jury; and (2) did not observe any other jurors communicating with anyone outside of the jury.<sup>5</sup>

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<sup>3</sup>See Strickland v. Washington, 466 U.S. 668 (1984); Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

<sup>4</sup>The remaining six jurors submitted notarized affidavits because they were unavailable to testify. We note that neither party to this appeal has provided this court with the affidavits. On appeal, however, neither party disputes the contents of the affidavits. Accordingly, we have resolved this issue without reviewing the affidavits based on the parties' discussion of the contents of the affidavits.

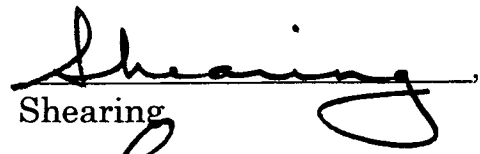
<sup>5</sup>Although Pray, his sister, and brother-in-law testified about several instances of juror misconduct, the district court did not find that testimony credible. See generally Williams v. State, 113 Nev. 1008, 1014, 945 P.2d 438, 442 (1997) (noting that determining the weight and credibility to give

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The district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal.<sup>6</sup> Pray has not demonstrated that the district court's findings of fact are not supported by substantial evidence or are clearly wrong.<sup>7</sup> Moreover, Pray has not demonstrated that the district court erred as a matter of law.<sup>8</sup>

Having considered Pray's argument and concluded that it lacks merit, we

ORDER the judgment of the district court AFFIRMED.

  
Shearing, J.

  
Leavitt, J.

  
Becker, J.

cc: Hon. Lee A. Gates, District Judge  
David M. Schieck  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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conflicting testimony is within the province of the trier of fact, and credibility determinations will not be reversed absent clear error).

<sup>6</sup>See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

<sup>7</sup>See id.

<sup>8</sup>See id.