

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWIN CLARK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40273

FILED

FEB 27 2003

ORDER DISMISSING APPEAL

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
DEPUTY CLERK

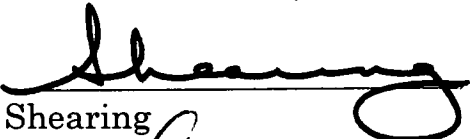
This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of attempted murder with the use of a deadly weapon, two counts of battery with the use of a deadly weapon, three counts of assault with a deadly weapon, one count of discharging a firearm into a structure, and one count of discharging a firearm out of a motor vehicle. The district court sentenced appellant Edwin Clark to serve consecutive and concurrent terms totaling 46 years in the Nevada State Prison.

Clark contends on appeal that his trial counsel was ineffective for various reasons. This court has stated that claims of ineffective assistance of counsel are more appropriately raised in the district court in the first instance by way of a petition for post-conviction relief.¹ Clark contends, however, that this court should review his claims of ineffective assistance of counsel because it is obvious from the record that counsel was ineffective. We disagree.

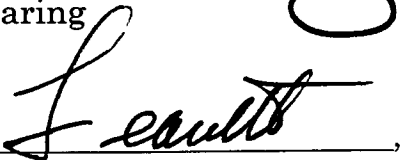
¹Gibbons v. State, 97 Nev. 520, 523, 634 P.2d 1214, 1216 (1981).

In the case of Jones v. State,² this court concluded on direct appeal that trial counsel was ineffective where counsel's actions were a matter of record, not disputed, and per se improper. The case at bar is quite dissimilar, as counsel's conduct appears to be consistent with a certain tactical approach.³ Therefore, we conclude that this appeal should be dismissed and Clark should file a post-conviction petition raising his claims of ineffective assistance of counsel in the district court. Accordingly, we


ORDER this appeal DISMISSED.



Shearing J.



Leavitt J.



Becker J.

²110 Nev. 730, 877 P.2d 1052 (1994); see also Johnson v. State, 117 Nev. 153, 17 P.3d 1008 (2001) (concluding on direct appeal that trial counsel was per se ineffective for presenting insanity defense against client's express objections).

³See Strickland v. Washington, 466 U.S. 668, 690-91 (1984) (holding that "[t]actical decisions of counsel are virtually unchallengeable absent extraordinary circumstances"); accord Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989).

cc: Hon. Sally L. Loehrer, District Judge
Goodman Law Firm
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk