

IN THE SUPREME COURT OF THE STATE OF NEVADA

MIZELL WRIGHT, III,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40462

FILED

JAN 08 2004

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Appellant was originally convicted, pursuant to a jury verdict, of three counts of attempted murder with the use of a deadly weapon (counts I, II, and III), one count of battery with the use of a deadly weapon (count IV), one count of robbery with the use of a deadly weapon (count VI), and three counts of attempted robbery with the use of a deadly weapon (counts VII, VIII, and IX). The district court sentenced appellant to prison as follows: 96 to 240 months, plus an equal and consecutive term for the deadly weapon enhancement, for count I; 43 to 192 months, plus an equal and consecutive term for the deadly weapon enhancement, for count II to be served concurrently with count I; 43 to 192 months, plus an equal and consecutive term for the deadly weapon enhancement, for count III to be served concurrently with count II; 24 to 96 months for count IV to be served concurrently with count III; 35 to 156 months, plus an equal and consecutive term for the deadly weapon enhancement, for count VI to be served concurrently with count II and IV; and three concurrent terms of 22 to 96 months, with an equal and consecutive term for the deadly weapon enhancement, for counts VII, VIII, and IX to be served concurrently with all other counts.

On direct appeal, this court affirmed the judgment of conviction.¹ Appellant thereafter filed a proper person petition for a writ of habeas corpus. The district court appointed counsel, who filed a supplement to the petition. After an evidentiary hearing, the district court denied the petition. This appeal followed.

Appellant argues that trial counsel was ineffective because: (1) trial counsel did not request a Petrocelli² hearing regarding the admission of evidence that appellant asked the victims for marijuana and evidence that the gun used in the crime had been stolen; (2) trial counsel did not object to comments by the district court regarding the Spanish interpretation and the stipulation to appellant's blood alcohol level after the incident; (3) trial counsel failed to object to improper comments by the prosecutor that unconstitutionally shifted the burden of proof; (4) trial counsel failed to object to the testimony of one of the victims during the State's case-in-chief; (5) trial counsel failed to adequately prepare for trial and investigate appellant's claim that he was actually attacked by the victims; and (6) trial counsel failed to prepare appellant to testify. Appellant also argues that appellate counsel's failure to raise meritorious issues on direct appeal rendered appellate counsel ineffective.

To state a claim of ineffective assistance of counsel, a petitioner must demonstrate that (1) counsel's performance fell below an objective standard of reasonableness, and (2) there is a reasonable probability that, but for counsel's performance, the outcome of the


¹Wright v. State, Docket No. 32099 (Order Dismissing Appeal, September 4, 1998).

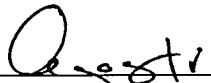
²Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985).

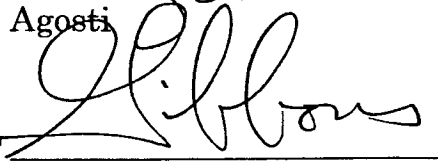
proceedings would have been different.³ The court need not consider both prongs of the test if the petitioner makes an insufficient showing on either prong.⁴ As to each issue, appellant has failed to demonstrate either that counsel's performance was unreasonable or that the outcome of the trial would have been different.

We therefore conclude that the district court did not err by denying the petition, and we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

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

³Strickland v. Washington, 466 U.S. 668, 694 (1984).

⁴Id. at 697.