

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
OBED ORLANDO PIGG, JR.,
Respondent.

No. 40509

FILED

AUG 20 2003

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court granting respondent's post-conviction petition for a writ of habeas corpus. Respondent was originally convicted, pursuant to a jury verdict, of one count of robbery. The district court sentenced respondent to a prison term of 48 to 120 months. On direct appeal, respondent's judgment of conviction was affirmed.¹

Respondent filed a post-conviction petition for a writ of habeas corpus, alleging that appellate counsel was ineffective. To state a claim of ineffective assistance of counsel, a defendant must demonstrate that: (1) counsel's performance was deficient, and (2) the deficient performance prejudiced the defense.² "Deficient" assistance of counsel is representation that falls below an objective standard of reasonableness.³ To establish prejudice based on the deficient assistance of appellate counsel, a

¹Pigg v. State, Docket No. 34036 (Order Dismissing Appeal, September 17, 1999).

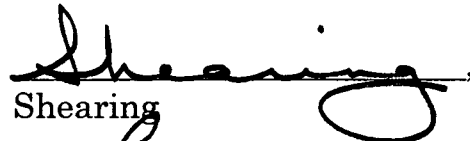
²See Hill v. Lockhart, 474 U. S. 52 (1985); Strickland v. Washington, 466 U.S. 668 (1984); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

³Strickland, 466 U.S. at 688.

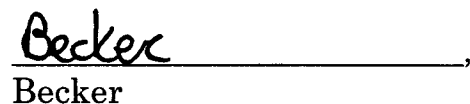
defendant must show that the omitted issue would have a reasonable probability of success on appeal.⁴

Following an evidentiary hearing, the district court found that appellate counsel was ineffective for failing to argue on appeal that the district court erred by giving a jury instruction on conspiracy. We conclude that the district court did not err by finding that there was a reasonable probability of success on appeal had appellate counsel challenged the decision to give the conspiracy instruction.⁵ We also conclude that the district court did not err in finding that appellate counsel's failure to raise the issue rendered his performance deficient. We therefore

ORDER the judgment of the district court AFFIRMED.


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

cc: Hon. James W. Hardesty, District Judge
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Karla K. Butko
Washoe District Court Clerk

⁴Kirksey, 112 Nev. at 998, 923 P.2d at 1114.

⁵See Jennings v. State, 116 Nev. 488, 998 P.2d 557 (2000).