

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARK ANTHONY HANSON,
Appellant,
vs.
WARDEN, ELY STATE PRISON, E.K.
MCDANIEL,
Respondent.

No. 40665

FILED

DEC 19 2003

ORDER OF AFFIRMANCE

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

This is an appeal from a district court order denying a post-conviction petition for a writ of habeas corpus. Appellant Mark Anthony Hanson was convicted of first-degree murder by child abuse, and this court affirmed his conviction.¹ He filed a timely habeas petition, and the district court held an evidentiary hearing and denied the petition. Hanson appeals.

Hanson contends that his trial and appellate counsel were ineffective. A claim of ineffective assistance of counsel presents a mixed question of law and fact, subject to independent review.² To establish ineffective assistance of counsel, a defendant must show that an attorney's representation fell below an objective standard of reasonableness and that the attorney's deficient performance prejudiced the defense.³ To establish prejudice, the defendant must show that but for the attorney's mistakes,

¹Hanson v. State, Docket No. 34156 (Order of Affirmance, November 14, 2000).

²Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996).

³Strickland v. Washington, 466 U.S. 668, 687-88 (1984).

there is a reasonable probability that the result of the proceeding would have been different.⁴

A petitioner for post-conviction relief cannot rely on conclusory claims for relief but must provide supporting specific factual allegations that if true would entitle him or her to relief.⁵ NRS 34.810(1)(b) and (3) require a court to dismiss a post-conviction habeas petition if the grounds for the petition could have been presented at trial or on direct appeal unless the petitioner shows cause for the failure to present the grounds and actual prejudice. Claims of ineffective assistance of counsel are properly presented in a timely, first post-conviction petition for a writ of habeas corpus because such claims are generally not appropriate for review on direct appeal.⁶ However, the law of a first appeal is the law of the case in all later appeals in which the facts are substantially the same and cannot be avoided by more detailed and precisely focused argument.⁷

Hanson claims first that Nevada's statutory scheme violates due process for allowing first-degree murder to be based on the killing of a child without the elements of premeditation and deliberation. This claim warrants no relief because Hanson cites no specific authority and provides no cogent argument to support it.⁸ Moreover, he fails to show how his

⁴Id. at 694.

⁵Evans v. State, 117 Nev. 609, 621, 28 P.3d 498, 507 (2001).

⁶See, e.g., Feazell v. State, 111 Nev. 1446, 1449, 906 P.2d 727, 729 (1995).

⁷Hall v. State, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975).

⁸Mazzan v. Warden, 116 Nev. 48, 75, 993 P.2d 25, 42 (2000) (stating that contentions unsupported by specific argument or authority should be summarily rejected on appeal).

counsel were ineffective since this issue was raised on direct appeal. This court rejected it, and Hanson has not demonstrated why the law of the case should not control.

Hanson claims that his counsel were ineffective because they failed to challenge the jury instruction defining implied malice on the ground that it improperly shifted the burden of proof to the defense. This claim fails: Hanson has not shown that the instructions were improper.⁹

Hanson contends that his trial counsel was ineffective in failing to offer a jury instruction differentiating between child neglect and child abuse and providing the jury with a basis for finding second-degree murder. This contention warrants no relief. He offers no authority to support it. Further, his trial counsel testified at the evidentiary hearing that such a defense would have been inconsistent with Hanson's testimony at trial that he had not acted wrongfully in any way.

Hanson maintains that improper expert testimony was admitted at trial on shaken baby syndrome and battered child syndrome. He fails to explain how his counsel were ineffective or why the law of the case should not control; this issue was raised at trial and on appeal, but was rejected.

Hanson claims that his trial counsel was ineffective in not seeking to remove a juror who received information outside the court indicating that Hanson was in jail. This claim has no merit. First, trial counsel did seek to remove the juror, but was unsuccessful. Second, though appellate counsel did not raise this issue, Hanson suffered no prejudice. This court examines trial errors such as improper reference to a

⁹See Doyle v. State, 112 Nev. 879, 900-02, 921 P.2d 901, 915-16 (1996).

defendant's in-custody status under a harmless-error standard,¹⁰ and the oblique, passing reference here was clearly harmless.

Hanson contends that the district court violated due process by excluding his defense expert at trial. Again, he fails to show how his counsel were ineffective since trial counsel attempted to present the expert evidence and appellate counsel raised the issue on direct appeal. This court deemed it meritless, and again Hanson has offered no basis to disregard the law of the case.

Hanson asserts that the trial judge was biased toward him and therefore excluded his expert witness while allowing the State to present irrelevant character evidence. Hanson does not articulate how his counsel were ineffective, but apparently he feels that counsel should have sought to remove the judge at trial and raised the issue on appeal. During the trial, Hanson's father menaced the judge and his wife, leading the judge to state that Hanson's family was "out of control" and to impose a restraining order against the father. At the evidentiary hearing on Hanson's petition, trial counsel testified that he "didn't see any bias" on the part of the trial judge toward Hanson. We likewise perceive no bias by the judge and conclude that counsel acted reasonably in not challenging the impartiality of the judge.

Hanson complains that "the district court refused [his] request for effective counsel." Again he fails to couch this issue as a claim of ineffective assistance of counsel, but he alleges that he informed the court that trial counsel showed up at hearings without a file, failed to show at the jail, and contacted him only three times in the course of 120 days. Hanson does not establish that his counsel was ineffective. First, he does

¹⁰State v. Carroll, 109 Nev. 975, 977, 860 P.2d 179, 180 (1993).

not cite relevant parts of the record to support his allegations;¹¹ he instead improperly cites to portions of his habeas petition.¹² Second, he does not explain how his counsel's conduct resulted in prejudice.

Hanson claims that his trial counsel was ineffective because he did not move for a change of venue after the jury was selected. Hanson offers no authority, no argument, and no facts to support this claim. He fails to show any deficient performance by counsel or any prejudice.

Hanson asserts that his trial counsel failed to exclude improper bad act evidence. Hanson fails to cite relevant parts of the record to support this assertion, improperly citing his habeas petition, and his argument remains conclusory at best. At the evidentiary hearing, trial counsel testified that the defense put character at issue through testimony by Hanson and his friends that he had been a good care giver to the victim. We conclude therefore that this claim has no merit.

Hanson complains about extensive prosecutorial misconduct. He fails to articulate how his counsel were ineffective, to describe specifically the alleged misconduct, or to cite relevant parts of the record to support his claim. This claim warrants no relief.


¹¹See Jacobs v. State, 91 Nev. 155, 158, 532 P.2d 1034, 1036 (1975) (stating that an appellant has the responsibility to provide materials necessary for appellate review); NRAP 28(e) ("Every assertion in briefs regarding matters in the record shall be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found.").

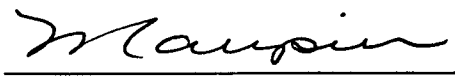
¹²See Sparks v. State, 96 Nev. 26, 29, 604 P.2d 802, 804 (1980) (stating that facts stated in a party's brief will not compensate for a deficiency in the record); NRAP 28(e) ("Briefs or memoranda of law filed in district courts shall not be incorporated by reference in briefs submitted to the Supreme Court.").

Finally, Hanson alleges that his trial counsel was ineffective because he "failed to conduct adequate investigation," "failed to employ adequate experts," "failed to obtain discovery to adequately prepare for expert and nonexpert testimony," "failed to object to juror misconduct," "failed to move to remove the judge," "failed to move for mistrial when the prosecutor introduced inadmissible treatise evidence and letters during closing argument," and "appeared to concede guilt during opening and closing argument." Hanson does not provide specific factual allegations or cogent argument to support these claims, and this court has already rejected some of the underlying substantive issues on direct appeal. We conclude that these claims also have no merit. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Leavitt


_____, J.
Maupin

cc: Hon. J. Michael Memeo, District Judge
Matthew J. Stermitz
Attorney General Brian Sandoval/Carson City
Elko County District Attorney
Elko County Clerk