IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD T. FINLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40808

FILED

JAN 27 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant Edward Finley's post-conviction petition for a writ of habeas corpus.

On April 12, 2000, the district court convicted Finley, pursuant to a jury verdict, of sexual assault on a child under the age of fourteen. The district court sentenced Finley to serve a term of life in the Nevada State Prison with the possibility of parole in twenty years. On appeal, this court affirmed the judgment of conviction and sentence.[1] The remittitur issued on November 5, 2001.

On November 5, 2002, Finley filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Finley or to conduct an evidentiary hearing. On January 28, 2003, the district court denied Finley's petition. This appeal followed.

[1]Finley v. State, Docket No. 36096 (Order of Affirmance, October 8, 2001).

In his petition, Finley first presented an allegation of ineffective assistance of trial counsel. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness, and there is a reasonable probability that in the absence of counsel's errors, the results of the proceedings would have been different.[2] The court need not consider both prongs of the Strickland test if the petitioner makes an insufficient showing on either prong.[3]

Finley contended that his trial counsel was ineffective for failing to present evidence that his statement to police should be suppressed because it was obtained without a complete recitation of his Miranda rights.[4] Specifically, Finley claimed that he was not informed of his right to an attorney. A review of the record on appeal, however, reveals that Finley's trial counsel filed a motion to suppress his statement made to police, and a hearing was held on this issue. Trial counsel, rather than arguing that Finley was not informed of his right to an attorney, argued that Finley's statement was involuntary because the detective coerced him into making certain admissions. We note that this is a tactical decision, and as such is entitled to deference.[5] Further, the record demonstrates that Finley was advised of his rights prior to questioning.

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[2]See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

[3]Strickland, 466 U.S. at 697.

[4]See Miranda v. Arizona, 384 U.S. 436 (1966).

[5]See Riley v. State, 110 Nev. 638, 653, 878 P.2d 272, 281-82 (1994).

We conclude that Finley failed to demonstrate that his trial counsel acted unreasonably in pursuing a motion to suppress his statement on this ground.

Next, Finley claimed that his appellate counsel was ineffective. "A claim of ineffective assistance of appellate counsel is reviewed under the 'reasonably effective assistance' test set forth in Strickland v. Washington."[6] Appellate counsel is not required to raise every non-frivolous issue on appeal.[7] "To establish prejudice based on the deficient assistance of appellate counsel, the defendant must show that the omitted issue would have a reasonable probability of success on appeal."[8]

Finley first contended that his appellate counsel was ineffective for failing to appeal the admission at trial of his statement to police because he was not first informed of his right to an attorney. We conclude that this claim lacks merit. Finley failed to preserve this issue for appeal. The failure to raise an objection with the district court generally precludes appellate review of the issue.[9] Moreover, even if trial counsel had objected, Finley failed to demonstrate that he was not advised of his right to an attorney prior to speaking with police. Consequently, this issue would not have had a reasonable likelihood of success on appeal, and Finley did not establish that his appellate counsel was ineffective in this regard.

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[6]Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1113 (1996).

[7]Jones v. Barnes, 463 U.S. 745, 751 (1983).

[8]Kirksey, 112 Nev. at 998, 923 P.2d at 1114.

[9]See Garner v. State, 78 Nev. 366, 372-73, 374 P.2d 525, 529 (1962).

Finley next argued that his appellate counsel was ineffective for failing to "federalize" his direct appeal issues in order to preserve them for federal appellate review. Finley failed to demonstrate that the results of the proceedings would have been different if counsel had "federalized" his direct appeal issues. Thus, he failed to establish that appellate counsel was ineffective on this issue.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.[10] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[11]

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

cc: Hon. Jackie Glass, District Judge
Edward T. Finley
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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[10]See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

[11]We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.