

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROGER WILFRED HUDON,
Appellant,
vs.
WARDEN, NEVADA STATE PRISON,
DON HELLING,
Respondent.

No. 41240

FILED

DEC 13 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 dismissing appellant Roger Wilfred Hudon's post-conviction petition for a writ of habeas corpus. Third Judicial District Court, Lyon County; Archie E. Blake, Judge.

On September 18, 2000, the district court convicted Hudon, pursuant to a jury verdict, of second-degree murder. The district court sentenced Hudon to serve a life term in the Nevada State Prison with the possibility of parole after ten years. This court affirmed Hudon's conviction.¹ The remittitur issued on January 16, 2002.

On July 3, 2002, Hudon filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On September 16, 2002, Hudon filed a supplemental petition through counsel. The State

¹Hudon v. State, Docket No. 36897 (Order Affirming in Part, and Remanding, December 14, 2001). We remanded this matter to correct an error in the judgment of conviction.

opposed the petition and supplemental petition. Pursuant to NRS 34.770, the district court conducted an evidentiary hearing on March 3, 2003. On March 14, 2003, the district court dismissed Hudon's petition. This appeal followed.²

In this appeal Hudon raises several claims of ineffective assistance of counsel.³ 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 that counsel's errors were so severe that they rendered the jury's verdict unreliable.⁴ The court may dispose of a claim if the petitioner makes an insufficient showing on either prong.⁵

First, Hudon asserts that his trial counsel was ineffective for failing to investigate the medical evidence. Hudon's claim is belied by the record.⁶ Counsel testified during the evidentiary hearing that he consulted with a medical expert. Accordingly, we conclude Hudon's counsel was not ineffective in this regard.

²We note that Hudon is represented by counsel in this appeal.

³Hudon raised other ineffective assistance counsel claims in the district court, but did not raise them on appeal. We conclude that Hudon abandoned these claims, and we did not consider them in this appeal.

⁴See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

⁵See Strickland, 466 U.S. at 697.

⁶See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

Second, Hudon claims that his counsel was ineffective for failing to call a medical expert at trial to refute the State's medical evidence. Specifically, Hudon contends that his counsel should have called a medical expert to testify that Sue Hudon's (Sue) death could have resulted from an accidental fall as opposed to Hudon pushing Sue to the floor. At trial, two witnesses, Lisa Johnson and Patty Neel, testified that Hudon pushed Sue to the floor. Johnson testified that Sue hit the ground with such force that her head bounced. Hudon fails to establish that any medical expert would have been able to testify that Sue's brain injury was caused by an accidental fall rather than a deliberate push to a hard surface. Accordingly, we conclude that Hudon's counsel was not ineffective in this regard.

Hudon also argues that a medical expert was necessary to substantiate the defense's position that Sue's death resulted from an intervening event. However, Hudon fails to explain in his opening brief what intervening event he believed caused Sue's death.⁷ As Hudon fails to support his claim with specific factual allegations, we conclude that he did not demonstrate that his counsel was ineffective on this issue.

Hudon also asserts that his counsel was ineffective for failing to object to Dr. Katherine Raven's testimony that it was her opinion that the manner of Sue's death was homicide. The record indicates that counsel failed to object the first time Dr. Raven characterized Sue's death as a homicide. During the course of redirect examination, Dr. Raven again

⁷See *id.* at 502, 686 P.2d at 225.

stated that, in her opinion, the manner of death was homicide. Hudon's counsel objected, and the district court overruled the objection. Based on the record, we conclude that counsel's cross-examination of Dr. Raven tempered her testimony that Sue's death was a homicide. Moreover, counsel elicited admissions from Dr. Raven that were helpful to the defense. Accordingly, we conclude that Hudon failed to demonstrate any prejudice suffered from counsel's initial failure to object to Dr. Raven's conclusion regarding the manner of death.

Finally, Hudon claims that his appellate counsel was ineffective for failing to communicate with him concerning his direct appeal. To establish ineffective assistance of appellate counsel, a petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness, and the deficient performance prejudiced the defense.⁸ "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."⁹

During the evidentiary hearing, counsel testified that he advised Hudon that he would file an appeal if Hudon so desired. Counsel further testified that he advised Hudon to provide him a written list of issues Hudon wished to include in his appeal; however, Hudon did not respond. In his opening brief, Hudon failed to explain how he was


⁸See Strickland, 466 U.S. at 668; Kirksey v. State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996).


⁹Kirksey, 112 Nev. at 998, 923 P.2d at 1114.

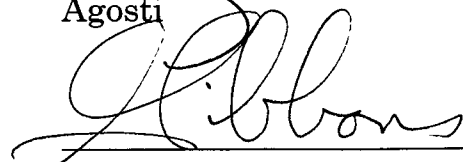
prejudiced by his counsel's alleged lack of communication or what additional matters he believed should have been raised in his direct appeal.¹⁰ Accordingly, we conclude that Hudon failed to demonstrate that his appellate counsel was ineffective in this regard.

Having reviewed the record and Hudon's assignments of error, we conclude that the district court did not err in dismissing Hudon's post-conviction habeas petition, and we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Archie E. Blake, District Judge
Law Offices of Robert Witek
Lyon County District Attorney
Lyon County Clerk

¹⁰See Hargrove, 100 Nev. at 502, 686 P.2d at 225.