

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL T. WILLIAMS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 41365

FILED

FEB 19 2004

ORDER OF AFFIRMANCE

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

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

On June 16, 2000, the district court convicted Williams, pursuant to a jury verdict, of three counts of sexual assault on a minor under fourteen years of age, one count of sexual assault on a minor under sixteen years of age, and one count of attempted sexual assault on a minor under sixteen years of age. The district court sentenced Williams to serve multiple terms totaling two consecutive terms of life in the Nevada State Prison with the possibility of parole after twenty years. On appeal, this court affirmed the judgment of conviction and sentence.<sup>1</sup> The remittitur issued on March 12, 2002.

Williams filed a timely proper person post-conviction petition for a writ of habeas corpus in the district court. On January 28, 2003, Williams filed an amended post-conviction petition for a writ of habeas corpus, raising additional claims. The State opposed the petition.

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<sup>1</sup>Williams v. State, Docket No. 36414 (Order of Affirmance, February 13, 2002).

Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Williams or to conduct an evidentiary hearing. On March 11, 2003, the district court denied Williams' petition. This appeal followed.<sup>2</sup>

In his petition, Williams made numerous allegations 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.<sup>3</sup> The court need not consider both prongs if the petitioner makes an insufficient showing on either prong.<sup>4</sup>

First, Williams contended that his trial counsel was ineffective for failing to investigate witnesses that could have refuted the testimony of M.R., a jailhouse informant. M.R., a fellow inmate at the Clark County Detention Center (CCDC), testified that Williams admitted to committing sexual assault against both victims. Williams stated that M.R. used facts from Williams' legal documents to support his fabricated testimony. Williams claimed that his legal documents were found in M.R.'s cell

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<sup>2</sup>Because the district court stated that it had considered all documents on file at the time it issued its order, we regard Williams' amended petition as a proper supplement to his original petition for a writ of habeas corpus.

<sup>3</sup>See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

<sup>4</sup>Strickland, 466 U.S. 697.

during a cell search, and his counsel should have subpoenaed records from the CCDC in order to provide support for this claim.

We conclude that Williams failed to establish that his trial counsel was ineffective on this issue. At trial, M.R. testified that he initially helped Williams with legal issues concerning his case. Eventually, Williams admitted to him that he had sexually assaulted the victims, and M.R. contacted the district attorney. Because M.R. testified that he had assisted Williams with legal issues, testimony that M.R. possessed Williams' legal documents would not have had a reasonable probability of altering the outcome of the trial. Further, Williams failed to provide specific facts concerning his allegation that Williams' legal documents were found in M.R.'s cell.<sup>5</sup> Therefore, the district court did not err in denying this claim.

Second, Williams contended that his trial counsel was ineffective for failing to object to the trial testimony of Kayshaundra Lighton. Williams did not specify what portion of Lighton's testimony his trial counsel should have objected to, nor articulate the grounds for any objection.<sup>6</sup> Thus, we affirm the order of the district court on this issue.

Third, Williams claimed that his trial counsel was ineffective for failing to impeach Lighton with her preliminary hearing testimony. Williams alleged that Lighton "was allowed to change her testimony without objection by counsel." Williams failed to specify what portion of Lighton's trial testimony was different from her preliminary hearing

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<sup>5</sup>See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

<sup>6</sup>Id.

testimony.<sup>7</sup> Therefore, Williams failed to establish that his trial counsel was ineffective in this regard.

Fourth, Williams alleged that his trial counsel was ineffective for failing to make the following arguments concerning the eight-year old victim: (1) she had been subjected to repeated sexual abuse by another individual because she had labial adhesions, (2) her hymen was naturally broken in two different places, (3) it was inappropriate that she shared a bed with her younger brother, and (4) she did not report the sexual assault until the third incident.

Williams failed to demonstrate a reasonable probability that the outcome of the trial would have been different if his trial counsel had made the preceding arguments. The victim testified that Williams inserted his finger into her vagina three different times over the course of one hour. In addition, there was medical testimony that the victim showed "definite evidence of sexual abuse." Lastly, a fellow inmate at CCDC testified that Williams admitted to inserting his finger into the victim's vagina. Therefore, Williams did not demonstrate that his trial counsel was ineffective for failing to argue any of the above points.

Fifth, Williams argued that (1) he was not properly charged with attempted sexual assault, (2) the district court erred in allowing Brenda Hinch to testify as an expert witness concerning handwriting, (3) the police failed to properly investigate the case by neglecting to get DNA evidence from Williams' hands, and (4) the fourteen-year old victim subsequently gave birth to his child and his attempted sexual assault conviction should therefore be reversed. These claims are outside the

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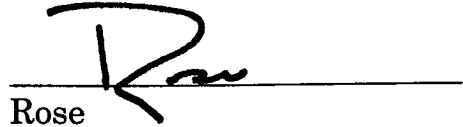
<sup>7</sup>Id.

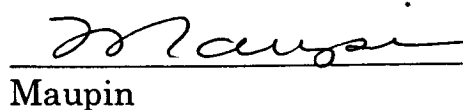
scope of a post-conviction petition for a writ of habeas corpus and should have been raised on direct appeal.<sup>8</sup> Therefore, the district court did not err in denying these claims.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Williams is not entitled to relief and that briefing and oral argument are unwarranted.<sup>9</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>10</sup>

 \_\_\_\_\_, C.J.  
Shearing

 \_\_\_\_\_, J.  
Rose

 \_\_\_\_\_, J.  
Maupin

cc: Hon. Valorie Vega, District Judge  
Michael T. Williams  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>8</sup>See NRS 34.810(1)(b)(2).

<sup>9</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>10</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.