

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH RUBEN SANCHEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41397

FILED

JUL 23 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOSS
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

On April 10, 2000, the district court convicted appellant, pursuant to a jury verdict, of first-degree murder with the use of a deadly weapon, first degree kidnapping with the use of a deadly weapon, conspiracy to commit kidnapping, robbery with the use of a deadly weapon, and conspiracy to commit robbery. The district court sentenced appellant to serve two consecutive terms of life in prison with the possibility of parole for the murder with the use of a deadly weapon, two consecutive terms of life with the possibility of parole for kidnapping with the use of a deadly weapon, and lesser concurrent and consecutive prison terms for the other three crimes. The consecutive terms of life for the murder with the use of a deadly weapon were ordered to be served concurrently with the terms imposed on the kidnapping with the use of a

deadly weapon. This court affirmed the judgment of conviction on direct appeal.¹

On June 25, 2002, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On August 26, 2002, the district court appointed counsel to represent appellant in the post-conviction proceedings, and counsel filed a supplement to the petition. The State opposed the petition. On April 1, 2003, after conducting an evidentiary hearing, the district court denied appellant's petition. This appeal followed.

In his petition, appellant initially raised several claims of ineffective assistance of 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 that but for counsel's errors, the result of the proceeding would have been different.² There is a presumption that counsel provided effective assistance unless petitioner demonstrates "strong and convincing proof to the contrary."³ Further, this court need not consider both prongs of the Strickland test if the petitioner makes an insufficient showing on either prong.⁴

¹Sanchez v. State, Docket No. 36051 (Order of Affirmance, March 8, 2002).

²See Strickland v. Washington, 466 U.S. 668 (1984).

³Davis v. State, 107 Nev. 600, 602, 817 P.2d 1169, 1170 (1991) (quoting Lenz v. State, 97 Nev. 65, 66, 624 P.2d 15, 16 (1981)).

⁴Strickland, 466 U.S. at 697.

First, appellant claimed that his trial counsel rendered ineffective assistance by improperly stating his opinion in closing argument that the State's witnesses were a "scumbag" and a "paid prostitute." We agree with the district court that counsel's attempt to disparage and impeach the credibility of the State's witnesses did not constitute ineffective assistance. We further conclude that appellant failed to demonstrate that he suffered any prejudice as a result of his counsel's comments.

Second, appellant claimed that his counsel was ineffective at trial and sentencing for failing to present mitigating evidence or witnesses on appellant's behalf including "friends, family, relatives, work associates, and community members" that "would have testified to the morals, character, and community involvement" of the appellant.⁵ We conclude that the district court did not err in finding that appellant is not entitled to relief on this claim. Appellant failed to specify what evidence should have been presented. The district court's findings note that the court "heard the trial, was familiar with the facts and circumstances, and was informed of [appellant's] background." Further, the record reflects that trial counsel's arguments in mitigation at sentencing persuaded the district court to impose sentences of life with the possibility of parole rather than without the possibility of parole. We defer to the district court's finding that calling witnesses would not have affected the outcome of the proceedings.

⁵We note that appellant requested that the sentence on the first degree murder conviction be determined by the trial judge rather than the jury.

Third, appellant claimed that his trial counsel was ineffective for failing get the results of appellant's polygraph examination admitted into evidence. However, at the hearing on appellant's petition, the prosecution testified that the State had refused to stipulate to the results of the polygraph examination.⁶ Thus, appellant failed to demonstrate that the results of the examination would have been admitted or changed the results of the proceedings.

Fourth, appellant claimed that his appellate counsel was ineffective for failing to confer with appellant about issues that should have been raised on direct appeal. However, appellant failed to identify any issues that would have had a reasonable probability of success on appeal.⁷ Thus, appellant is not entitled to relief on this claim.

Finally, appellant claimed that the district court erred in (1) admitting co-defendant Michael Cu's statements, (2) not instructing the jury that NRS 175.291 was applicable to Thomas Huffman's testimony and Cu's statements, (3) denying appellant's motion to sever his trial, (4) failing to give a jury instruction that adequately defined first-degree murder, and (5) convicting appellant when the evidence adduced at trial was allegedly insufficient. These claims and the issues underlying these claims were substantially raised in appellant's direct appeal and determined to be without merit. The doctrine of the law of the case

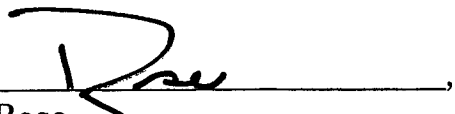
⁶See Jackson v. State, 116 Nev. 334, 336, 997 P.2d 121, 122 (2000) (citing Domingues v. State, 112 Nev. 683, 917 P.2d 1364 (1996) (holding that polygraph evidence may properly be excluded absent a written stipulation of the parties.)).

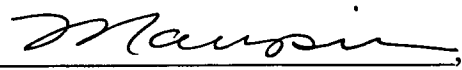
⁷See Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996).

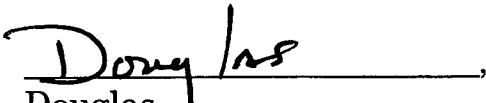
prevents further relitigation of these claims.⁸ Appellant cannot avoid this doctrine "by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings."⁹

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.

 J.
Rose

 J.
Maupin

 J.
Douglas

cc: Hon. Lee A. Gates, District Judge
Joseph Ruben Sanchez
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁸See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

⁹Id. at 316, 535 P.2d at 799.

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