

IN THE SUPREME COURT OF THE STATE OF NEVADA

TARZ DEMONE MITCHELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41460

FILED

JUL 01 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
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.

On November 8, 1999, the district court convicted appellant, pursuant to a jury verdict, of one count of burglary while in possession of a firearm, five counts of first degree kidnapping with the use of a deadly weapon, one count of conspiracy to commit robbery, three counts of robbery with the use of a deadly weapon, and one count of resisting a public officer. The district court sentenced appellant to serve consecutive and concurrent terms in the Nevada State Prison totaling 14 to 60 years. The sentence in the instant case was ordered to run consecutive to the sentence imposed in another district court case, C157820. This court affirmed the judgment of conviction on direct appeal.¹

¹Mitchell v. State, Docket No. 35204 (Order of Affirmance, February 12, 2002).

On February 24, 2003, appellant 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 appellant or to conduct an evidentiary hearing. On May 21, 2003, the district court denied appellant's petition. This appeal followed.

In his petition, appellant initially raised 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

Appellant first contended that his trial counsel was ineffective for failing to interview and subpoena pawnshop employee Darryl Mounger. Specifically, appellant argued that Mounger might have provided information about the inventory of weapons at the pawnshop

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.

that may have supported appellant's assertion that he used a toy, rather than a real firearm taken from the pawnshop, in committing the offenses. Appellant claimed that this information might have provided a basis for a successful motion to suppress the admission of the firearms collected at the crime scene into evidence. Appellant's argument is speculative and is belied by the record on appeal.⁵ Thus, appellant failed to demonstrate that his counsel's performance was unreasonable or that a different result was likely but for counsel's performance.

Next, appellant contended that his appellate counsel was ineffective for failing to argue that there was insufficient evidence supporting the deadly weapon enhancements. Our review of the record on appeal indicates that sufficient evidence was presented to support the deadly weapon enhancements. At trial, physical evidence and extensive testimony from multiple eyewitnesses indicated that a firearm was used while appellant and two other individuals burglarized and robbed a pawnshop and kidnapped the employees. Thus, appellant failed to demonstrate that his appellate counsel's performance was deficient or that he was prejudiced.

Finally, appellant contended that there was insufficient evidence to support his conviction for kidnapping. Appellant substantially raised this claim in his direct appeal. The doctrine of the law of the case


⁵See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

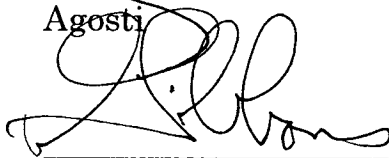
prevents further relitigation of this matter.⁶ Therefore, we affirm the district court's decision to deny this claim.

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.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁸


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

⁶Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁸We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Joseph T. Bonaventure, District Judge
Tarz Demone Mitchell
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk