

IN THE SUPREME COURT OF THE STATE OF NEVADA

CRISTOBAL MORALES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 41486

FILED

JUN 14 2004

ORDER OF AFFIRMANCE

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

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

On June 24, 1997, the district court, pursuant to a jury verdict, convicted Morales of trafficking in a controlled substance and sentenced him to a term of twenty-five years in prison. Morales appealed, and this court reversed his conviction because the district court improperly limited his peremptory challenges.<sup>1</sup> On October 19, 2000, the district court, pursuant to a jury verdict, again convicted Morales of trafficking in a controlled substance and sentenced him to twenty-five years in prison. This court affirmed Morales' judgment of conviction and sentence on appeal.<sup>2</sup> The remittitur issued on July 23, 2002.

On January 21, 2003, Morales filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed an answer. The district court did not appoint counsel; however,

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<sup>1</sup>See Morales v. State, 116 Nev. 19, 992 P.2d 252 (2000).

<sup>2</sup>See Morales v. State, Docket No. 37011 (Order of Affirmance, June 26, 2002).

it did conduct an evidentiary hearing. On June 19, 2003, the district court denied Morales' petition. This appeal followed.

In his petition, Morales raised three claims that should have been raised on direct appeal.<sup>3</sup> He claimed that he was unlawfully prosecuted on the basis of "uncertified copies of falsified and altered documents and occulted evidence"; his Miranda rights were violated when he was arrested; and Officer Thomas Carlson, Detective Joe Kelly, and Sergeant Anthony Nicosia committed perjury during his trial. Because these claims were direct appeal claims, Morales had the burden of pleading and proving specific facts that demonstrate good cause for failing to present these claims earlier and actual prejudice.<sup>4</sup> Morales failed to do so. Therefore, the district court did not err in denying these claims.

Next, Morales claimed that his trial and appellate counsel were ineffective. To state a claim of ineffective assistance of trial counsel, Morales must set forth specific facts that demonstrate that his counsel's performance fell below an objective standard of reasonableness and that the defective performance prejudiced Morales, i.e., that there was a reasonable probability that the result of the trial would have been different had counsel acted reasonably.<sup>5</sup> "A claim of ineffective assistance of appellate counsel is reviewed under the 'reasonably effective assistance' test set forth in Strickland v. Washington."<sup>6</sup> Appellate counsel is not

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<sup>3</sup>See NRS 34.810(1)(b)(2).

<sup>4</sup>See NRS 34.810(1)(b)(2), 3(a), 3(b).

<sup>5</sup>See Strickland v. Washington, 466 U.S. 668 (1984).

<sup>6</sup>Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1113 (1996).

required to raise every nonfrivolous issue on appeal.<sup>7</sup> This court has held that appellate counsel will be most effective when every conceivable issue is not raised on appeal.<sup>8</sup> To establish prejudice based on the deficient assistance of appellate counsel, Morales must demonstrate that the omitted issue would have had a reasonable probability of success on appeal.<sup>9</sup>

Morales claimed that his trial counsel was ineffective because his counsel knew that: documents regarding Morales' arrest, such as the traffic report, were not original certified copies; he did not have a copy of the audiotape of the arrest; every document involved in Morales' arrest and booking had different signatures by the same Officer Carlson; and the "Declaration of Arrest" was unsigned. Despite counsel's knowledge regarding these documents, Morales claimed that his counsel improperly "stipulated to the chain of custody." Morales also claimed that his appellate counsel was ineffective for failing to raise these issues on direct appeal.

We conclude that the district court did not err in denying these claims. Morales failed to demonstrate that his trial counsel's actions fell below an objective standard of reasonableness or how the result of his trial would have been different had his counsel raised these issues at trial.<sup>10</sup> In addition, Morales failed to show that had his appellate counsel

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<sup>7</sup>See Jones v. Barnes, 463 U.S. 745, 751 (1983).

<sup>8</sup>See Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989).


<sup>9</sup>See Kirksey, 112 Nev. at 998, 923 P.2d at 1114.


<sup>10</sup>See Strickland, 466 U.S. 668; see also Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).


raised these issues on direct appeal they would have had a reasonable probability of success on appeal.<sup>11</sup> Therefore, Morales failed to demonstrate that his trial or appellate counsel were ineffective.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Morales is not entitled to relief and that briefing and oral argument are unwarranted.<sup>12</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>13</sup>

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Gibbons

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<sup>11</sup>See Kirksey, 112 Nev. at 998, 923 P.2d at 1114; see also Hargrove, 100 Nev. 498, 686 P.2d 222.

<sup>12</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>13</sup>We have reviewed all documents that Morales 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 Morales has attempted to present claims or facts in those submissions that were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Donald M. Mosley, District Judge  
Cristobal Morales  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk