

IN THE SUPREME COURT OF THE STATE OF NEVADA

HAROLD STONEBARGER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41745

FILED

AUG 27 2004

ORDER OF AFFIRMANCE

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

This is an appeal from a district court order denying appellant Harold Stonebarger's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

On April 16, 2002, Stonebarger was convicted, pursuant to a guilty plea, of one count each of first-degree kidnapping and sexual assault of a minor under sixteen years of age. The district court sentenced Stonebarger to serve a prison term of life with parole eligibility in 5 years for the kidnapping count and a consecutive prison term of 5 to 20 years for the sexual assault count. Stonebarger did not file a direct appeal.

On April 15, 2003, Stonebarger, with the assistance of counsel, filed a post-conviction petition for a writ of habeas corpus. The State opposed the petition. After hearing arguments from counsel, the district court denied the petition, finding that trial counsel were not ineffective for failing to investigate. Stonebarger filed this timely appeal.

Stonebarger contends that the district court erred in rejecting his claim of ineffective assistance of counsel. In particular, Stonebarger

claims that his trial counsel failed to conduct an adequate pretrial investigation and retain expert witnesses.

The district court found that counsel were not ineffective under the standard set forth in Strickland v. Washington.¹ The district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal.² Stonebarger has failed to demonstrate that the district court's finding that trial counsel were not ineffective was not supported by substantial evidence or was clearly wrong. Moreover, Stonebarger has not demonstrated that the district court erred as a matter of law.

Stonebarger also contends that the district court violated his constitutional rights to due process and to confront the witnesses by having an unrecorded discussion with former trial counsel alleged to be ineffective about the allegations in Stonebarger's petition. We conclude that Stonebarger's contention lacks merit. Even assuming without deciding that the conference should have been recorded, Stonebarger has failed to show that the failure to record the discussion with former trial counsel has denied him a meaningful review of his conviction or amounted to a violation of his constitutional rights.³


¹466 U.S. 668 (1984).

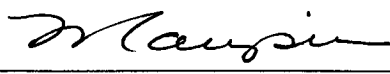
²See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

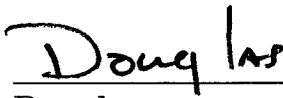
³Cf. Daniel v. State, 119 Nev. 498, 509-510, 78 P.3d 890, 897-98 (2003), cert. denied, ___ U.S. ___, 124 S. Ct. 2161 (2004).

Having considered Stonebarger's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Sally L. Loehrer, District Judge
Robert L. Langford & Associates
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk