

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES SANFORD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41759

CHARLES SANFORD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41764

FILED

DEC 14 2004

ORDER OF AFFIRMANCE

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

These are proper person appeals from orders of the district court denying appellant Charles Sanford's post-conviction petition for a writ of habeas corpus and motion to modify/correct an illegal sentence. We elect to consolidate these appeals for disposition.¹ Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

On April 6, 1999, the district court convicted Sanford, pursuant to a jury verdict, of two counts each of conspiracy to commit robbery and burglary, and one count each of robbery with the use of a deadly weapon and attempted robbery. On direct appeal, this court reversed the deadly weapon enhancement due to insufficient evidence, but affirmed the remainder of Sanford's judgment of conviction and sentence.²

¹See NRAP 3(b).

²Sanford v. State, Docket Nos. 33981, 34103 (Order Affirming in Part, Reversing in Part, and Remanding, February 18, 2003).

Sanford was ultimately sentenced to a period totaling 72 to 180 months in the Nevada State Prison.³

Post-Conviction Petition for a Writ of Habeas Corpus

On March 11, 2003, Sanford filed a timely proper person post-conviction petition for a writ of habeas corpus in the district court. On March 21, 2003, Sanford filed a supplement. The State opposed the petition. Sanford filed a reply. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Sanford or to conduct an evidentiary hearing. On August 29, 2003, the district court denied Sanford's petition. This appeal followed.

In his petition, Sanford raised numerous allegations of ineffective assistance of trial counsel.⁴ To state a claim of ineffective assistance of trial counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness.⁵ A petitioner must further establish

³An amended judgment of conviction was entered on March 10, 2003. A seconded amended judgment of conviction was entered on March 14, 2003.

⁴Sanford alleged ineffective assistance of appellate counsel on several of the following claims as well. Consistent with the reasoning discussed below, we conclude that Sanford failed to demonstrate that his appellate counsel was ineffective on these issues. See Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996). Additionally, to the extent that Sanford raised any of the following claims independently from his ineffective assistance of counsel claims, we conclude that they should have been raised on direct appeal and are therefore waived. See Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) overruled in part on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

⁵See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

a reasonable probability that, in the absence of counsel's errors, the results of the proceedings would have been different.⁶ The court can dispose of a claim if the petitioner makes an insufficient showing on either prong.⁷

First, Sanford claimed that his trial counsel was ineffective for failing to show the jury transcripts from his preliminary hearing in which the justice's court dismissed certain charges against him. The record reveals that a preliminary hearing was conducted with respect to the burglary on West Charleston. At the conclusion of the preliminary hearing, the justice's court dismissed a charge of first-degree kidnapping and any allegation regarding the use of a deadly weapon. The justice's court bound Sanford over to the district court on charges of conspiracy to commit robbery, burglary, and attempted robbery.

We conclude that Sanford's claim is without merit. Sanford did not articulate how the jury's knowledge of his dismissed charges would have aided his defense, such that the outcome of his trial would have been altered. Therefore, Sanford failed to demonstrate that his trial counsel was ineffective on this issue, and the district court did not err in denying the claim.

Second, Sanford contended that his trial counsel was ineffective for failing to inform the jury that no one was arrested at either crime scene. Testimony at trial revealed that the assailants fled both restaurants immediately after committing the crimes. Sanford was arrested in his home the same day the second restaurant was burglarized.

⁶Id.

⁷Strickland, 466 U.S. at 697.

Thus, the jury was aware that Sanford was not arrested at either crime scene. Sanford failed to articulate how the jury's knowledge that no one else was arrested at the crime scenes would have aided his defense. Consequently, he failed to demonstrate that his counsel was ineffective in this regard.

Third, Sanford alleged that his trial counsel was ineffective for failing to challenge jury instruction five, which provided a definition of reasonable doubt. However, Sanford did not provide a basis for objecting to the reasonable doubt jury instruction. Further, the jury instruction correctly stated the law. NRS 175.211 provides a statutory definition of reasonable doubt, which the court is required to give juries in criminal cases. The language used in jury instruction five was identical to that found in the statute. As such, Sanford did not establish that his trial counsel acted unreasonably in failing to object to this jury instruction, and the district court did not err in denying the claim.

Fourth, Sanford claimed that his trial counsel failed to investigate, interview, and subpoena essential alibi witnesses. A review of the record reveals that four witnesses testified for the defense that Sanford was running errands and gambling in a casino during the time the crimes were alleged to have occurred. Sanford did not state what additional alibi testimony his trial counsel failed to procure. Therefore, Sanford did not demonstrate that his trial counsel was ineffective on this issue.

Fifth, Sanford alleged that his trial counsel was ineffective for failing to object to the prosecutor's improper vouching and commentary during the trial. We have reviewed the record on appeal and conclude that the prosecutor did not improperly vouch for the State's witnesses, or make

inappropriate comments. Therefore, Sanford did not establish that his trial counsel was ineffective in this regard.

Sanford additionally raised numerous ineffective assistance of counsel claims regarding his charge of first-degree kidnapping and the deadly weapon enhancement.⁸ The record reveals that although the jury convicted Sanford of first-degree kidnapping, the district court set aside the verdict. Further, on appeal this court reversed the deadly weapon enhancement of Sanford's robbery conviction. Therefore, Sanford cannot demonstrate that he was prejudiced by any errors concerning these charges, as he was not convicted of them. Thus, Sanford did not establish that his trial counsel was ineffective on any of these issues, and the district court did not err in denying the claims.

In addition to the above claims, Sanford raised countless ineffective assistance of counsel claims that were not supported by specific, factual support. "A defendant seeking post-conviction relief cannot rely on conclusory claims for relief but must support any claims with specific factual allegations that if true would entitle him or her to relief."⁹ Because Sanford failed to include specific information concerning his trial counsel's allegedly deficient performance with respect to these claims, the district did not err in denying him relief.

⁸Although the justice's court dismissed a first-degree kidnapping charge and any allegation of a deadly weapon with respect to the West Charleston burglary, Sanford was tried on these charges in connection with the North Decatur burglary.

⁹Evans v. State, 117 Nev. 609, 621, 28 P.3d 498, 507 (2001).

Sanford next raised a number of allegations with respect to the joinder of his two cases for trial.¹⁰ On direct appeal, Sanford argued that his two cases were improperly joined for trial, and the district court erred in failing to hold a Petrocelli¹¹ hearing prior to consolidating the cases. This court concluded that the joinder of Sanford's two cases was proper. The doctrine of the law of the case prevents further litigation of this issue and "cannot be avoided by a more detailed and precisely focused argument."¹² Therefore, we affirm the order of the district court on this issue.

Finally, Sanford raised numerous claims involving allegedly prejudicial jury instructions, trial court error, and prosecutorial misconduct. Sanford additionally claimed that his double jeopardy rights were violated. These claims are outside the scope of a post-conviction petition for a writ of habeas corpus and should have been raised on direct appeal.¹³ Because Sanford did not demonstrate good cause for failing to raise these issues earlier,¹⁴ the district court did not err in denying him relief.

¹⁰To the extent that Sanford argued that his trial counsel was ineffective for failing to object to the joinder of his cases, we note that trial counsel did object and this claim is therefore belied by the record. See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

¹¹See Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985).

¹²Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975).

¹³See NRS 34.810(1)(b).

¹⁴See id.

Motion to Modify/Correct an Illegal Sentence

On April 17, 2003, Sanford filed a motion to modify/correct an illegal sentence in the district court. The State opposed the motion. On August 29, 2003, the district court denied Sanford's motion. This appeal followed.

A motion to modify a sentence "is limited in scope to sentences based on mistaken assumptions about a defendant's criminal record which work to the defendant's extreme detriment."¹⁵ A motion to modify a sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied.¹⁶ A motion to correct an illegal sentence may only challenge the facial legality of the sentence: either the district court was without jurisdiction to impose a sentence or the sentence was imposed in excess of the statutory maximum.¹⁷ "A motion to correct an illegal sentence 'presupposes a valid conviction and may not, therefore, be used to challenge alleged errors in proceedings that occur prior to the imposition of sentence.'"¹⁸

In his motion, Sanford raised numerous challenges to his judgment of conviction. These claims are not appropriately raised in either a motion to modify a sentence or a motion to correct an illegal sentence. Sanford did not claim that his sentence was based on a mistaken assumption concerning his criminal record. Further, Sanford's

¹⁵Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

¹⁶Id. at 708-09 n.2, 918 P.2d at 325 n.2.

¹⁷Id. at 708, 918 P.2d at 324.

¹⁸Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).


sentence is within the range prescribed by statute for the offenses of which he was convicted,¹⁹ and there is no indication that the district court was without jurisdiction. Consequently, the district court did not err in denying Sanford's motion to modify/correct an illegal sentence.

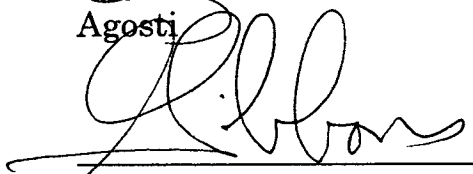
Conclusion

Having reviewed the records on appeal, and for the reasons set forth above, we conclude that Sanford is not entitled to relief and that briefing and oral argument are unwarranted.²⁰ Accordingly, we

ORDER the judgments of the district court AFFIRMED.²¹


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

¹⁹See NRS 193.330; 199.480; 200.380; 205.060.

²⁰See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

²¹We have reviewed all documents that Sanford 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 Sanford 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. Lee A. Gates, District Judge
Charles Sanford
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk