

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES DELBERT WILDER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 42026

FILED

NOV 15 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 a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge.

On April 7, 1999, the district court convicted appellant, pursuant to a jury verdict, of one count of trafficking in a controlled substance, one count of transporting a controlled substance, and one count of possession of a controlled substance. The district court sentenced appellant to serve a term of ten to twenty-five years in the Nevada State Prison for trafficking and two concurrent terms of twelve to forty-eight months for the other offenses. This court affirmed appellant's judgment of conviction on direct appeal.<sup>1</sup> The remittitur issued on January 2, 2002.

On March 6, 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 NRS 34.770, the district court declined to appoint counsel or conduct an evidentiary hearing. On August 11, 2003, the district court entered a written order

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<sup>1</sup>See Wilder v. State, Docket No. 34178 (Order of Affirmance, December 5, 2001).

denying the petition on the ground that the petition was procedurally time barred. Because there was a discrepancy between what transpired at the hearings on the petition and what was set forth in the written order, this court directed the district court to enter additional findings of fact and conclusions of law clarifying the basis for denying appellant's petition. On October 13, 2004, the district court entered new findings of fact and conclusions of law determining that there was good cause for the delay, but nevertheless denying the petition on its merits.<sup>2</sup> This appeal followed.

In his petition, appellant raised several claims of ineffective assistance of trial and appellate 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 counsel's errors were so severe that they rendered the jury's verdict unreliable.<sup>3</sup> A claim of ineffective assistance of appellate counsel is also reviewed under the test set forth in Strickland.<sup>4</sup> Appellate counsel is not required to raise every non-frivolous issue on appeal.<sup>5</sup> "To establish prejudice based on the deficient assistance of appellate counsel, the defendant must show that

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<sup>2</sup>We conclude that the district court did not abuse its discretion in determining that appellant had established good cause to excuse the delay in his petition. See Colley v. State, 105 Nev. 235, 773 P.2d 1229 (1989).

<sup>3</sup>See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

<sup>4</sup>Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1113 (1996).

<sup>5</sup>Jones v. Barnes, 463 U.S. 745, 751 (1983).

the omitted issue would have a reasonable probability of success on appeal."<sup>6</sup>

Appellant claimed that his trial counsel was ineffective for the following reasons: (1) failing to investigate and produce available evidence demonstrating relief from criminal charges; (2) failing to investigate and produce available witnesses, including Della Thompson who would have set out facts totally inconsistent with the State's theory; (3) failing to investigate, research and present a readily available legal presentation of the facts, through evidence and testimony of witnesses; (4) asserting a position antagonistic to appellant's interest and without his consent and failing to assist in planning of strategy at trial and sentencing; (5) failing to perform sworn obligation of office and contract; and (6) suffering from grave health and personal problems throughout his representation of appellant. Appellant claimed that his appellate counsel was ineffective for failing to argue in the opening brief that there was insufficient evidence to support the verdicts. Finally, appellant argued that his right to a fair trial and due process was denied because of the above errors.

The district court denied these claims because they were conclusory and without supporting facts. We conclude that the district court did not err. Appellant failed to support any of his claims with specific facts, which if true, would have entitled him to the relief requested.<sup>7</sup> Therefore, we conclude that appellant failed to demonstrate that his counsel was ineffective, and we affirm the order of the district court denying appellant's petition.

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<sup>6</sup>Kirksey, 112 Nev. at 998, 923 P.2d at 1114.

<sup>7</sup>See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

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.<sup>8</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>9</sup>

Becker, J.  
Becker

Agosti, J.  
Agosti

Gibbons, J.  
Gibbons

cc: Hon. John S. McGroarty, District Judge  
James Delbert Wilder  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>8</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>9</sup>We 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.