

IN THE SUPREME COURT OF THE STATE OF NEVADA

SCOTT LEROY NICHOLS,
Appellant,
vs.
WARDEN, HIGH DESERT STATE
PRISON, J. M. SCHOMIG,
Respondent.

No. 42102

FILED

SEP 15 2004

ORDER OF AFFIRMANCE

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

This is an appeal from a district court order denying appellant Scott Leroy Nichols' post-conviction petition for a writ of habeas corpus. Fourth Judicial District Court, Elko County; Andrew J. Puccinelli, Judge.

On October 26, 1999, Nichols was convicted, pursuant to a jury verdict, of two counts of level-three trafficking in a controlled substance. The district court sentenced Nichols to serve two consecutive life prison terms with parole eligibility in 10 years. Nichols appealed, and this court affirmed the judgment of conviction.¹ The remittitur issued on March 6, 2001.

On February 2, 2002, Nichols, with the assistance of counsel, filed a post-conviction petition for a writ of habeas corpus. The State opposed the petition, and Nichols filed a reply to the State's opposition. After conducting an evidentiary hearing, the district court denied the petition. Nichols filed this timely appeal.

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

¹Nichols v. State, Docket No. 35050 (Order of Affirmance, February 7, 2001).

that his trial counsel was ineffective for failing to file a pretrial writ petition alleging that the State presented insufficient evidence at the preliminary hearing. Citing to Konold v. Sheriff,² Glispey v. Sheriff,³ and Marshall v. State,⁴ Nichols contends that the State did not show that he had exclusive access or dominion and control over the motel room where the controlled substances were found. Additionally, Nichols contends that his trial counsel was ineffective in failing to call Lisa Nichols to testify at trial. Nichols argues that Lisa Nichols may have been able to identify who possessed the controlled substances found in the hotel room and, even if she did invoke her Fifth Amendment right to remain silent, "at least the jury would have been made aware of this." Finally, Nichols contends that his appellate counsel was ineffective in failing to challenge the validity of the trafficking convictions because there was insufficient evidence linking him to the methamphetamine and cocaine seized from the hotel room. We conclude that Nichols' contentions lack merit.

In this case, the district court found that counsel were not ineffective under the standard set forth in Strickland v. Washington.⁵ The district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal.⁶ Nichols has not demonstrated that the district court's finding that counsel were not

²94 Nev. 289, 579 P.2d 768 (1978).

³89 Nev. 221, 510 P.2d 623 (1973).

⁴110 Nev. 1328, 885 P.2d 603 (1994).


⁵466 U.S. 668 (1984).


⁶See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

ineffective was not supported by substantial evidence or was clearly wrong. Moreover, Nichols has not demonstrated that the district court erred as a matter of law.

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

ORDER the judgment of the district court AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Andrew J. Puccinelli, District Judge
Andrew M. Leavitt
Attorney General Brian Sandoval/Carson City
Elko County District Attorney
Elko County Clerk