

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARENCE M. YOUNKIN, III,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 42146

**FILED**

JUN 2 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
DEPUTY CLERK

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

On September 20, 2001, the district court convicted Younkin, pursuant to a jury verdict, of one count of first-degree kidnapping, three counts of sexual assault, and two counts of battery constituting domestic violence. The district court sentenced Younkin to serve two concurrent and two consecutive terms of life in the Nevada State Prison with the possibility of parole after a combined total of 280 months, plus two concurrent terms of 137 days in the Clark County Jail. This court affirmed the district court's judgment of conviction, and issued the remittitur on September 17, 2002.<sup>1</sup>

On June 27, 2003, Younkin 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 34.770, the district court declined to appoint counsel to represent Younkin or to

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<sup>1</sup>Younkin v. State, Docket No. 38565 (Order of Affirmance, August 21, 2002).

conduct an evidentiary hearing. On October 9, 2003, the district court summarily denied Younkin's petition. This appeal followed.

In his petition, Younkin raised several claims of ineffective assistance of trial 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 was deficient, and that the petitioner was prejudiced by counsel's performance.<sup>2</sup> The court need not consider both prongs of this test if the petitioner makes an insufficient showing on either prong.<sup>3</sup>

Younkin specifically claimed that trial counsel (1) failed to object during the jury trial at critical moments that would have changed the outcome of the verdict, (2) made improper comments during closing arguments which biased the jury, (3) failed to properly conduct pretrial discovery, (4) failed to investigate a motive for false accusations made by the witnesses, and (5) failed to notify the district court that he had severe medical conditions which should have been considered during sentencing. However, Younkin failed to support any of these claims with specific factual allegations which if true would entitle him to relief.<sup>4</sup> As such, we conclude that the district court did not err in denying these claims.

Younkin also claimed that the prosecutor misled the jury. However, he did not support this claim with specific factual allegations.<sup>5</sup>

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<sup>2</sup>Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996) (citing Strickland v. Washington, 466 U.S. 668, 687 (1984)).

<sup>3</sup>See Strickland, 466 U.S. at 697.

<sup>4</sup>See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).


<sup>5</sup>See id.


We note that Younkin previously raised a substantially similar claim on direct appeal and, as such, the doctrine of the law of the case prevents further litigation of this issue.<sup>6</sup> To the extent that this claim might be different, Younkin failed to show cause for not raising this claim on direct appeal and he failed to demonstrate actual prejudice if the claim was not considered.<sup>7</sup> As such, we conclude that the district court did not err in denying this claim.

Having reviewed the records on appeal and for the reasons set forth above, we conclude that Younkin 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.

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

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

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

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<sup>6</sup>Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

<sup>7</sup>See NRS 34.810(1)(b)(2).

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

cc: Hon. Valorie Vega, District Judge  
Clarence M. Younkin III  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk