

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEITH JOSEPH SHANLEY A/K/A
JOSEPH KEITH SHANLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42253

FILED

JUN 15 2005

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court denying appellant Keith Joseph Shanley's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

On November 3, 2000, the district court convicted Shanley, pursuant to a jury verdict, of one count each of discharging a firearm at or into a structure, conspiracy to commit murder, burglary while in possession of a firearm, attempted murder with the use of a deadly weapon and murder with the use of a deadly weapon. The district court sentenced Shanley to serve a term of life in the Nevada State Prison with the possibility of parole after twenty years for the murder conviction, plus an equal and consecutive term for the deadly weapon enhancement. Shanley was also sentenced to multiple determinate concurrent terms for his other convictions. This court affirmed in part, reversed in part and remanded for correction of the judgment of conviction on direct appeal.¹ The remittitur issued on November 8, 2002.

¹Shanley v. State, Docket No. 37120 (Order Affirming in Part, Reversing in Part and Remanding, July 11, 2002). It appears that the *continued on next page . . .*

On July 14, 2003, Shanley 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 Shanley or to conduct an evidentiary hearing. On September 24, 2003, the district court denied Shanley's petition. This appeal followed.²

In this appeal Shanley contends that the district court erred in denying his petition without first conducting an evidentiary hearing on several of his claims of ineffective assistance of trial counsel. "A petitioner for post-conviction relief is entitled to an evidentiary hearing only if he supports his claims with specific factual allegations that if true would entitle him to relief. The petitioner is not entitled to an evidentiary hearing if the factual allegations are belied or repelled by the record."³ The burden is on the petitioner to establish the factual allegations in support of his petition.⁴

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.⁵

... continued

district court entered an amended judgment of conviction on February 3, 2003, in compliance with this order.

²We note that Shanley is represented by counsel in this appeal.

³Thomas v. State, 120 Nev. 37, 44, 83 P.3d 818, 823 (2004) (citations omitted).

⁴See id.

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

A petitioner must further establish 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

Shanley argues that he alleged sufficient facts in his petition to warrant an evidentiary hearing on his claims that his trial counsel was ineffective for: (1) failing to interview or present specific impeachment witnesses; (2) failing to investigate prosecutorial inducement of witness testimony; (3) failing to present expert impeachment evidence; (4) failing to present an exculpatory clandestine tape recording; and (5) failing to present expert exculpatory evidence.

Although Shanley supported these claims with specific facts, he has failed to demonstrate that the district court erred in rejecting these claims. Shanley failed to provide this court with an adequate record to review these assignments of error.⁸ Specifically, Shanley failed to provide this court with any district court documents pertaining to the trial, including trial transcripts. Without the trial transcripts, this court cannot review whether trial counsel failed to present impeachment or exculpatory witnesses and evidence, or evaluate whether trial counsel acted unreasonably. Shanley also failed to provide this court with a copy of the tape recording. Without the tape recording, this court is unable to review Shanley's claim that his counsel was deficient for failing to present the tape recording at trial. Moreover, even assuming, without deciding, that

⁶Id.

⁷Strickland, 466 U.S. at 697.


⁸See Lee v. Sheriff, 85 Nev. 379, 380-81, 455 P.2d 623, 624 (1969).

these errors had occurred, Shanley failed to demonstrate that he was prejudiced by his counsel's conduct. Accordingly, we conclude that the district court did not err in denying these claims without first conducting an evidentiary hearing.

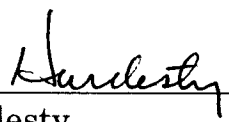
Shanley also contends that the district court erred by failing to set forth specific findings of fact pertaining to the above listed allegations of ineffective assistance of counsel. Based on our review of the appendix, we conclude that the district court order denying Shanley's post-conviction habeas corpus petition was sufficient.⁹ Accordingly, we conclude that no relief is warranted on this claim.

Having reviewed the record before this court and Shanley's assignments of error, we conclude that the district court did not err, and we

ORDER the judgment of the district court AFFIRMED.¹⁰


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

⁹See NRS 34.830(1).

¹⁰We note that Shanley asserted multiple additional claims in his habeas petition below, but did not allege that the district court erred in denying these claims. Accordingly, we did not consider these claims, and we conclude that Shanley abandoned these claims on appeal.

cc: Hon. Valorie Vega, District Judge
Herbert Sachs
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk