

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICARDO ANTONIO ABREGO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42255

FILED

APR 29 2004

ORDER OF AFFIRMANCE

JANEITE M. GLOON
CLERK OF SUPREME COURT
BY *J. Rubade*
CHIEF DEPUTY CLERK

This is an appeal from an order of the district court denying appellant Ricardo Antonio Abrego's post-conviction petition for a writ of habeas corpus.

On May 1, 1998, the district court convicted Abrego, pursuant to a jury verdict, of conspiracy to commit robbery (count I), attempted robbery with the use of a deadly weapon (count II), and coercion with the use of a deadly weapon (count III). The district court sentenced Abrego to serve a prison term of 12 to 48 months for count I, two consecutive prison terms of 16 to 72 months for count II to run concurrently with count I, and two consecutive prison terms of 16 to 72 months for count III, to run consecutively to counts I and II. This court dismissed Abrego's direct appeal.¹

On March 2, 2001, Abrego filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. The district court declined to appoint counsel, but conducted an evidentiary hearing without Abrego being present.

¹Abrego v. State, Docket No. 32442 (Order Dismissing Appeal, March 2, 2000).

Thereafter, the district court denied the petition. Abrego appealed, and this court reversed and remanded this case to the district court for another evidentiary hearing, ruling that Abrego's statutory rights had been violated as discussed in Gebers v. State.²

On remand, a different district court was assigned to review Abrego's petition. The district court appointed counsel to represent Abrego, and counsel supplemented the petition. After entertaining arguments from counsel, the district court denied the petition without conducting an evidentiary hearing. This appeal followed.

Abrego contends that the district court erred in rejecting his claims of ineffective assistance of counsel. In particular, Abrego claims that his trial counsel was ineffective for failing to object to: (1) trial testimony that referenced the dismissed kidnapping charges; (2) the unnecessarily suggestive show-up identification; and (3) the State's improper arguments made at the sentencing hearing involving prior uncharged bad acts. Additionally, Abrego contends that both trial and appellate counsel were ineffective in failing to raise a misidentification defense. Finally, Abrego contends that, cumulatively, the instances of ineffective assistance of counsel deprived him of his constitutional right to a fair trial.

In this case, the district court found that counsel were not ineffective under the standard set forth in Strickland v. Washington.³ The district court's factual findings regarding a claim of ineffective assistance

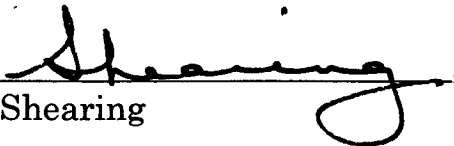
²118 Nev. 500, 50 P.3d 1092 (2002); see Abrego v. State, Docket No. 38602 (Order of Reversal and Remand, November 6, 2002).

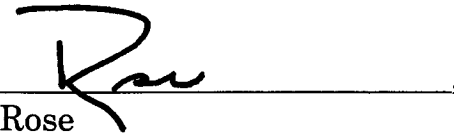
³466 U.S. 668 (1984).

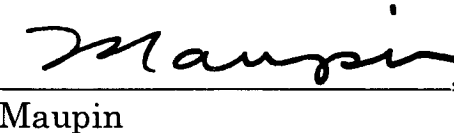
of counsel are entitled to deference when reviewed on appeal.⁴ Notwithstanding the district court's failure to follow this court's instructions and, on remand, conduct an evidentiary hearing, Abrego has not demonstrated that the district court's finding that trial counsel were not ineffective was not supported by substantial evidence or was clearly wrong. Moreover, Abrego has not demonstrated that the district court erred as a matter of law.

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

ORDER the judgment of the district court AFFIRMED.

 C.J.
Shearing

 J.
Rose

 J.
Maupin

cc: Hon. Joseph T. Bonaventure, District Judge
J. Chip Siegel, Chtd.
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁴See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).