

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATTHEW JOHN CAUSEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42294

FILED

JUN 25 2004

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

Appellant was originally convicted, pursuant to a jury verdict, of one count each of first-degree murder with use of a deadly weapon, third-degree arson, and trafficking in a controlled substance. The district court sentenced appellant: to a prison term of life with the possibility of parole after 20 years for murder, with an equal and consecutive term for the use of a deadly weapon; to a concurrent prison term of 19 to 48 months for arson; and to a consecutive prison term of 18 to 50 months for trafficking.

Appellant filed a direct appeal, challenging the jury instructions regarding premeditation, deliberation, and reasonable doubt.

This court affirmed the judgment of conviction.¹ Appellant subsequently filed a post-conviction petition which the district court dismissed, finding that it was not properly verified. On appeal, this court reversed and remanded for further proceedings.² On remand, the district court appointed counsel and counsel filed a supplement to the petition. The district court denied the petition without an evidentiary hearing.

In the petition, appellant presented claims of ineffective assistance of counsel. The district court found that counsel was not ineffective. Appellant contends that: (1) trial counsel was ineffective for failing to request a transition jury instruction regarding the consideration of first and second degree murder; (2) appellate counsel was ineffective for failing to argue prosecutorial vindictiveness; and (3) trial counsel was ineffective for failing to object to the jury instruction defining malice.


The district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal. Based on our review of the record, appellant has not demonstrated that the district court's findings of fact are not supported by substantial evidence or are clearly wrong. Moreover, appellant has not


¹Causey v. State, Docket No. 33012 (Order Dismissing Appeal, July 7, 2000).

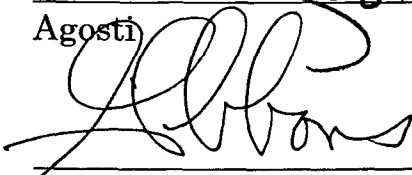
²Causey v. State, Docket No. 36721 (Order of Reversal and Remand, December 5, 2001).

demonstrated that the district court erred as a matter of law. Accordingly,
we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Steven P. Elliott, District Judge
Scott W. Edwards
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk