

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES EDMONDSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42476

FILED

JUN 28 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant James Edmondson's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michael A. Cherry, Judge.

On June 6, 2000, the district court convicted Edmondson, pursuant to a jury verdict, of three counts of lewdness with a minor under fourteen, and one count of sexual assault on a minor under fourteen. The district court sentenced Edmondson to serve three concurrent terms of life in the Nevada State Prison with the possibility of parole after ten years, and a consecutive term of life with the possibility of parole after twenty years. This court affirmed Edmondson's judgment of conviction and sentence on appeal.¹ The remittitur issued on March 5, 2002.

On February 6, 2003, Edmondson 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 Edmondson or to

¹Edmondson v. State, Docket No. 36359 (Order of Affirmance, February 8, 2002).

conduct an evidentiary hearing. On November 25, 2003, the district court denied Edmondson's petition. This appeal followed.

In his petition, Edmondson raised several claims of ineffective assistance of trial counsel. To state a claim of ineffective assistance of trial counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness.² A petitioner must further establish that there is a reasonable probability that in the absence of counsel's errors, the results of the proceedings would have been different.³ The court can dispose of a claim if the petitioner makes an insufficient showing on either prong.⁴

First, Edmondson claimed that his trial counsel was ineffective for failing to investigate and present mitigating evidence at his sentencing hearing. Edmondson alleged that his trial counsel should have procured testimony from the victim and her mother. Edmondson contended that although they testified against Edmondson at trial, they would have requested that Edmondson receive the minimum sentence.

We conclude that Edmondson failed to demonstrate that he was prejudiced by the actions of his trial counsel. During the sentencing hearing, Edmondson's trial counsel highlighted the statement of the victim in the pre-sentence investigation report (PSI). In Edmondson's PSI, the victim and her mother requested that Edmondson serve at least five

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

³Id.

⁴Strickland, 466 U.S. at 697.

years in prison, or until the victim becomes an adult. Further, during the trial, the district court heard statements from the victim in which she testified that she loved Edmondson. Thus, we conclude that Edmondson failed to demonstrate that the outcome of the sentencing hearing would have been different if his trial counsel had obtained testimony from the victim and her mother, and we affirm the order of the district court with respect to this claim.⁵

Second, Edmondson contended that his trial counsel was ineffective for not bringing an error in his PSI to the district court's attention. Specifically, Edmondson stated that his PSI erroneously concluded that he was convicted of two counts of sexual assault, rather than one. A review of the record reveals that during the sentencing hearing, trial counsel alerted the district court to the fact that Edmondson was only convicted of one count of sexual assault. Therefore, Edmondson's claim is belied by the record,⁶ and we affirm the order of the district court with respect to this claim.

Third, Edmondson alleged that his trial counsel was ineffective for failing to ensure that he received a psychosexual evaluation prior to sentencing. Edmondson contended that he would have received probation or a more lenient sentence if a psychosexual evaluation had been conducted.

⁵To the extent that Edmondson argued that his trial counsel failed to investigate or present mitigating evidence or other character witnesses at his sentencing hearing, we note that these allegations were not supported by specific facts concerning counsel's ineffectiveness. See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

⁶See id. at 503, 686 P.2d at 225.

A psychosexual evaluation is required when a defendant is convicted of a crime for which the granting of probation is permitted.⁷ At the time Edmondson was convicted, lewdness with a minor under fourteen was an offense for which the district court could grant probation.⁸ Probation was not available for Edmondson's sexual assault conviction.⁹ The record does not belie Edmondson's claim that he was not given a psychosexual evaluation. We conclude, however, that Edmondson failed to demonstrate that the results of his sentencing hearing would have been different if he had been given a psychosexual evaluation. Thus, Edmondson did not establish that his trial counsel was ineffective on this issue, and the district court did not err in denying the claim.

Edmondson next raised a claim of ineffective assistance of appellate counsel. To establish ineffective assistance of appellate counsel, a petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness, and the deficient performance prejudiced the defense.¹⁰ "To establish prejudice based on the deficient assistance of appellate counsel, the defendant must show that the omitted issue would have a reasonable probability of success on appeal."¹¹

⁷NRS 176.139.

⁸See 1999 Nev. Stat., ch. 288, § 10, at 1192.

⁹See NRS 176A.100.

¹⁰See Strickland, 466 U.S. 668; Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

¹¹Kirksey, 112 Nev. at 998, 923 P.2d at 1114.

Appellate counsel is not required to raise every non-frivolous issue on appeal.¹²

Edmondson contended that his appellate counsel was ineffective for failing to appeal the constitutionality of NRS 48.045 as applied to his case. Specifically, Edmondson claimed that his appellate counsel should have argued that the district court erred in allowing evidence of prior bad acts that occurred twenty-seven years ago. This court addressed this issue on direct appeal, however. Thus, Edmondson's claim that his appellate counsel failed to raise this issue on direct appeal is belied by the record.¹³ Further, the doctrine of the law of the case prevents further litigation of this issue and "cannot be avoided by a more detailed and precisely focused argument."¹⁴ Therefore, we affirm the order of the district court on this issue.

As a final matter, we note that the district court erred in concluding that Edmondson must attach affidavits, records, or other evidence supporting his allegations to his petition. NRS 34.735, which sets forth the form of the habeas corpus petition, does not require a petitioner to attach affidavits in support of claims raised in the petition. The determination of whether an evidentiary hearing is required can be made on the claims as presented in the petition. Any more stringent requirement may deprive a prisoner of adequate access to the courts. Because we determine that the district court did not err in denying

¹²Jones v. Barnes, 463 U.S. 745, 751 (1983).


¹³See Hargrove, 100 Nev. at 503, 686 P.2d at 225.


¹⁴Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975).

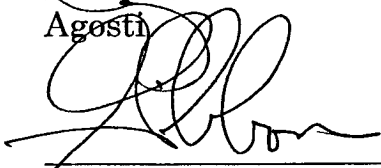
Edmondson's petition without conducting an evidentiary hearing, however, the district court's mistaken conclusion was harmless.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Edmondson is not entitled to relief and that briefing and oral argument are unwarranted.¹⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹⁶


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Michael A. Cherry, District Judge
James Edmondson
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

¹⁵See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹⁶We have reviewed all documents that Edmondson has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that Edmondson has attempted to present claims or facts in those submissions that were not previously presented in the proceedings below, we have declined to consider them in the first instance.