

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD L. WALKER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42478

FILED

AUG 13 2004

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying appellant Richard Walker's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On October 28, 2002, the district court convicted Walker, pursuant to a jury verdict, of battery with the use of a deadly weapon. The district court sentenced Walker to serve a term of 48 to 120 months in the Nevada State Prison. On appeal, this court affirmed Walker's judgment of conviction and sentence.¹ The remittitur issued on February 28, 2003.

On August 7, 2003, Walker 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, the district court declined to appoint counsel to represent Walker. On November 14, 2003, the district court conducted an evidentiary hearing. On January 29, 2004, the district court denied Walker's petition. This appeal followed.

¹Walker v. State, Docket No. 40359 (Order of Affirmance, February 3, 2003).

In his petition, Walker 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 if counsel had not committed the error, there is a reasonable probability that 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 The district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal.⁵

First, Walker contended that his trial counsel was ineffective for failing to discuss Walker's case with him. Walker further argued that his trial counsel never discussed any possible defenses with him. Walker's trial counsel, Amy Coffee, testified that she had numerous conversations with Walker concerning his case, and believed she was prepared at the time of trial. Coffee additionally stated that she discussed possible defenses to both of Walker's charges with him. Based on Coffee's testimony, the district court's determination was supported by substantial

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.

⁵Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

evidence and was not clearly wrong.⁶ As such, we affirm the order of the district court with respect to this claim.

Second, Walker claimed that his trial counsel was ineffective for failing to conduct any pre-trial investigation. At the evidentiary hearing, Coffee testified that an investigator from her office visited the crime scene, interviewed all material witnesses, and spoke with the victim. Coffee stated that she did not believe any more investigation was necessary. Walker did not specify what additional pre-trial investigation his trial counsel should have conducted, such that the outcome of his trial would have been altered. Consequently, Walker failed to establish that his trial counsel was ineffective on this issue, and the district court did not err in denying the claim.

Third, Walker alleged that his trial counsel was ineffective for failing to file any pre-trial motions. Specifically, Walker argued that his trial counsel should have filed a motion to dismiss his charge for attempted murder. However, Walker was not convicted of attempted murder. Thus, he failed to demonstrate that he was prejudiced by any failure of his trial counsel in relation to his attempted murder charge, and we affirm the order of the district court with respect to this claim.

Fourth, Walker claimed that his trial counsel was ineffective for failing to retain an expert in the field of accident reconstruction. Attorney Coffee testified that she did not believe there was any utility in hiring an expert in accident reconstruction because it was undisputed that the victim's car was hit, went through the intersection, and was later destroyed. Based on Coffee's testimony, we conclude that Walker did not

⁶See id.

establish that his trial counsel was ineffective on this issue, and the district court did not err in denying the claim.

Fifth, Walker contended that his trial counsel was ineffective for failing to file a "motion for impeachment." Walker alleged that Officer Ryan gave inconsistent testimony during Walker's preliminary hearing. Further, Walker argued that Fausto Gutierrez's trial testimony was inconsistent with his preliminary hearing testimony. We initially note that Nevada law does not provide for the filing of a "motion for impeachment." To the extent that Walker is arguing that his trial counsel should have impeached Officer Ryan and Gutierrez during trial, this claim is without merit. First, during Walker's trial, his counsel did question Gutierrez about his inconsistent preliminary hearing testimony; therefore, this claim is belied by the record.⁷ Further, Walker failed to demonstrate that impeachment of Officer Ryan based on his allegedly inconsistent statements during the preliminary hearing would have altered the outcome of his trial. Consequently, we affirm the order of the district court with respect to this claim.

Sixth, Walker alleged that his trial counsel was ineffective for allowing his speedy trial rights to be violated. Walker invoked his right to a speedy trial on March 22, 2001; his trial did not begin until July 29, 2002. Attorney Coffee testified that the trial was delayed one time because there were no judges available; another time Coffee requested a continuance because she needed to file a motion. Coffee further stated that because Walker was out of custody during much of this time, she wanted to give priority to her clients who were in jail.

⁷See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

The 60-day rule, as prescribed by NRS 178.556, provides that the district court may dismiss charges against a defendant who is not brought to trial within 60 days of his arraignment. However, the 60-day rule is mandatory only when there is a lack of good cause for the delay.⁸ Further, trial counsel is authorized to waive the 60-day rule.⁹ In the instant case, Walker failed to demonstrate that there was a lack of good cause for the delay in bringing him to trial. As such, Walker did not establish that his trial counsel was ineffective in this area, and the district court did not err in denying this claim.

Seventh, Walker claimed that his trial counsel was ineffective for entering into a conspiracy with the justice's court and prosecutor to withhold exculpatory evidence during the preliminary hearing. We conclude that Walker failed to support this claim with sufficient facts, or adequately articulate how his counsel was ineffective in this area.¹⁰ Thus, we affirm the order of the district court with respect to this claim.

Eighth, Walker alleged that his trial counsel was ineffective for failing to call David Meng as a witness during his preliminary hearing. Meng witnessed the incident at issue, and testified during trial. At the evidentiary hearing, Coffee testified that Meng's testimony was extremely damaging and it was to Walker's advantage that the State did not call Meng at the preliminary hearing. Based on this testimony, we conclude that the district court's determination was supported by substantial

⁸Huebner v. State, 103 Nev. 29, 31, 731 P.2d 1330, 1332 (1987).

⁹Schultz v. State, 91 Nev. 290, 292, 535 P.2d 166, 167 (1975).

¹⁰See Hargrove, 100 Nev. at 502, 686 P.2d at 225.

evidence and was not clearly wrong.¹¹ Consequently, we affirm the order of the district court with respect to this claim.

Ninth, Walker claimed that his trial counsel was ineffective for failing to procure the testimony of emergency medical workers. Walker argued that emergency medical personnel examined the victim shortly after the incident, and would have testified that she did not sustain any serious injuries. However, substantial bodily injury was not an element of the crime of which Walker was convicted.¹² Moreover, the victim herself testified during trial that the only injury she received was a headache. Therefore, Walker did not demonstrate that the outcome of his trial would have been altered if his trial counsel had obtained testimony from medical workers, and we affirm the order of the district court in this regard.

Tenth, Walker contended that: (1) the justice's court conducted an illegal proceeding, (2) the State violated his right to a speedy trial, (3) his conviction violates the prohibition against double jeopardy, (4) the district court allowed testimony that violated the spousal privilege, and (5) the district court failed to correctly instruct the jury on the definition of a deadly weapon and the elements of battery with the use of a deadly weapon. These claims are outside the scope of a post-conviction petition for a writ of habeas corpus, however, and Walker did not provide good cause for failing to raise them earlier.¹³


¹¹See Riley, 110 Nev. at 647, 878 P.2d at 278.

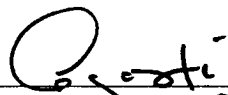
¹²See NRS 200.481(2)(e)(1).

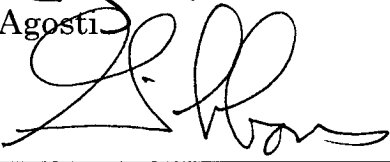
¹³See NRS 34.810(1)(b)(2).

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Walker is not entitled to relief and that briefing and oral argument are unwarranted.¹⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹⁵


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Donald M. Mosley, District Judge
Richard L. Walker
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

¹⁴See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹⁵We have reviewed all documents that Walker 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 Walker 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.