

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEPHEN HENRY SCHAROSCH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46177

FILED

APR 07 2006

ORDER OF AFFIRMANCE

JANETTE 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; Robert H. Perry, Judge.

Appellant Stephen Scharosch was originally convicted, pursuant to a guilty plea, of five counts of driving under the influence causing death, and two counts of driving under the influence causing substantial bodily harm. No direct appeal was taken, but Scharosch filed a timely proper person post-conviction habeas petition raising claims of ineffective assistance of counsel. The district court appointed counsel who filed a supplemental petition and an amended petition. Without conducting an evidentiary hearing, the district court denied the petition.


On appeal, Scharosch first contends that the district court erred by denying his claim that counsel was ineffective for failing to present evidence at sentencing regarding the victims' failure to wear seatbelts. The district court found that in light of the fact that Scharosch was intoxicated at the time of the accident and driving the wrong way on the interstate, presentation of the seatbelt evidence at sentencing would not have affected the sentence Scharosch received. Moreover, the presentence investigation report noted that most of the victims were not wearing seatbelts. Scharosch had therefore failed to demonstrate

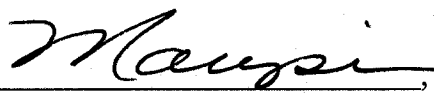
prejudice.¹ We conclude that the district court did not err by denying this claim.

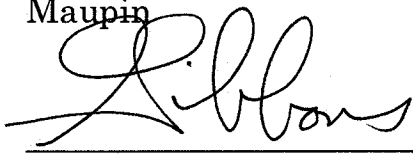
Scharosch also contends that the district court erred by denying his claim that counsel was ineffective for failing to investigate and present evidence that Scharosch had suffered a brain aneurysm 10 years prior to the accident. Scharosch argues that the aneurysm resulted in a loss of impulse control and created a binge pattern to his drinking. The district court, however, found that presentation of the evidence would not have resulted in a different sentence. Because Scharosch again failed to demonstrate prejudice, we conclude that the district court did not err by denying this claim.

Having considered Scharosch's contentions and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.

 C.J.
Rose

 J.
Maupin

 J.
Gibbons

¹See Strickland v. Washington, 466 U.S. 668, 687 (1984); accord Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984) (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, and that counsel's deficient performance prejudiced the defense).

cc: Hon. Robert H. Perry, District Judge
Mary Lou Wilson
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk