

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANNY ANDREW YOUNG,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58352

FILED

NOV 17 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE AND LIMITED REMAND TO CORRECT
JUDGMENT OF CONVICTION

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

In his petition, filed on January 12, 2011, appellant claimed that he received ineffective assistance of counsel. To prove ineffective assistance of trial counsel, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability that, but for counsel's errors, the outcome of the proceedings would have been different. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

(1984) (adopting the test in Strickland). Similarly, to prove ineffective assistance of appellate counsel, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that the omitted issue would have a reasonable probability of success on appeal. Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). Both components of the inquiry must be shown, Strickland, 466 U.S. at 697, and the petitioner must demonstrate the underlying facts by a preponderance of the evidence, Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).

First, appellant claimed that trial counsel was ineffective for allowing admission of a telephone recording that reflected appellant's in-custody status. He further claimed that counsel was ineffective for failing to allow appellant the opportunity to listen to the recording prior to trial. Appellant failed to demonstrate that trial counsel was deficient or that he was prejudiced. Counsel filed a pretrial motion to exclude the recording, and the recording was admitted over counsel's continuing objection. Appellant conceded in his petition that he had received a transcribed copy of the recordings prior to trial. Appellant failed to demonstrate how the result of trial would have been different had he received an opportunity to listen to the actual audio recording. Further, while this court determined on direct appeal that the district court erred in allowing portions of the recordings that reflected appellant's in-custody status, this court ultimately concluded that any error related to the admission of the recording was harmless. Young v. State, Docket No. 54017 (Order of Affirmance, May 10, 2010). Therefore, the district court did not err in rejecting this claim.

Second, appellant claimed that trial counsel was ineffective, and allowed the State to commit prosecutorial misconduct, by allegedly suppressing other exculpatory jailhouse recordings. Beyond his blanket statement that the recordings were exculpatory and suppressed by both the State and defense counsel, appellant failed to support this claim with any specific factual allegations which, if true, would entitle him to relief. See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Therefore, the district court did not err in denying this claim.

Third, appellant claimed that trial counsel was ineffective for failing to subpoena three defense witnesses who would have been “beneficial” to his case. While appellant provided the names of the witnesses, he failed to describe the nature of their testimony, or to support this claim with any other specific factual allegations which, if true, would entitle him to relief. See id. Accordingly, the district court did not err in denying this claim.

Fourth, appellant claimed that trial counsel was ineffective for failing to meet with him and sufficiently prepare him for trial. In light of the overwhelming evidence presented against appellant, including the victim’s testimony and DNA evidence, appellant failed to demonstrate a reasonable probability of a different result at trial had he received additional meeting time with counsel. Accordingly, the district court did not err in denying this claim.

Fifth, appellant claimed that appellate counsel was ineffective for failing to argue that insufficient evidence supported his separate convictions for two counts of sexual assault and attempted sexual assault. Appellant failed to demonstrate that counsel was deficient or that he was prejudiced. Appellate counsel raised this argument on direct appeal, as

well as the argument that appellant's convictions for sexual assault and attempted sexual assault were redundant. This court considered and rejected each of these arguments. Young v. State, Docket No. 54017 (Order of Affirmance, May 10, 2010). Accordingly, the district court did not err in denying this claim.

Sixth, appellant claimed that this court conducted an inadequate review of his direct appeal, and that this court ignored or wrongly decided his claims. This claim was not cognizable in a post-conviction petition for a writ of habeas corpus filed in the district court, as the district court lacked jurisdiction to overrule any decision issued by this court. See Nev. Const. art. I, § 6. In addition, as this court reviewed all claims in appellant's direct appeal and determined that they lacked merit, any further litigation of appellant's direct appeal claims is barred by the doctrine of law of the case, which "cannot be avoided by a more detailed and precisely focused argument." Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975). Therefore, the district court did not err in denying this claim.

Seventh, appellant claimed that the district court violated his right against double jeopardy when it allowed admission of testimony regarding a prior conviction for sexual assault of a mentally handicapped woman in appellant's care, that evidence related to the prior sexual assault was inadmissible bad act evidence, that the State presented insufficient evidence to prove two counts of sexual assault and attempted sexual assault, and that the district court wrongfully admitted a jailhouse recording of appellant's outgoing telephone calls. This court considered, and rejected, each of these claims on direct appeal. Young v. State, Docket No. 54017 (Order of Affirmance, May 10, 2010). Accordingly, these claims

are barred by the doctrine of law of the case, which “cannot be avoided by a more detailed and precisely focused argument.” Hall, 91 Nev. at 316, 535 P.2d at 799. Therefore, the district court did not err in denying these claims.

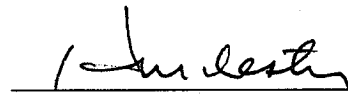
Eighth, appellant claimed that the district court committed multiple errors that violated his Sixth Amendment confrontation rights, that he did not receive a fair and impartial trial due to juror bias, that the district court admitted other inappropriate bad act evidence, that the district court violated appellant’s constitutional rights by not granting his motion for a continuance, and that the district court wrongfully sentenced appellant under 2009 Nevada law, rather than 2004 law.² Appellant could have raised these claims on direct appeal and failed to do so. Therefore, appellant waived the right to raise these claims absent a demonstration of good cause and prejudice. NRS 34.810(1)(b). Appellant raised no facts to show either good cause or prejudice. Accordingly, the district court did not err in denying these claims.

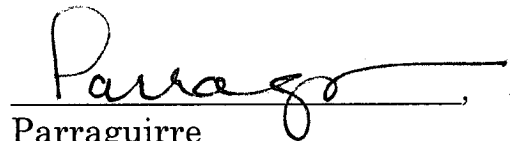
Finally, we note that the judgment of conviction contains a clerical error insofar as it identifies attempted sexual assault as a “category A felony.” Attempted sexual assault is a category B felony. See 1997 Nev. Stat., ch. 314, § 2, at 1178. We accordingly remand this case for the limited purpose of correcting the judgment of conviction. Therefore, we

²Appellant’s last claim is also patently without merit, as each of his sentences was valid under 2004 Nevada law. See 2003 Nev. Stat., ch. 461, § 1, at 2825 (sexual assault); 1997 Nev. Stat., ch. 314, § 2, at 1178 (attempts); 1995 Nev. Stat., ch. 443, § 83, at 1198 (incest).

ORDER the judgment of the district court AFFIRMED and REMAND to the district court for the limited purpose of correcting the judgment of conviction.


_____, J.
Douglas


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Jackie Glass, District Judge
Danny Andrew Young
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk