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3 **Clark County District Attorney**
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7 **Nevada Bar #004352**
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9 **Las Vegas, Nevada 89155-2212**
10 **(702) 455-4711**
11 **Attorney for Plaintiff**

FILE!

DEC 1 8 56 AM '04

Shirley L. Parnell
CLERK

44094

DISTRICT COURT
CLARK COUNTY, NEVADA

9 **THE STATE OF NEVADA,**

10 **Plaintiff,**

11 **-vs-**

12 **MICHAEL DAMON RIPPO,**
13 **#0619119**

14 **Defendant.**

CASE NO: C106784

DEPT NO: XIV

FILED

15
16 **FINDINGS OF FACT, CONCLUSIONS OF**
17 **LAW AND ORDER**

FEB 22 2005

18 **DATE OF HEARING: 9/10/04**
19 **TIME OF HEARING: 9:00 P.M.**

JANETTE M. BLOOM
JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY: [Signature] DEPUTY CLERK

20 **THIS CAUSE** having come on for hearing before the Honorable Donald M. Mosley,
21 **District Judge**, on the 10th day of September, 2004, the Petitioner being present, represented
22 **by CHRISTOPHER R. ORAM, ESQ.,** the Respondent being represented by **DAVID**
23 **ROGER, District Attorney,** by and through **STEVEN S. OWENS, Chief Deputy District**
24 **Attorney,** and the Court having considered the matter, including briefs, transcripts,
25 **arguments of counsel,** and documents on file herein, now therefore, the Court makes the
26 **following findings of fact and conclusions of law:**

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JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

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FINDINGS OF FACT

Defendant filed a Petition of Writ of Habeas Corpus (Post Conviction) on December 4, 1998, followed by attorney David Schieck's Supplemental Points and Authorities in Support of the Petition on August 8, 2002, alleging ineffective assistance of counsel at trial. The State filed its Opposition on October 14, 2002. Thereafter, attorney Chris Oram was appointed and filed a Supplemental Brief on February 10, 2004, alleging ineffective assistance of counsel on appeal. The State filed its Response on April 6, 2004. Affidavits were filed on behalf of trial counsel Steven Wolfson and Philip Dunleavy and appellate counsel David Schieck. An evidentiary hearing was held on August 20, 2004 and continued on September 10, 2004, at which all three attorneys gave testimony.

The performance of trial counsel did not fall below a standard of reasonable effectiveness under the Strickland test. With hindsight there are things that could be said about a trial that could be done differently, but counsel is not clairvoyant and can not know what the law will be in the future except through the benefit of hindsight. Defendant is entitled to a fair trial, but not a perfect trial. Trial counsel worked diligently and covered all the bases and did not fall below the Strickland standard.

Appellate counsel did not include certain issues in the appeal for three valid reasons: one, the issues were not preserved by contemporaneous objection and none of the alleged errors were so absolute that they would have been entertained without such preservation in the record; two, some of the issues were for ineffective assistance of counsel and are better left to be reviewed through the writ process; and three, many of the issues only arise through the perspective of hindsight. Appellate counsel was not remiss in any way and for credibility purposes concentrated on some very valid issues rather than raising every conceivable issue and risk alienating the court.

WHEREFORE, the Petition for Writ of Habeas Corpus (Post-Conviction) is denied.

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ORDER

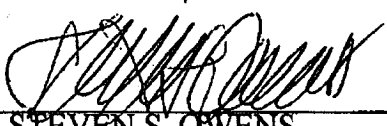
THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief shall be, and it is, hereby denied.

DATED this 18TH day of November, 2004


DISTRICT JUDGE

DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

BY


STEVEN S. OWENS
Chief Deputy District Attorney
Nevada Bar #004352

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