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DISTRICT COURT 2004 DEC 15 PM 1:53
CLARK COUNTY, NEVADA

Shirley B. Parraguirre
CLERK # 44094

MICHAEL DAMON RIPPO,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: C106784
Dept No: XIV

FILED

FEB 22 2005

NOTICE OF ENTRY OF
DECISION AND ORDER
BY *Janette M. Bloom*
JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

PLEASE TAKE NOTICE that on December 1, 2004, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on December 15, 2004.

SHIRLEY B. PARRAGUIRRE, CLERK OF COURT

By: *Robin J. Mills*
Robin J. Mills, Deputy Clerk

CERTIFICATE OF MAILING

I hereby certify that on this 15 day of December 2004, I placed a copy of this Notice of Entry of Decision and Order in:

The bin(s) located in the Office of the County Clerk of:
Clark County District Attorney's Office
Attorney General's Office - Appellate Division

☒ The United States mail addressed as follows:

Michael Damon Rippo # 17097
P.O. Box 650
Indian Springs, NV 89018

Christopher R. Oram, Esq.
520 S. Fourth St., #370
Las Vegas, NV 89101

Robin J. Mills
Robin J. Mills, Deputy Clerk

RECEIVED

FEB 22 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

FILED

DEC 1 8 56 AM '04

Shirley B. Rasmussen
CLERK

1 **ORDR**

2 **DAVID ROGER**
3 **Clark County District Attorney**
4 **Nevada Bar #002781**
5 **STEVEN S. OWENS**
6 **Chief Deputy District Attorney**
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11 **Attorney for Plaintiff**

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

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

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

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:**

27 **///**

28 **///**

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

Donald H. Smiley
DISTRICT JUDGE

DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

BY

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

kjk

