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Shirley C. Ruggins
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11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

No. 46324

12 THE STATE OF NEVADA,
13 Plaintiff,

CASE NO: C175914

14 -vs-

DEPT NO: XII

15 ASHLEY WILLIAM BENNETT,
16 #1107300

17 Defendant.

FILED

18 FINDINGS OF FACT, CONCLUSIONS OF
19 LAW AND ORDER

DEC 08 2005

20 DATE OF HEARING: 11/4/2005
21 TIME OF HEARING: 10:30 A.M.

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *S. Young*
DEPUTY CLERK

22 THIS CAUSE having come on for hearing before the Honorable Michelle Leavitt,
23 District Judge, on the 4th day of November, 2005, the Petitioner being present, represented
24 by CYNTHIA DUSTIN, the Respondent being represented by DAVID ROGER, District
25 Attorney, by and through MARC DIGIACOMO, Chief Deputy District Attorney, and the
Court having considered the matter, including briefs, transcripts, arguments of counsel,
documents on file herein as well as an evidentiary hearing on November 1 and 2, 2005, now
therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. That Petitioner was found Guilty by a jury on February 4, 2002.
2. That Petitioner filed his first motion for new trial on February 11, 2002.
3. That in the first motion for new trial, Petitioner's trial counsel made a record of the

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1 testimony of Reginald Fobbes.

2 4. That Petitioner's trial counsel and an investigator met with all of the Petitioner's
3 witnesses prior to trial and conducted an investigation into the facts underlying the charges.

4 5. That Petitioner never objected to the representation by Melinda Simpkins.

5 6. That prior to trial, on at least one occasion, Petitioner's attorney, Melinda
6 Simpkins, and an investigator met with Reginald Fobbes to determine the relevant evidence
7 which he had to present.

8 5. That the trial court determined that Reginald Fobbes' testimony was hearsay and
9 as such inadmissible.

10 6. That the Nevada Supreme Court affirmed that determination.

11 7. That no evidence presented at the evidentiary hearing in this matter indicated to
12 this Court that Reginald Fobbs provided information at the time of trial in addition to the
13 proffered evidence.

14 8. That the evidence proffered at the evidentiary hearing in this matter would not
15 have changed the Court's determination on the merits of the admissibility of Mr. Fobbs'
16 testimony.

17 9. That asserting that Pamela Neal was biased against Defendant because she
18 believed he was involved in another homicide was potentially highly prejudicial information
19 which may have resulted in violent character evidence being admitted against Petitioner.

20 10. That Defendant's Attorney, Scott Bindrup, made a tactical decision to not ask
21 more questions concerning Ms. Neal's alleged bias as the answers could have been highly
22 prejudicial to his client.

23 11. That after receiving new counsel, Stanley Walton, Petitioner filed another motion
24 for new trial on June 17, 2002.

25 12. That Mr. Walton never indicated that Reginald Fobbs had any additional
26 information.

27 13. That Petitioner has not attacked the effective representation of Mr. Walton.

28 14. That Petitioner's second motion for new trial was denied on June 18, 2002.

1 15. That Anthony Gantt signed an affidavit of recantation on July 3, 2002.

2 16. That Petitioner failed to raise the issue of Gantt's recantation before the trial court
3 in a timely manner in a motion for new trial within the two (2) year limitation of NRS
4 176.515.

5 17. That Petitioner has failed to allege, assert or prove good cause for the failure to
6 file such a motion.

7 18. That Petitioner's ground three (3), the admissibility of the underlying facts of
8 Pamela Neal's criminal case, was raised on appeal.

9 19. That the admissibility of Lakeisha Reed's and Reginald Fobbs' testimony was
10 raised on appeal.

11 20. At the evidentiary hearing, no evidence was presented which demonstrated
12 inadmissible evidence was admitted or admissible evidence was not admitted based upon the
13 conduct of the lawyers.

14 21. At the evidentiary hearing, no evidence was presented which demonstrated that
15 Petitioner's trial counsel failed to make an argument which would have changed any ruling
16 by the trial court.

17 22. At the evidentiary hearing, no evidence was presented which demonstrated that
18 Petitioner's appellate counsel, Christopher Oram, failed to make an argument which would
19 have affected the outcome of the appeal.

20 23. At the evidentiary hearing, no evidence was presented that any of Defendant's
21 lawyers' representation fell below an objective standard of reasonableness.

22 CONCLUSIONS OF LAW

23 1. That this Court does not adopt a rule that merely the inexperience of a lawyer
24 alone is a sufficient basis for an ineffective assistance of counsel without establishing
25 substandard performance and/or prejudice to Petitioner's rights. See Strickland v.
26 Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984) and Homick v. State, 112 Nev. 304, 913
27 P.2d 1280 (1996).

28 2. That Petitioner received the effective assistance of counsel at both his trial and on

1 appeal. See id; Evitts v. Lucey, 469 U.W. 387, 105 S.Ct. 830 (1985).

2 3. That Scott Bindrup's determination as to which questions to ask Pamela Neal was
3 a tactical decision virtually unreviewable by this Court. See Dawson v. State, 108 Nev. 112,
4 825 P.2d 593 (1992).

5 4. That Defendant could have raised the recantation of Anthony Gantt with the trial
6 court and failed to do so. Defendant does not have good cause for the failure. As such, it is
7 procedurally barred by NRS 34.810. See NRS 176.515 and NRS 34.810.

8 4. That this Court rejects the argument that merely because the trial court made
9 slightly different rulings in two separate trials involving different evidence that an equal
10 protection claim is available. As such, this Court does not find a violation of the equal
11 protection clause of the Fourteenth Amendment. See Snow v. State, 105 Nev. 521, 779 P.2d
12 96 (1989).

13 5. That Petitioner's third ground of relief was rejected by the Nevada Supreme Court
14 and, as such, is denied as Law of the Case. See Pellegrini v. State, 117 Nev. 860, 34 P.3d
15 519 (2001).

16 ORDER

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

19 DATED this 23 day of November, 2005.

20 
21 DISTRICT JUDGE

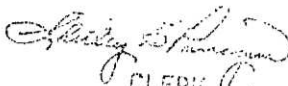
22 DAVID ROGER
23 DISTRICT ATTORNEY
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