

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN BROOKS A/K/A RALPH KEVIN
CLARK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48747

FILED

JUL 03 2007

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a petition for post-conviction relief filed pursuant to former NRS chapter 177. Eighth Judicial District Court, Clark County; Elizabeth Halverson and Lee A. Gates, Judges.

On October 5, 1990, the district court convicted appellant, pursuant to a jury trial, of two counts of burglary. Appellant was adjudicated a habitual criminal and sentenced to serve two concurrent terms of life in the Nevada State Prison without the possibility of parole. This court dismissed appellant's appeal from his judgment of conviction.¹

On February 7, 1991, while his direct appeal was pending, appellant filed a petition for post-conviction relief pursuant to former NRS chapter 177. On March 13, 1991, the district court dismissed the petition

¹Brooks v. State, Docket No. 21722 (Order Dismissing Appeal, December 20, 1991).

without prejudice to re-file after the direct appeal had been resolved. Appellant appealed the March 13, 1991 decision, and this court vacated the district court's order and remanded the matter to the district court as a petition for post-conviction relief could be litigated while a direct appeal was pending.² After the matter was remanded, the State filed an answer opposing the petition. On March 16, 1992, Judge Gates orally denied the petition. A written order memorializing that decision was entered on March 8, 2007, by Judge Halverson. This appeal followed.³

In his petition, appellant claimed that he received ineffective assistance of counsel. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and prejudice such that counsel's errors were so severe that they rendered the jury's verdict unreliable or

²Brooks v. State, Docket No. 22285 (Order of Remand, September 30, 1991).

³In the intervening period between the oral decision denying the petition and the written decision memorializing the decision, appellant unsuccessfully sought post-conviction relief by way of at least two post-conviction petitions for writs of habeas corpus, a motion to correct an illegal sentence, and a motion for production of favorable evidence and motion to dismiss prosecution. See e.g., Brooks v. State, Docket No. 46807 (Order of Affirmance, July 14, 2006); Brooks v. State, Docket No. 43621 (Order of Affirmance, November 3, 2004); Brooks v. State, Docket No. 40941 (Order of Affirmance, January 28, 2004); Brooks v. State, Docket No. 34575 (Order of Affirmance, February 22, 2001).

that there was a reasonable probability of a different outcome in the proceedings.⁴ The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.⁵

First, appellant claimed that his trial counsel was ineffective for failing to obtain the preliminary hearing transcript or neglecting to properly investigate the transcripts. Appellant did not demonstrate that he was prejudiced. Appellant did not specifically identify what evidence or testimony trial counsel should have elicited through the preliminary hearing transcript, and thus, he necessarily failed to demonstrate a reasonably probable different result at trial. Therefore, we conclude that the district court did not err in denying this claim.

Second, appellant claimed that his trial counsel was ineffective for failing to file a motion to sever the two counts of burglary because count 1, a count of burglary, had allegedly been dropped and re-filed without any new evidence. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. The record on appeal did not support appellant's contention that count 1 had been dropped and re-filed. Rather, the preliminary hearing transcript reveals that the district court bound appellant over to the district court on two counts of burglary as charged in the criminal complaint. An

⁴Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

⁵Strickland, 466 U.S. at 697.

information was filed in the district court setting forth two counts of burglary. Appellant failed to demonstrate that a motion to sever would have been successful under these circumstances, and therefore, we conclude that the district court did not err in denying this claim.

Third, appellant claimed that his trial counsel was ineffective for waiting until the middle of trial to request an independent fingerprint specialist. Appellant failed to demonstrate that he was prejudiced. Appellant failed to indicate what facts or testimony would have been elicited from an independent fingerprint specialist that would have had a reasonable probability of altering the outcome at trial. Therefore, we conclude that the district court did not err in denying this claim.

Fourth, appellant claimed that his trial counsel was ineffective for making a brief closing argument. Appellant claimed that trial counsel informed him that he was making a short closing argument in order to be able to make a family function. Appellant failed to demonstrate that he was prejudiced. Appellant failed to indicate what argument and facts were omitted from the closing argument made, and appellant failed to demonstrate that a lengthier closing argument would have had a reasonable probability of altering the outcome at trial. Therefore, we conclude that the district court did not err in denying this claim.

Fifth, appellant claimed that his trial counsel was ineffective for: (1) failing to file motions; (2) failing to properly prepare for trial; (3) failing to file a full discovery motion; (4) engaging in a redundant line of questioning; (5) failing to bring out important points; (6) failing to present any witnesses or evidence on appellant's behalf for a lenient sentence; and

(7) failing to investigate. Appellant failed to support any of these claims with specific facts, and thus, appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Therefore, we conclude that the district court did not err in denying these claims.

Finally, appellant claimed that the visiting Justice of the Peace, Judge Marley Robinson, was not qualified to preside over his preliminary hearing as she was not a licensed member of the Nevada Bar Association. Appellant further claimed that Judge Robinson erred in granting a motion to dismiss or continuance for time to obtain private counsel. These claims were waived as they should have been raised on direct appeal, and appellant did not demonstrate good cause for his failure to do so.⁶ Moreover, as a separate and independent ground to deny relief, appellant failed to demonstrate that Judge Marley Robinson as a visiting justice of the peace was not qualified or that she abused her discretion in denying his motion to dismiss counsel or request for a continuance.⁷

⁶See 1987 Nev. Stat., ch. 539, § 45, at 1231 (former NRS 177.375(2)(b)).

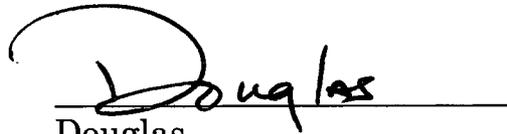
⁷See NRS 4.340. We note that appellant has raised a variation of this claim in a number of petitions and motions since the filing of his 1991 petition, and his claims have been rejected on several occasions. We caution appellant that a prisoner may forfeit all deductions of time earned by the prisoner if the court finds that the prisoner has filed a document in a civil action and the document contains a claim or defense included for an improper purpose, the document contains a claim or defense not supported by existing law or a reasonable argument for a change in existing law, or the document contains allegations or information presented as fact for
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Having reviewed the record on appeal and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.⁸ Accordingly, we

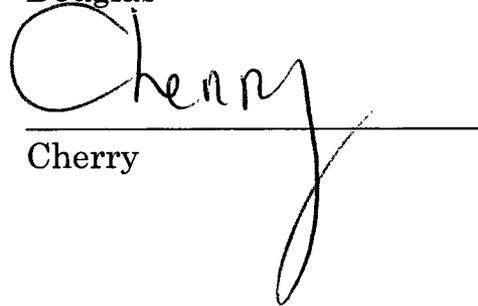
ORDER the judgment of the district court AFFIRMED.⁹

 _____, C.J.

Maupin

 _____, J.

Douglas

 _____, J.

Cherry

... continued

which evidentiary support is not available or is not likely to be discovered after further investigation. See NRS 209.451(1)(d).

⁸See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁹We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Elizabeth Halverson, District Judge
Hon. Lee A. Gates, District Judge
Kevin Brooks
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk