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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES WILLIAM TURNER,

Defendant and Appellant.

D058018

(Super. Ct. No. SCD222570)

In re JAMES WILLIAM TURNER on
Habeas Corpus.

D061349

Super. Ct. No. SCD222570)

CONSOLIDATED APPEAL and petition for writ of habeas corpus following a judgment of the Superior Court of San Diego County, Melinda J. Lasater, Judge.

Judgment affirmed; petition denied.

A jury convicted James Turner of second degree murder. In his appeal and habeas corpus petition, defendant asserts the judgment should be reversed due to ineffective assistance of counsel based on his counsel's failure to object to evidence and to present

expert testimony. We reject his contentions of reversible error. Accordingly, we affirm the judgment and summarily deny the habeas corpus petition.

Overview

About 9:30 p.m. on August 23, 2009, Jaime Nicasio was fatally shot in the street in front of defendant's residence. Defendant was charged and tried for the murder in two trials; the jury deadlocked at the first trial and convicted him at the second trial. The prosecution's theory was that the shooting was motivated by a conflict that arose during drug sale activity between defendant and Nicasio. The defense theory was that defendant was not involved in the incident. The sole other witness present at the time of the shooting was Christina Martin, a mutual friend of defendant and the victim. Martin described a drug sale transaction between defendant and Nicasio that was occurring just before the shooting. Although Martin did not actually see defendant in possession of a gun or see him fire a gun, she identified defendant as the shooter based on the totality of her observations of the incident.

In his appeal and habeas petition, defendant challenges his counsel's failure to object to the admission of several evidentiary items, including (1) evidence concerning defendant's drug-related activity which he contends was in violation of the trial court's pretrial ruling or was otherwise inadmissible, and (2) several of Martin's statements that he contends were based on mere speculation. We find no reversible error arising from his counsel's failure to object.

Additionally, defendant challenges his counsel's failure to call an expert to testify concerning the effects of cocaine on perception and memory, given that eyewitness

Martin was a long-term rock cocaine user and was using the drug at the time of the shooting. At the first trial which resulted in a deadlocked jury, defense counsel presented a drug expert's testimony and argued to the jury that Martin was not a reliable witness due to her drug usage. At the second trial resulting in the conviction, a different defense counsel did not call a drug expert to testify. Defendant's new counsel focused on the theory that Martin had a motive to shoot Nicasio and that she was consciously fabricating her statements about the incident to hide her own culpability. Defense counsel's tactical selection of a theory based on fabrication, rather than drug-induced inaccuracies, did not necessitate expert testimony on drug impairment. Because counsel's strategy at the second trial was within the range of reasonable representation, there was no ineffective representation arising from counsel's decision not to call a drug expert.

FACTUAL AND PROCEDURAL BACKGROUND

The jury was presented with Martin's description of the incident via her trial testimony, an audio recording of her 911 call to the police the morning after the shooting, and a video recording of her interview with a detective. Martin stated that she had known defendant for a few months before the shooting, and she met Nicasio at defendant's home about one month before the shooting. Defendant and his wife sold rock cocaine from their home, and both Martin and Nicasio bought rock cocaine from defendant. On one occasion Nicasio did not have any money and he exchanged a piece of jewelry for the cocaine.

On the night of the shooting, Martin was walking on defendant's street on the way to another friend's home to purchase cocaine. Nicasio was parked in his sports utility

vehicle (SUV) in front of defendant's home. When Nicasio saw Martin, he got out of his SUV and approached her. Nicasio was angry at Martin due to a prior incident where she left him parked outside a friend's home and then did not return. When Nicasio approached her on defendant's street, he confronted her about this prior incident, and she explained why she had not returned to him.

Martin and Nicasio then got into Nicasio's SUV. Nicasio asked Martin for money because he was waiting for defendant "to get something." Martin refused, explaining that she was going elsewhere to buy cocaine and she would be back. Nicasio objected, telling Martin she did not need to go elsewhere because defendant was "'on his way right now.'" Nicasio was acting "really, really agitated" and he kept repeatedly asking Martin for money. Martin got out of the SUV and walked around the corner to another location where she purchased rock cocaine and took a "hit."

About 15 to 20 minutes after her departure, Martin returned to Nicasio. Nicasio was talking to defendant in defendant's driveway. A car was parked along the curb on the other side of the driveway from Nicasio's SUV. Defendant's wife was sitting in the passenger's seat of the car, and another woman was in the back seat. When Martin approached Nicasio and defendant, they appeared "a little agitated" with each other. Martin did not hear their entire conversation, but she heard Nicasio ask defendant, "'Can we go talk to [defendant's wife] to get some credit?'" Defendant answered, "'No, don't go to the car. You can't ask her.'"

When she approached the two men, Martin told defendant that Nicasio "'is crazy right now.'" Defendant responded, "'Yeah, I know. That's why you should leave.'" Martin and Nicasio got into Nicasio's SUV, and defendant went into his house.

While defendant was gone, Nicasio asked Martin if she had a pipe and if she had "something." Martin told him she did, but she would not let him take a hit. Nicasio was still "very, very agitated," and he was looking for his wallet in the SUV's console. When he found his wallet, he "mashed" his wallet and his cell phone together so that they "could match up like something like a gun." Nicasio got out of the SUV and walked between the parked vehicles. Defendant came out of the gate by his house and also walked between the vehicles. Martin bent down in the SUV to take a hit, thinking that defendant was bringing Nicasio "some crack."

While Martin was bent down, she heard two gunshots. She then heard Nicasio yell to defendant, "I'm sorry, man. I didn't mean to do it.'" When she got up and turned around, she saw defendant walk to the driver's side of the car in which his wife was sitting. Defendant got into the car and the headlights came on. This blinded Martin, who was unable to see anything. The car backed up, drove the other way down the street, and left the area.

Meanwhile, Nicasio, who had been shot, went to a neighbor's house across the street, knocked on the door, gave up knocking when no one answered, ran to another area, fell down and got up several times, and finally collapsed at the end of defendant's driveway. Martin had gotten out of the SUV and started to walk away, but she stopped when the police arrived. Martin watched the rescue efforts for about 20 to 30 minutes,

and when a neighbor asked if she saw anything, Martin said no. When Martin saw that Nicasio had died, she left the area and walked around the corner to her friend's home. She stayed at her friend's home for a few hours, watching the activity at the scene from a garage window. She later got a ride to her mother's home.

The next morning Martin's sister persuaded her to contact the police. Martin called 911 from a laundromat, and told the police that defendant was the shooter. Martin testified that she, Nicasio, defendant, and the other two occupants of the car driven by defendant were the only people out on the street when Nicasio was shot.

Nicasio was shot twice in the back, and he died at the scene. Three days after the shooting, defendant was arrested at a hotel where he had been staying.

Jury Verdict and Sentence

Defendant was charged with first degree murder; the jury acquitted him of this charge and found him guilty of second degree murder, with a true finding that he personally discharged a firearm and caused death. Based on his current conviction, prior strike convictions, and prior serious felony convictions, he was sentenced to 70 years to life in prison, plus a determinate term of 10 years.

DISCUSSION

To show ineffective representation, the defendant must establish that counsel's performance fell below an objective standard of reasonableness, and that there is a reasonable probability that absent counsel's deficiency the result would have been different. (*People v. Weaver* (2001) 26 Cal.4th 876, 925.) There is a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance.

(*Id.* at pp. 926-927.) If the record does not show prejudice from counsel's alleged deficiency, we may reject the claim without determining whether counsel's performance was deficient. (*People v. Sapp* (2003) 31 Cal.4th 240, 263.)

With these standards in mind, we address defendant's contentions that his counsel was ineffective for failing to object to evidence, and for failing to introduce expert testimony.

I. *Failure to Object to Evidence*

As we shall detail below, during pretrial motions for the second trial, defense counsel moved to exclude certain items of evidence related to defendant's drug sales, and the court ruled on the motion. On appeal, defendant contends his counsel was ineffective for not objecting to (1) evidence regarding his drug-related activities that contravened the court's pretrial ruling or was otherwise inadmissible, and (2) several of Martin's statements that were speculative.¹ In statements made to appellate counsel for purposes of the habeas corpus petition, defendant's trial counsel did not provide any information suggesting her performance was deficient with respect to this evidence.²

¹ Defendant's arguments in his opening appellate brief and habeas corpus petition concerning counsel's failure to object are at times difficult to decipher. Some of his assertions are set forth with more specificity for the first time in his reply brief. We have extracted what we perceive as his essential arguments.

² Defendant's trial counsel did not submit a declaration in conjunction with the habeas corpus petition, but she responded by email and verbally to appellate counsel's inquiries.

A. Failure to Object to Drug-related Evidence

Defendant identifies the following items of drug sales or drug-related evidence as inadmissible either based on the court's pretrial ruling or based on the rule against admission of uncharged misconduct evidence: (1) Martin's testimony that defendant was selling drugs; (2) a detective's testimony that there was evidence of drug dealing (including stolen property) at defendant's house; (3) forensic evidence showing defendant tested positive for drugs when he was arrested; and (4) Martin's statement during the recorded interview with the detective that could imply that her brother (like Nicasio) was killed in an incident involving " 'dope dealers.' "³ As we shall explain, contrary to defendant's contention, the trial court did not exclude all drug sales evidence in its pretrial ruling. Further, defendant has presented no argument to show the drug-related evidence was inadmissible uncharged misconduct evidence.

³ The detective's testimony concerning the drug dealing at defendant's home actually emerged on cross-examination when defense counsel elicited testimony to show that defendant's home did not contain indicia of drug sales such as pay-and-owe sheets, scales, and baggies, and that there was no rock cocaine found in the home. On direct examination, the detective had described observing \$600 cash in defendant's wife's fanny pack, prescription drugs in other people's names, a surveillance system, lots of electronic equipment, and pit bulls. On cross-examination, when defense counsel asked what kinds of things are indicia of drug sales, the detective responded stolen property (which defendant's house "looked like it was full of"), and \$600 cash, prescription drugs in other people's names, surveillance cameras, and pit bulls. On redirect examination, the prosecutor asked several additional questions concerning the indicia of drug sales at defendant's home.

Martin's reference to "'dope dealers'" arose when she was telling the detective about her mother's statements in reaction to hearing about the shooting and Martin's claim that Nicasio was her friend. Martin quoted her mother as stating: "'Ain't nobody your friend, those fuckin' dope dealers. . . . Your brother got killed that way'"

To support his assertion that his counsel was ineffective for failing to object to drug sales evidence because it contravened the court's pretrial ruling, defendant characterizes his trial counsel's pretrial motion as objecting to all evidence of drug sales from his home. Further, defendant describes the trial court's pretrial ruling as excluding the evidence on the basis that it was improper character evidence, more prejudicial than probative, and inadmissible hearsay. Defendant's summation fails to accurately characterize the motion and the ruling.

In her written motion to exclude drug sales evidence, defense counsel argued that the court should exclude "all evidence concerning the inference of drug sales out of [defendant's] home." In subsequent written and oral arguments, defense counsel clarified that she was moving to exclude certain specifically-identified evidentiary items that were used at the first trial to bolster Martin's testimony on the drug sales issue, and which defense counsel viewed as improper character evidence and more prejudicial than probative. Other than arguing that Martin was not a credible witness, defense counsel did not dispute that *Martin's testimony* concerning the drug sales issue was relevant and admissible given the prosecution's theory that a drug-related dispute could have provided a motive for the shooting.

One of the items that defense counsel requested to be excluded was a police officer's testimony that (on an occasion prior to the shooting) Nicasio was seen leaving defendant's home and was stopped by the officer. The trial court ruled that the officer could testify to establish that Nicasio was seen leaving defendant's residence to establish a relationship between defendant and Nicasio, however, the officer could not testify to

describe the reason that the officer stopped Nicasio (i.e., complaints about drug dealing at defendant's residence) because these complaints were hearsay and speculative.⁴

On appeal, defendant extrapolates this hearsay ruling and contends the court found the evidence of drug dealing was inadmissible hearsay. The court made no such ruling. Rather, the court's hearsay ruling merely pertained to a *narrow portion* of the drug sales evidence (the officer's testimony about complaints of drug dealing at defendant's home), which was not introduced at trial. Further, the trial court did not rule that the drug sales evidence was inadmissible character evidence or more prejudicial than probative.

Accordingly, defense counsel was not ineffective for failing to object on the basis of the court's pretrial ruling to the various evidentiary items introduced at trial that could support that defendant was selling drugs. Contrary to defendant's claim, there was no broad pretrial ruling excluding the drug sales evidence. Moreover, evidence related to defendant's drug-related activities was relevant and admissible to support the prosecution's theory that drug activity may have provided a motive for the shooting. (See *People v. Whisenhunt* (2008) 44 Cal.4th 174, 203 [uncharged misconduct evidence admissible when relevant to issue other than criminal propensity].) Defendant has not shown ineffective representation arising from the admission of the drug-related evidence.

⁴ Defense counsel also objected to admission of evidence of surveillance cameras found in defendant's home and of multiple cell phones in defendant's or his wife's possession. The court ruled the evidence of the surveillance cameras and (to some extent) the cell phones was admissible.

B. *Failure to Object to Martin's Statements as Speculative*

Defendant argues that his counsel should have objected, on grounds of speculation, to Martin's statements that he sold drugs from his home, that Nicasio bought drugs from him, and that he went into his home to get a gun with the intent to shoot Nicasio.

1. *Martin's Testimony that Defendant Sold Drugs from His Home and that Nicasio Bought Drugs from Defendant*

Defendant asserts that Martin's testimony that he sold drugs from his home and that Nicasio bought drugs from him was not based on her personal knowledge, and the evidence would have been excluded on this ground if his counsel had raised the objection. Martin testified that she went to defendant's house and bought rock cocaine there. Thus, the evidence that defendant was selling drugs from his home was within Martin's personal knowledge. Moreover, when the prosecutor asked Martin if defendant sold rock cocaine from his home, defense counsel *did* object on grounds of lack of foundation, and the court properly overruled the objection.

Martin also testified that Nicasio bought drugs from defendant; however, she clarified that she had never actually seen a drug transaction between defendant and Nicasio. Martin explained that she had purchased cocaine from defendant; there were occasions when she and Nicasio were at defendant's home at the same time; she and Nicasio would leave defendant's home together; when they left sometimes she had cocaine and sometimes Nicasio had cocaine; and she and Nicasio shared their cocaine

with each other.⁵ It is apparent from Martin's testimony that she deduced from the circumstances—when both she and Nicasio were present at defendant's home—that Nicasio had bought cocaine from defendant. Martin's deduction on this point was relevant, admissible evidence.

An evidentiary fact may properly be based on reasonable inferences from circumstantial evidence. (See *People v. Sifuentes* (2011) 195 Cal.App.4th 1410, 1416.) A reasonable inference " ' " 'may not be based on suspicion alone, or on imagination, speculation, supposition, surmise, conjecture, or guess work.' " ' " (*Ibid.*) However, admissible " ' evidence need not confirm anything. It is axiomatic that its weight is for the jury.' " (*People v. Peggese* (1980) 102 Cal.App.3d 415, 420.) The test of admissibility "is whether the evidence tends, logically, naturally, or by reasonable inference to establish a material fact, not whether it conclusively proves it." (*Ibid.*)

The record supports that Martin's assessment that Nicasio had purchased cocaine from defendant was based on more than mere speculation. Her testimony established that she had personal knowledge that defendant sold cocaine, and her testimony that Nicasio sometimes had cocaine when she and he left defendant's home was sufficient to support an inference that Nicasio also bought cocaine from defendant. Although her testimony on this point was based on a deduction derived from her interactions with Nicasio and

⁵ After Martin testified that she knew Nicasio bought cocaine from defendant even though she did not witness a transaction, the prosecutor asked how she could know this without seeing it. Martin responded, "Because . . . he was in the house when I arrived and when I arrived I got some and we left together. I shared what I had. He shared what he had. I'm not stupid. . . . I didn't have to say, hey [Nicasio] did you get this from—you don't ask that. You just share."

defendant, this did not preclude its admission, and it was for the jury to decide what weight to give the testimony. Further, her deduction was buttressed by Nicasio's statements to Martin about his desire to get cocaine from defendant the night he was shot. Given that Martin's deduction was based on a reasonable inference from facts within her personal knowledge, the trial court was not required to exclude the testimony as speculative. Because defense counsel could reasonably conclude the evidence would be ruled admissible by the trial court, counsel's failure to object did not constitute ineffective representation. (*People v. Majors* (1998) 18 Cal.4th 385, 404.)

2. Martin's Statements to the Police that Defendant Went into His House to Get a Gun and With the Intent to Shoot

Defendant argues that Martin's statements during the recorded police interview that he went into his house to get a gun and with the intent to shoot the victim were speculative, and defense counsel should have requested that the statements be redacted from the recorded interview with the detective before it was played for the jury.⁶ Prior to admission of the recorded police interview, Martin had testified on cross-examination that she did not actually see anyone with a gun and she did not actually see someone shoot the victim. In the recorded police interview, Martin stated: "[Defendant] came up to the house and got that weapon." The detective then asked if she ever saw a gun that night. Martin responded "No. . . . [¶] . . . [¶] . . . I told you what I was doin' but I know [defendant] got the gun." Later during the interview, Martin again told the detective that

⁶ Both the prosecutor and defense counsel decided that they wanted the jury to hear Martin's recorded interview with the detective, and they agreed to a redacted version.

defendant retrieved a gun from his house, and she further stated: "He knew when he went and got that gun that he was gonna shoot him."

Assuming *arguendo* reasonably competent counsel would have objected that Martin's statements that defendant went to get a gun and had a plan to shoot were speculative, defendant has not shown prejudice.⁷ On cross-examination by defense counsel, Martin in effect acknowledged that she never actually saw defendant with a gun and never actually saw him shoot Nicasio. Likewise, during the recorded interview she stated that she never saw a gun. Thus, the jury knew that Martin was merely surmising from the circumstances that defendant went into his house to get a gun, and likewise the jury knew from her testimony that she had no factual information showing his intent. We assume that jurors are intelligent persons. (See *People v. Valdez* (2011) 201 Cal.App.4th 1429, 1437.) Because the jury knew that Martin did not actually know whether defendant went into his home to get a gun or why he did so, reasonably intelligent jurors would not accept her statement on these points as established facts. There is no reasonable probability that Martin's statements in this regard were construed by the jury as anything more than assumptions on her part.

Further, the jury was instructed that it must review all the evidence to determine whether the prosecution had proven guilt beyond a reasonable doubt. (See CALCRIM Nos. 220, 223, 224.) We presume the jury follows the court's instructions. (*People v.*

⁷ Defendant also asserts that Martin's statements about the gun retrieval were hearsay. The contention is unavailing because there is no evidence that someone else told Martin about this.

Valdez, supra, 201 Cal.App.4th at p. 1437.) Thus, the jury understood that it must decide for itself defendant's conduct and intent, and that Martin's assessments concerning his gun retrieval were based on her own personal circumstantial inferences that were not determinative of the matter. Moreover, the jury's *acquittal* on the first degree murder charge shows that it did not find that defendant premeditated the shooting. The jury's rejection of the premeditation allegation further supports that it did not rely on Martin's testimony concerning what defendant was doing and thinking when he went into his home.

We conclude that any deficiency arising from defense counsel's failure to request redaction of Martin's statements concerning defendant's gun retrieval was not prejudicial.

II. *Failure to Present Testimony of Defense Expert on Effects of Cocaine Use*

At the first trial, a medical doctor with expertise in drug addiction testified that cocaine use can cause hallucinations, paranoid delusions, and inaccurate memories. In closing arguments to the jury at the first trial, defense counsel presented the jury with the theory that Martin was an unreliable witness because her drug usage impaired her ability to accurately observe or recall the shooting incident.

Defendant contends that at the second trial his counsel should have presented expert testimony concerning the impact of cocaine usage on perception and memory. The contention lacks merit as the record shows counsel made a reasonable tactical decision to pursue a defense that was different from the one used at the first trial. In statements to appellate counsel, defendant's trial counsel stated that she had reviewed the transcripts of the first trial, and she made an informed, tactical choice not to present the

expert's testimony because it was not helpful or necessary. The record shows that at the second trial counsel made a strategic decision to focus on the theory that either Martin (or possibly someone else) committed the shooting, and that Martin was consciously fabricating her statements about the incident to cover up her own culpability. Because this theory was a reasonable tactical choice that did not turn on the effects of Martin's drug usage, counsel was not ineffective for failing to present expert evidence concerning the perception and memory inaccuracies that can arise from drug impairment.

To effectuate defense counsel's selected strategy, on cross-examination counsel asked Martin numerous, detailed questions to support the theory that Martin had a motive to shoot Nicasio and that her description of the incident was untruthful. For example, defense counsel elicited testimony from Martin acknowledging that on the night of the shooting Nicasio was angry with her, and that she told the detective that Nicasio wanted money from her; he thought she owed him money for gas; he was going to take her purse; she told him she was not going to take "any shit" from him; he was "acting crazy like he was going to hit" her; she was afraid of him; she thought he had a knife; when he came to her side of the car and opened the door she thought he was going to hurt her; she asked him if he was going to kill her; and she told him not to hurt her. Also, defense counsel asked if it was true that in her recorded interview with the detective, she stated that she shot Nicasio.⁸

⁸ A portion of the recorded interview was apparently unclear, and defense counsel raised the possibility that Martin stated "I shot."

Additionally, defense counsel asked Martin if she told the detective that she did not see defendant come back outside of his house before the shooting, and that she saw "two black males at the end of the street" who she knew were "people you shouldn't mess with." Defense counsel also questioned Martin at length about various discrepancies or omissions revealed by her pretrial and trial statements and other evidentiary matters.

Juxtaposed against this lengthy cross-examination designed to paint Martin as an untruthful witness, defense counsel asked Martin only a few questions about whether she was under the influence when she spoke with the authorities, and whether this affected her ability to describe the details of what occurred. It is clear that counsel's strategy when cross-examining Martin focused on Martin's fabrication, not her inaccurate perception or memory.

Consistent with counsel's cross-examination of Martin, in closing arguments defense counsel developed the theories that Martin had a motive and opportunity to shoot Nicasio, that she was fabricating her description of what occurred, and that the police ignored key pieces of evidence that indicated defendant was innocent and they were pursuing the wrong person. Counsel stated that on the night of the shooting Nicasio was angry and aggressive towards Martin; Martin thought Nicasio was going to hurt or kill her and she was afraid of him; after the shots were fired Martin was the only person standing in the street by the dead body; "[m]aybe what [Nicasio] did to her was enough to make her snap, out of fear"; Martin fled the scene after the shooting and had an opportunity to dispose of evidence that could have identified her as the shooter; the police

failed to test her for gunshot residue; and she (not defendant) was the one with the motive and opportunity to commit the shooting.

Further, in closing arguments defense counsel pointed to the "two black males" observed at the scene and other evidentiary matters suggesting someone else could have committed the crime. Defense counsel also delineated various discrepancies between Martin's statements and other evidence to support that Martin was not telling the truth. Notably, defense counsel did *not* urge the jury to conclude that Martin was an unreliable witness because of her drug usage, but rather argued that the inconsistencies in her statements showed she was an untruthful witness who was trying to cover up her own culpability.

On appeal, we do not second-guess reasonable tactical decisions in the harsh light of hindsight, and even debatable trial tactics do not constitute ineffective representation. (*People v. Weaver, supra*, 26 Cal.4th at pp. 926, 928.) The courts recognize that "[t]here are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way." (*People v. Wrest* (1992) 3 Cal.4th 1088, 1115.) Because defense counsel reasonably selected a trial strategy that focused on Martin's fabrication rather than on drug-induced inaccuracies, counsel was not ineffective for failing to present a drug expert's testimony.

Defendant argues that a drug expert's testimony could have supported the defense theory that Martin was the shooter and was trying to cover her guilt because drug-induced paranoid delusions could have caused her to believe the victim was going to kill her. Although defense counsel could have tried to develop this theme, her failure to do so

does not rise to the level of constitutionally ineffective representation. To provide effective representation, defense counsel need not present all possible defense theories and evidence to the jury; rather, a defendant is competently represented if counsel's decisions resulted from an informed tactical choice within the range of reasonable competence. (See *People v. Floyd* (1970) 1 Cal.3d 694, 709 [claim that "case might have been handled more effectively" does not show ineffective representation]; *People v. Diaz* (1992) 3 Cal.4th 495, 557.) Because defense counsel's strategic approach at the second trial was reasonable and was not premised on the effects of drug usage, defendant's claim of ineffective representation based on the failure to call the drug expert fails.

DISPOSITION

The judgment is affirmed. The petition for writ of habeas corpus is denied.

HALLER, J.

WE CONCUR:

BENKE, Acting P. J.

IRION, J.