

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN WALLACE HUMPHREY,  
Appellant,  
vs.  
WARDEN, HIGH DESERT STATE  
PRISON, GEORGE GRIGAS,  
Respondent.

No. 43025

**FILED**

OCT 06 2004

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying appellant John Humphrey's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On March 14, 2001, the district court convicted Humphrey, pursuant to a guilty plea, of attempted sexual assault on a minor under fourteen (count I), and attempted lewdness with a minor under fourteen (count II). The district court sentenced Humphrey to serve a term of 36 to 120 months in the Nevada State Prison for count I, and a consecutive term of 60 to 180 months for count II. This court affirmed Humphrey's judgment of conviction and sentence on appeal.<sup>1</sup> The remittitur issued on December 17, 2002.

On September 11, 2003, Humphrey filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Humphrey filed a reply. Pursuant to NRS

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<sup>1</sup>Humphrey v. State, Docket No. 37660 (Order of Affirmance, November 21, 2002).

34.750, the district court declined to appoint counsel to represent Humphrey. On February 20, 2004, the district court conducted an evidentiary hearing, and subsequently denied Humphrey's petition. This appeal followed.

In his petition, Humphrey raised several claims of ineffective assistance of trial counsel. To state a claim of ineffective assistance of trial counsel sufficient to invalidate a guilty plea, a petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness.<sup>2</sup> A petitioner must further establish "a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial."<sup>3</sup> The court can dispose of a claim if the petitioner makes an insufficient showing on either prong.<sup>4</sup> The district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal.<sup>5</sup>

First, Humphrey claimed that his trial counsel was ineffective for failing to file a motion to suppress his statement to police; Humphrey contended that police did not read him his Miranda<sup>6</sup> rights prior to interrogating him. We conclude that Humphrey failed to demonstrate that he is entitled to relief on this claim. Humphrey did not establish that

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<sup>2</sup>See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

<sup>3</sup>Hill v. Lockhart, 474 U.S. 52, 59 (1985); see also Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996).

<sup>4</sup>Strickland, 466 U.S. at 697.

<sup>5</sup>Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

<sup>6</sup>See Miranda v. Arizona, 384 U.S. 436 (1966).

he would have insisted on going to trial if his statement to police had been suppressed. Consequently, the district court did not err in denying this claim.

Second, Humphrey contended that his trial counsel was ineffective for failing to investigate his defense that the victim fabricated the story. Humphrey allegedly provided his trial counsel with various reasons why the victim would make up the claim of sexual abuse, yet his trial counsel did not investigate these leads. We conclude that Humphrey failed to demonstrate that he would not have pleaded guilty and would have insisted on going to trial if his counsel had conducted this investigation. Humphrey received a substantial benefit in pleading guilty to two charges, rather than facing the possibility of a conviction of all four charged counts. Further, Humphrey's trial counsel, Scott Coffee, testified that he did not conduct extensive investigation because Humphrey entered into a favorable plea agreement while the case was still in the justice's court. Thus, Humphrey failed to demonstrate that his counsel was ineffective on this issue.

Third, Humphrey claimed that his trial counsel was ineffective for failing to discuss the guilty plea agreement with him and for failing to ensure that he understood the consequences of his guilty plea. During the evidentiary hearing, attorney Coffee testified that he met with Humphrey prior to the entry of his plea and discussed the plea agreement. Further, the district court conducted an extensive plea canvass, during which Humphrey acknowledged that he read, understood, and signed the guilty plea agreement. Additionally, Humphrey told the district court that he did not have any questions regarding the plea agreement. For these reasons, Humphrey failed to demonstrate that his trial counsel was

ineffective with respect to this claim, and we affirm the order of the district court.

Fourth, Humphrey contended that his trial counsel was ineffective for allowing him to plead guilty when there was no factual basis for the plea. However, during the plea canvass, Humphrey answered affirmatively when the district court asked him if he "attempt[ed] to place [his] penis into the mouth of a young girl," and "attempt[ed] to touch and/or kiss the breasts of this young lady." Humphrey's claim that there was no factual basis for the plea is belied by the record,<sup>7</sup> and the district court therefore did not err in denying him relief on this claim.

Fifth, Humphrey alleged that his trial counsel was ineffective for failing to procure testimony from his family during his sentencing hearing. However, Humphrey failed to provide specific information concerning the testimony his family members would have provided at his sentencing hearing.<sup>8</sup> Therefore, Humphrey did not establish that the results of his sentencing hearing would have been different if his family had testified, and the district court did not err in denying this claim.

Lastly, Humphrey alleged that his trial counsel was ineffective with respect to his psychosexual evaluation. Specifically, Humphrey argued that his counsel should have ensured that he received his Miranda warning prior to speaking with the doctor conducting the evaluation. However, this court already concluded on direct appeal that there was no violation of Humphrey's Fifth Amendment right when he

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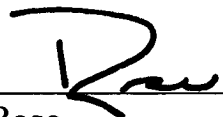
<sup>7</sup>See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

<sup>8</sup>See id. at 502, 686 P.2d at 225.

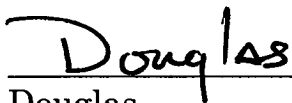
was not advised of his right to remain silent prior to the examination. Thus, Humphrey did not establish that his counsel acted unreasonably in this instance, and we affirm the order of the district court with respect to this claim.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Humphrey is not entitled to relief and that briefing and oral argument are unwarranted.<sup>9</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>10</sup>

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. Donald M. Mosley, District Judge  
John Wallace Humphrey  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>9</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>10</sup>We have reviewed all documents that Humphrey 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.