

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARVIN LEE MORRIS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 43085

FILED

AUG 27 2004

ORDER OF AFFIRMANCE

JENNIFER M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

This is an appeal from an order of the district court denying appellant Marvin Lee Morris' post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

Morris was convicted in 2002, pursuant to a nolo contendere plea, of one count of robbery with the use of a firearm. The district court sentenced Morris to serve two consecutive prison terms of 24-60 months and ordered him to pay \$300.00 in restitution. Morris did not pursue a direct appeal from the judgment of conviction and sentence.

On July 22, 2002, Morris filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The district court appointed counsel to represent Morris and counsel filed a supplement to the petition. The State opposed the petition. The district court conducted an evidentiary hearing and on March 16, 2004, entered an order denying Morris' petition. This timely appeal followed.

Morris' sole contention is that he received ineffective assistance of counsel. More specifically, Morris argues that counsel's investigation of the case was deficient, and "it was unreasonable and prejudicial for him to be coerced [by counsel] into pleading no contest to a crime that he did not commit." We disagree with Morris' contention.

The right to the effective assistance of counsel applies “when deciding whether to accept or reject a plea bargain.”<sup>1</sup> To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a nolo contendere plea, a petitioner must demonstrate that counsel’s performance fell below an objective standard of reasonableness,<sup>2</sup> and that, but for counsel’s errors, the petitioner would not have pleaded nolo contendere and would have insisted on going to trial.<sup>3</sup> The tactical decisions of defense counsel are “virtually unchallengeable absent extraordinary circumstances.”<sup>4</sup> The court can dispose of a claim if the petitioner makes an insufficient showing on either prong.<sup>5</sup> Finally, a district court’s factual finding regarding a claim of ineffective assistance of counsel is entitled to deference so long as it is supported by substantial evidence and is not clearly wrong.<sup>6</sup>

In the instant case, we conclude that the district court did not err in rejecting Morris’ allegation of ineffective assistance of counsel. Morris’ trial counsel testified at the evidentiary hearing about the degree of his investigation and consideration of possible defenses, and the district

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<sup>1</sup>See Larson v. State, 104 Nev. 691, 693 n.6, 766 P.2d 261, 262 n.6 (1988) (citing McMann v. Richardson, 397 U.S. 759 (1970)).

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

<sup>4</sup>Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990) (citing Strickland, 466 U.S. at 691), modified on other grounds by Harte v. State, 116 Nev. 1054, 13 P.3d 420 (2000).

<sup>5</sup>Strickland, 466 U.S. at 697.


<sup>6</sup>Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

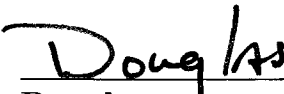
court determined that counsel's testimony was more credible than Morris' testimony to the contrary. The district court also concluded that counsel's testimony that he merely advised Morris to enter a guilty plea was more credible than Morris' allegation that counsel "threatened and bribed" him and told him that "the jury would convict him because of the color of his skin and his illiteracy." Counsel testified at the evidentiary hearing and stated that he advised Morris to enter a plea of nolo contendere because, although there were discrepancies in the preliminary hearing testimony, three of Morris' own family members, including his codefendant/son-in-law, were prepared to testify against him on behalf of the State. Additionally, there were three eyewitnesses to the robbery. The State had agreed to a stipulated sentence significantly limiting the possible maximum penalty for the charged offense. And finally, counsel testified that it was his opinion at the time that Morris believed the negotiated plea was in his best interest. Based on all of the above, we conclude that substantial evidence supports the district court's finding that Morris did not receive ineffective assistance of counsel.

Having considered Morris' contention and concluded that it is without merit, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Brent T. Adams, District Judge  
Mary Lou Wilson  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk