

IN THE SUPREME COURT OF THE STATE OF NEVADA

KARI SCOTT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 43258

FILED

OCT 20 2004

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On December 31, 2002, the district court convicted appellant, pursuant to an Alford<sup>1</sup> plea, of one count of battery causing substantial bodily harm. The district court sentenced appellant to serve a term of twelve to sixty months in the Nevada State Prison. No direct appeal was taken.

On October 29, 2003, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On April 19, 2004, the district court denied appellant's petition. This appeal followed.

In her petition, appellant claimed that she received ineffective assistance of counsel and that this rendered her guilty plea involuntary. To state a claim of ineffective assistance of counsel sufficient to invalidate

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<sup>1</sup>North Carolina v. Alford, 400 U.S. 25 (1970).

a judgment of conviction based on a guilty plea, a petitioner must demonstrate that her counsel's performance fell below an objective standard of reasonableness. Further, a petitioner must demonstrate a reasonable probability that, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial.<sup>2</sup> It is the petitioner's burden to demonstrate that her guilty plea was not entered knowingly and voluntarily.<sup>3</sup>

First, appellant claimed that her trial counsel was ineffective in advising her to enter a guilty plea. Appellant claimed that her trial counsel failed to visit her at the county jail and very seldom returned her phone calls. Appellant further claimed that her trial counsel failed to interview witnesses, did not investigate the facts relating to the victim's alleged attempted rape of a girl in appellant's home, failed to explore defenses based upon the alleged rape, and failed to pursue an allegation that two of the co-defendants were told to lie in their statements. Finally, appellant claimed that she was advised to accept the plea because she was an ex-felon and that if she refused to accept the plea that her co-defendants would have their pleas withdrawn.

We conclude that appellant failed to demonstrate that her counsel's performance prejudiced her. Appellant failed to support her claims with specific factual allegations, which if true, would have entitled

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

<sup>3</sup>See Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986); see also Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).

her to relief.<sup>4</sup> Specifically, appellant failed to identify the witnesses or set forth the potential testimony of the witnesses. Appellant failed to demonstrate that further investigation of the facts of the attempted rape allegation or the statements regarding the co-defendants would have altered her decision to accept the plea negotiations. Appellant failed to demonstrate that she was prejudiced by trial counsel's advice about the potential impact of her prior felonies at a trial. There is nothing in the record to support her claim that her guilty plea impacted the ability of her co-defendants to enter guilty pleas. Appellant received a substantial benefit by entry of her plea—she avoided the more serious charge of attempted murder.<sup>5</sup> Therefore, we conclude that the district court did not err in denying this claim.

Second, appellant claimed that her trial counsel was ineffective for refusing to move to withdraw her guilty plea. Appellant claimed that her trial counsel told her that if he moved to withdraw her plea it would look like he failed to thoroughly explain the plea agreement.

Appellant failed to demonstrate that her counsel's performance was deficient or that she was prejudiced. Appellant again failed to offer specific facts in support of this allegation—for instance,

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<sup>4</sup>See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

<sup>5</sup>The record reveals that the victim's injuries, the result of the beating administered by the co-defendants and aided and abetted by appellant, included facial fractures and bleeding and swelling of the brain causing a two-week long coma and severe cognitive deficits. Although appellant denied that she aided and abetted the beating, in pleading guilty pursuant to Alford she acknowledged that if she went to trial the State would be able to prove the more serious offense of attempted murder.

whether she made the request before or after sentencing or the reason to seek withdrawal of the plea.<sup>6</sup> Even assuming that appellant made her request before sentencing, appellant failed to provide a substantial, fair and just reason to warrant the withdrawal of her guilty plea.<sup>7</sup> Therefore, we conclude that the district court did not err in denying this claim.

Third, appellant claimed that her trial counsel was ineffective for refusing to pursue a direct appeal. Appellant failed to demonstrate that her counsel's performance was deficient. This allegation is unsupported by any specific facts.<sup>8</sup> Therefore, because appellant failed to support this claim, we conclude that the district court did not err in denying this claim.

Finally, appellant claimed that her privilege against self-incrimination was violated. This claim is not properly raised in a habeas corpus petition challenging the validity of a judgment of conviction based upon a guilty plea.<sup>9</sup> Therefore, we conclude that the district court did not err in denying this claim.

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<sup>6</sup>See Hargrove, 100 Nev. 498, 686 P.2d 222.

<sup>7</sup>NRS 176.165; Woods v. State, 114 Nev. 468, 475, 958 P.2d 91, 95 (1998). If her request was made after sentencing, appellant failed to demonstrate that withdrawal of the plea was necessary to correct a manifest injustice. See NRS 176.165.


<sup>8</sup>See Hargrove, 100 Nev. 498, 686 P.2d 222.


<sup>9</sup>See NRS 34.810(1)(a).

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.<sup>10</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Jackie Glass, District Judge  
Kari Scott  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>10</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).