IN THE SUPREME COURT OF THE STATE OF NEVADA

MILTON JOHN PAPPILLION,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43417

FILED

NOV 03 2004

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

ORDER OF AFFIRMANCE

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 April 25, 2002, the district court convicted appellant, pursuant to an Alford[1] plea, of one count of battery with a deadly weapon causing substantial bodily injury. The district court sentenced appellant to serve a term of twenty-four to one hundred and twenty months in the Nevada State Prison. This court affirmed appellant's judgment of conviction on direct appeal.[2] The remittitur issued on March 25, 2003.

On March 4, 2004, 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

[1]North Carolina v. Alford, 400 U.S. 25 (1970).

[2]Pappillion v. State, Docket No. 39697 (Order of Affirmance, February 27, 2003).



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district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On August 31, 2004, the district court denied appellant's petition. This appeal followed.

In his petition, appellant claimed that his trial counsel was "ineffective for allowing a judgment of conviction to be entered where all of the elements of the crime were not constitutionally proven beyond a reasonable doubt." To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate that his counsel's performance fell below an objective standard of reasonableness and a reasonable probability that, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial.[3] This court already determined on direct appeal that appellant's Alford plea was validly entered. Thus, appellant cannot demonstrate that his trial counsel's performance was deficient or that he was prejudiced in failing to challenge entry of the judgment of conviction. Moreover, appellant's underlying claim, an Alford plea must be supported by proof beyond a reasonable doubt, is patently without merit. Appellant is not as he suggested entitled to a trial, whether by a jury or by the court, when he enters an Alford plea and the State did not have to prove the crime beyond a reasonable doubt in order

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[3]See Hill v. Lockhart, 474 U.S. 52 (1985); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

for the plea to be valid.[4] Thus, we conclude that the district court properly denied this claim.[5]

Next, appellant claimed that his appellate counsel was ineffective for failing to argue that the Alford plea was invalid because every element was not proven beyond a reasonable doubt. This appears to be tied into appellant's claim that the district court erroneously denied his presentence motion to withdraw a guilty plea. "A claim of ineffective assistance of appellate counsel is reviewed under the 'reasonably effective assistance' test set forth in Strickland v. Washington, 466 U.S. 668 (1984)."[6] "To establish prejudice based on the deficient assistance of appellate counsel, the defendant must show that the omitted issue would have a reasonable probability of success on appeal."[7] Appellate counsel did challenge the denial of the presentence motion to withdraw a guilty

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[4]See Tiger v. State, 98 Nev. 555, 654 P.2d 1031 (1982) (holding that the district court must determine that there is factual basis for the plea, seek to resolve the conflict between the waiver of trial and a claim of innocence, and determine that the accused understands the elements of the offense); see also Alford, 400 U.S. at 37 ("An individual accused of crime may voluntarily, knowingly, and understandingly consent to the imposition of a prison sentence even if he is unwilling or unable to admit his participation in the acts constituting the crime.").

[5]In light of this court's disposition of this claim, we conclude that appellant's equal protection and due process arguments are similarly without merit.

[6]Kirksey, 112 Nev. at 998, 923 P.2d at 1113.

[7]Id. at 998, 923 P.2d at 1114.

plea. Appellant failed to demonstrate that any further challenge had a reasonable probability of success for the reasons discussed above. Therefore, we conclude that the district court did not err in denying this claim.[8]

Finally, appellant claimed that his guilty plea was not constitutionally entered because the State failed to prove every element of the crime. He further claimed that the district court erred in denying his presentence motion to withdraw a guilty plea. We conclude that the district court did not err in denying this claim. This court previously considered and rejected appellant's challenge to the denial of his presentence motion to withdraw a guilty plea. The doctrine of the law of the case prevents further litigation of this issue.[9] Moreover, as a separate and independent ground to deny relief, appellant's claim lacks merit for the reasons discussed above. Therefore, we affirm the order of the district court.[10]

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[8]In light of this court's disposition of this claim, we conclude that appellant's equal protection and due process arguments are similarly without merit.

[9]Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

[10]In light of this court's disposition of this claim, we conclude that appellant's fair trial and due process arguments are similarly without merit.

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.[11] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Rose

_____, J.
Maupin

_____, J.
Douglas

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

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