

IN THE SUPREME COURT OF THE STATE OF NEVADA

PHILLIP M. MERCADO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44095

FILED

FEB 03 2005

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 appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

On February 17, 2004, the district court convicted appellant, pursuant to an Alford¹ plea, of one count of battery with the use of a deadly weapon with substantial bodily harm with gang enhancement. The district court sentenced appellant to serve two consecutive terms of 24 to 60 months in the Nevada State Prison. Appellant did not file a direct appeal.

On June 23, 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 district court declined to appoint counsel to represent appellant or to

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

conduct an evidentiary hearing. On September 21, 2004, the district court denied appellant's petition. This appeal followed.

In his petition, appellant raised two 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.² A petitioner must also establish by a reasonable probability that, but for counsel's errors, the results of the proceedings would have been different.³ Further, to challenge the validity of the guilty plea, a petitioner must establish "a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial."⁴ The court can dispose of a claim if the petitioner makes an insufficient showing on either prong.⁵

First, appellant claimed that his counsel was ineffective for failing to present mitigating evidence of prior drug and alcohol abuse. Appellant failed to demonstrate that his counsel was deficient in this regard. This information was presented to the district court in the

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

³See Strickland, 466 U.S. at 694.

⁴Hill v. Lockhart, 474 U.S. 52, 59 (1985); see also Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996).

⁵Strickland, 466 U.S. at 697.

presentence investigation report and appellant received the minimum possible sentence for his conviction. Appellant failed to demonstrate that a different result would have been obtained had his counsel reiterated this information at sentencing. Accordingly, we conclude that the district court did not err in denying this claim.

Second, appellant claimed that his trial counsel was ineffective because his counsel coerced him into pleading guilty. Appellant failed to provide any support for this allegation.⁶ Further, at the plea canvass, appellant stated that he read and understood the plea agreement and that he was entering his plea freely and voluntarily. Accordingly, we conclude that the district court did not err in denying this claim.

Appellant also raised two additional claims for relief in his petition. First, appellant claimed that the district court abused its discretion at sentencing by failing to consider appellant's educational and family background. Second, appellant claimed that the district court erred and treated him unfairly by allowing his co-defendants to receive suspended sentences. These claims are outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus that challenges the judgment of conviction based upon a guilty plea.⁷


⁶See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

⁷See 34.810(1)(a).

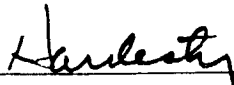
Accordingly, we conclude that the district court did not err in denying these claims.

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.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Becker


_____, J.
Rose


_____, J.
Hardesty

cc: Hon. Joseph T. Bonaventure, District Judge
Phillip M. Mercado
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).