

IN THE SUPREME COURT OF THE STATE OF NEVADA

JACK D. PERRY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44105

FILED

SEP 13 2005

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court denying appellant Jack D. Perry's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

On February 12, 2003, the district court convicted Perry, pursuant to a guilty plea, of second-degree murder. The district court also convicted him, pursuant to an Alford plea,¹ of attempted robbery. The district court sentenced Perry to serve a term of life in prison for the murder and a consecutive term of 4 to 10 years for the attempted robbery. No direct appeal was taken.

On January 22, 2004, Perry filed a proper person post-conviction petition for a writ of habeas corpus in the district court. He later filed two supplements to his petition. The State opposed the petition. On September 17, 2004, the district court denied Perry's petition without an evidentiary hearing. This appeal followed.

Perry contends on appeal that the district court erred in denying his petition without an evidentiary hearing. First, Perry asserts

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

that the district court should have conducted an evidentiary hearing in light of a number of alleged weaknesses in the State's case that his counsel should have investigated, including lost evidence and other potential suspects. The record reveals that a defense investigator explored several matters in the case. However, Perry fails to provide a complete record of the full extent of the defense investigation or explain how the lack of further investigation affected his decision to plead guilty. Moreover, Perry acknowledged in his plea agreement that he "discussed any possible defenses, defense strategies and circumstances which might be in [his] favor." Accordingly, we conclude that the district court did not err in denying this claim without an evidentiary hearing.

Perry next claims that counsel should have investigated his competency at the time of the shooting and when he entered his plea in light of his history of alcohol and drug abuse. Although counsel argued at sentencing that Perry acknowledged his alcohol problem and suffered an undisclosed number of misdemeanor DUI convictions, Perry does not reveal whether he advised his counsel of the extent of his mental health problems. Additionally, the district court noted that Perry exhibited no signs of incompetence during the proceedings and did not raise any issue of competency prior to entering his plea. Moreover, we conclude that the psychiatric evaluation and other materials Perry presented to this court do not indicate that his mental condition was ever one of legal incompetence.² Accordingly, we conclude that the district court did not err in denying this claim without an evidentiary hearing.

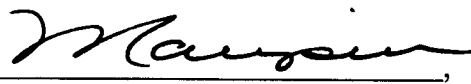
Finally, Perry contends that the district court erred in refusing to conduct an evidentiary hearing respecting the propriety of his

²Jones v. State, 107 Nev. 632, 637, 817 P.2d 1179, 1182 (1991).

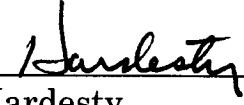
Alford plea. Specifically he argues that the attempted robbery charge lacked a proper factual basis. The record reveals that Perry agreed to enter an Alford plea to attempted robbery to avoid a harsher punishment, specifically to secure the State's promise to drop the deadly-weapon enhancement accompanying the second-degree murder charge. Nothing in the record suggests that he did not understand the negotiations or that his plea was otherwise unknowing and involuntary.³ Accordingly, we conclude that the district court did not err in denying this claim without an evidentiary hearing.⁴

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Perry is not entitled to relief. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty

³See State v. Freese, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000).

⁴See Thomas v. State, 120 Nev. 37, 44, 83 P.3d 818, 823 (2004).

cc: Hon. Joseph T. Bonaventure, District Judge
Potter Law Offices
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk