

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT T. MACHLAN,
Appellant,
vs.
WARDEN, ELY CONSERVATION
CAMP, GREGORY COX,
Respondent.

No. 44224

FILED

MAR 04 2005

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying appellant Robert T. Machlan's post-conviction petition for a writ of habeas corpus. Fifth Judicial District Court, Nye County; John P. Davis, Judge.

On August 5, 2003, the district court convicted Machlan, pursuant to a guilty plea, of attempted possession of document or personal identifying information to establish false status or identity. The district court sentenced Machlan to a term of 12 to 36 months in the Nevada State Prison. No direct appeal was taken.

On June 25, 2004, Machlan 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 Machlan or to conduct an evidentiary hearing. On September 23, 2004, the district court dismissed Machlan's petition. This appeal followed.

In his petition, Machlan argued that the State and his counsel breached the plea agreement by not returning his pickup truck and certain personal property as provided in the plea agreement. In the plea agreement, the State agreed to allow Machlan to retain his pickup truck

and certain enumerated personal items. After Machlan's arrest, his pickup truck and personal items were seized and stored at a local towing company. Eventually, the towing company sold Machlan's pickup truck and personal property. The State announced this development at sentencing. Machlan made no request to withdraw his plea at that time. There is no evidence that the State pursued forfeiture of the property at issue.¹ Therefore, we conclude that Machlan did not establish a breach of the plea agreement. Accordingly, we conclude no relief is warranted.²

Machlan also claimed that his counsel was ineffective. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, Machlan must demonstrate that his counsel's performance fell below an objective standard of reasonableness.³ Further, Machlan must demonstrate a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.⁴

First, Machlan asserted that his counsel was ineffective for failing to investigate his case and for not filing a motion in limine to suppress alleged illegally obtained evidence. We conclude that Machlan's claim is without merit. Machlan acknowledged in his plea agreement that he discussed all possible defenses with counsel and that counsel

¹See NRS 179.1156 - .1175.

²We express no opinion regarding the propriety of pursuing this matter in a civil proceeding.

³See Strickland v. Washington, 466 U.S. 668 (1984).

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

thoroughly investigated his case. Further, Machlan failed to demonstrate that a motion to suppress would have been meritorious.⁵ Moreover, Machlan received a substantial benefit by pleading guilty in that he avoided a possible habitual criminal adjudication. Accordingly, we conclude that Machlan's claim is without merit.

Second, Machlan contended that his counsel was ineffective for failing to file a direct appeal because counsel was "obviously aware of the plea agreement violation at sentencing." Counsel has a duty to perfect an appeal when a convicted defendant expresses a desire to appeal or indicates dissatisfaction with his conviction.⁶ The burden was on Machlan to inform his attorney that he desired to pursue an appeal.⁷ Here, Machlan did not allege that he informed counsel of his desire to file an appeal. Accordingly, we conclude that Machlan's claim is without merit.

Finally, Machlan claimed that the police conducted an illegal search and seizure of his person and truck. However, by pleading guilty, Machlan waived all claims of error occurring prior to the plea except those related to the voluntariness of the plea.⁸ Accordingly, we conclude that no relief is warranted.

⁵See Kirksey, 112 Nev. at 990, 923 P.2d at 1109.


⁶See Davis v. State, 115 Nev. 17, 20, 974 P.2d 658, 660 (1999); Lozada v. State, 110 Nev. 349, 354, 871 P.2d 944, 947 (1994)

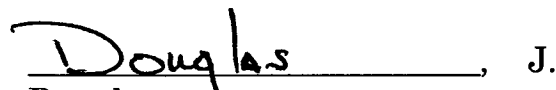
⁷See Davis, 115 Nev. at 20, 974 P.2d at 660.

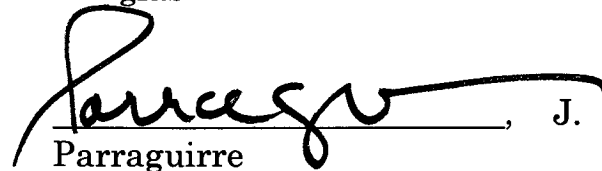
⁸See Kirksey, 112 Nev. at 1002, 923 P.2d at 1116.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Machlan is not entitled to relief and that briefing and oral argument are unwarranted.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

cc: Hon. John P. Davis, District Judge
Robert T. Machlan
Attorney General Brian Sandoval/Carson City
Nye County District Attorney/Tonopah
Nye County Clerk

⁹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).