

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRYAN DENNIE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44480

FILED

JUL 22 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; John S. McGroarty, Judge.

On May 7, 2003, the district court convicted appellant, pursuant to a jury verdict, of one count each of invasion of the home while in possession of a firearm, robbery with the use of a deadly weapon, discharging a firearm at or into a structure, two counts of battery with the use of a deadly weapon and one count of possession of a firearm by an ex-felon.¹ The district court sentenced appellant to serve a term of 35 to 156 months in the Nevada State Prison for the home invasion conviction, and a consecutive term of 35 to 156 months for the robbery conviction, plus an equal and consecutive term for the deadly weapon enhancement. Lesser concurrent terms were imposed for the remaining counts. This court

¹The district court subsequently entered amended judgments of conviction on July 11, 2003 and December 4, 2003.

affirmed the judgment of conviction and sentence on appeal.² The remittitur issued on May 17, 2005.

On March 26, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition and appellant filed a reply. 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 January 18, 2005, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that his trial counsel was ineffective.³ To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that his counsel's performance fell below an objective standard of reasonableness, and that but for his counsel's errors the results of the proceedings would have been different.⁴ The court may dispose of a claim if the petitioner makes an insufficient showing on either prong.⁵

Appellant claimed that his counsel was ineffective and deprived him of his right to a speedy trial by requesting continuances of the trial after appellant had invoked the sixty-day rule. Appellant claimed that he was prejudiced by counsel's actions because his co-defendant's trial

²Dennie v. State, Docket No. 41404 (Order of Affirmance, April 21, 2005).

³Although appellant represented himself at trial, he was represented by counsel prior to trial.

⁴Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

⁵Strickland, 466 U.S. at 697.

was severed as a result of the continuances of his trial, which allowed his co-defendant to testify against him at his trial.

Appellant failed to demonstrate that his counsel was ineffective in this regard. The record on appeal reveals that appellant's counsel asked for the continuances because appellant's counsel had scheduling conflicts with two other trials and because the appointed investigator had not completed the necessary investigation. Further, appellant failed to demonstrate that he was prejudiced by his counsel's conduct. The record on appeal reveals that appellant's co-defendant entered into an agreement to testify with the State, in which the State agreed not to pursue any of the charges against the co-defendant if the co-defendant testified against appellant at trial. Appellant failed to demonstrate that, but for the continuances, his co-defendant would not have entered into the agreement to testify with the State. Accordingly, we conclude that the district court did not err in denying this claim.

Appellant also claimed that the district court denied him his right to a grand jury hearing by conducting a preliminary hearing and initiating prosecution by information. Appellant waived this claim by failing to raise it on direct appeal and failed to demonstrate good cause for his failure to do so.⁶ Accordingly, the district court did not err in denying this claim.

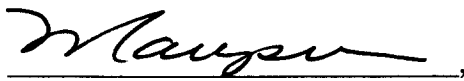
As a separate and independent ground for denying relief, this claim lacks merit. Prosecutions in Nevada may be initiated either by

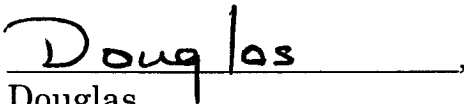
⁶See NRS 34.810(1)(b)(2).

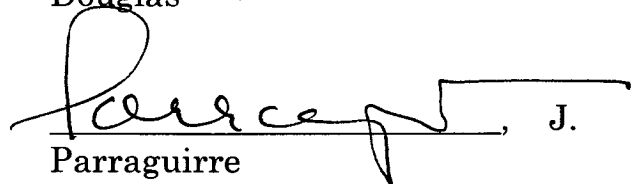
indictment or information.⁷ "The power and jurisdiction of the district court in cases initiated by indictment is the same respecting prosecutions commenced by information" and the procedural safeguards afforded to defendants prosecuted by indictment are equal to those prosecuted by information.⁸

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.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

cc: Hon. John S. McGroarty, District Judge
Bryan Dennie
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁷Nevada Const. art. 1, §8; NRS 172.015; NRS 173.015; Seim v. State, 95 Nev. 89, 98, 590 P.2d 1152, 1157 (1979).

⁸Seim, 95 Nev. at 98, 590 P.2d at 1157; see also NRS 173.025.

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