

IN THE SUPREME COURT OF THE STATE OF NEVADA


CHARLITA LASHUNDA CARROLL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44554

FILED

MAR 29 2005

ORDER OF AFFIRMANCE

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

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

On October 20, 2003, the district court convicted Carroll, pursuant to a guilty plea, of attempted murder. The district court sentenced Carroll to serve a term of 48 to 120 months in the Nevada State Prison. Carroll did not file an appeal.

On August 5, 2004, Carroll filed a proper person post-conviction petition for a writ of habeas corpus and a motion for appointment of counsel in the district court. The State opposed the petition and motion. Pursuant to NRS 34.770, the district court declined to conduct an evidentiary hearing. On November 1, 2004, the district court denied Carroll's petition and motion. This appeal followed.¹

In her petition, Carroll alleged that her trial counsel was ineffective. To state a claim of ineffective assistance of trial counsel

¹We conclude that the district court did not err in denying Carroll's motion for appointment of counsel. See NRS 34.750.

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 further establish "a reasonable probability that, but for counsel's errors, [she] would not have pleaded guilty and would have insisted on going to trial."³ The court can dispose of a claim if the petitioner makes an insufficient showing on either prong.⁴

First, Carroll claimed that her trial counsel was ineffective for failing to investigate whether James Thompson fired his weapon first. We conclude that Carroll is not entitled to relief on this claim. During Carroll's preliminary hearing, Yolanda Coleman Bryant testified that she and Thompson were in her apartment when Carroll came to the door. Bryant answered the door and she and Carroll had a brief discussion; Carroll then pulled a gun from her jacket and shot Bryant three times. Thompson fired several shots at Carroll in return. Carroll failed to specify what investigation her trial counsel should have conducted that would have contradicted Bryant's preliminary hearing testimony. Accordingly, the district court did not err in denying this claim.

Second, Carroll contended that her trial counsel was ineffective for failing to investigate whether there were bullet fragments from Thompson's weapon. It was never disputed, however, that Thompson fired several shots at Carroll. Carroll failed to specify how the discovery of

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

³Hill v. Lockhart, 474 U.S. 52, 59 (1985); see also Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996).

⁴Strickland, 466 U.S. at 697.

bullet fragments from Thompson's weapon would have altered her decision to plead guilty. As such, Carroll did not establish that her trial counsel was ineffective in this regard.

Third, Carroll alleged that her trial counsel was ineffective for disregarding her request to take a lie detector test. The results of a polygraph examination are not admissible unless both parties have signed a written stipulation to that effect.⁵ Carroll did not demonstrate that the results of a polygraph examination would have been both favorable and admissible, such that her counsel acted objectively unreasonable in failing to arrange for one. Thus, the district court did not err in denying this claim.

Fourth, Carroll contended that her trial counsel was ineffective for failing to inform her that self-defense is an affirmative defense. However, Carroll did not articulate how her knowledge that self-defense is an affirmative defense would have affected her decision to plead guilty. Further, the record reveals that Carroll's trial counsel argued at her preliminary hearing that Carroll acted in self-defense, but the justice court rejected this argument. We therefore affirm the district court's denial of this claim.

Fifth, Carroll claimed that her trial counsel was ineffective for failing to acquire the audiotape of a 9-1-1 call Carroll made weeks before the instant incident. Carroll contended that on May 10, 2003, she called 9-1-1 to report that Thompson had pushed her to the ground and threatened her with a gun.

⁵Santillanes v. State, 102 Nev. 48, 50, 714 P.2d 184, 186 (1986).

The district court did not err in denying Carroll relief on this claim. Even assuming such a tape existed, Carroll failed to demonstrate that she would not have pleaded guilty and would have insisted on going to trial and facing a possible conviction of all charged offenses if her counsel had procured the tape. Consequently, Carroll did not establish that her trial counsel was ineffective.

Sixth, Carroll alleged that her trial counsel was ineffective for failing to advise her of the right to appeal. "[T]here is no constitutional requirement that counsel must always inform a defendant who pleads guilty of the right to pursue a direct appeal," unless the defendant inquires about a direct appeal or there exists a direct appeal claim that has a reasonable likelihood of success.⁶ The burden is on the defendant to indicate to her attorney that she wishes to pursue an appeal.⁷ Here, Carroll did not allege that she asked her trial counsel to file an appeal on her behalf. Further, Carroll did not demonstrate the existence of an issue that had a reasonable probability of success on appeal. As such, she failed to establish that her trial counsel was ineffective on this issue, and the district court did not err in denying the claim.

Seventh, Carroll argued that her trial counsel was ineffective for failing to file pre-trial motions and for failing to question the victim. Carroll failed to support either of these claims with specific facts or articulate how she was prejudiced by her counsel's allegedly deficient performance.⁸ Thus, we affirm the district court's denial of these claims.

⁶Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999).

⁷Davis v. State, 115 Nev. 17, 20, 974 P.2d 658, 660 (1999).

⁸See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

Next, Carroll alleged that her guilty plea was not entered knowingly or voluntarily. A guilty plea is presumptively valid, and Carroll carries the burden of establishing that her plea was not entered knowingly and intelligently.⁹ In determining the validity of a guilty plea, this court looks to the totality of the circumstances.¹⁰ This court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.¹¹

Carroll contended that her guilty plea was unknowingly entered because her counsel coerced her into pleading guilty. However, she failed to support this claim with any specific facts whatsoever.¹² Further, Carroll signed the written guilty plea agreement, which provided that she was not entering her plea under duress or coercion. Thus, the district court did not err in denying Carroll relief on this claim.

Finally, Carroll claimed that she was never afforded an evidentiary hearing. Carroll failed to offer any supporting facts for this claim. Moreover, we have previously held, "[w]here the defendant has pleaded guilty, the only claims that may be raised thereafter are those involving the voluntariness of the plea itself and the effectiveness of

⁹Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); see also Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).

¹⁰State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000); Bryant, 102 Nev. 268, 721 P.2d 364.

¹¹Hubbard, 110 Nev. at 675, 877 P.2d at 521.

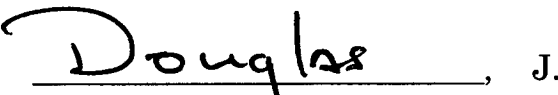
¹²See Hargrove, 100 Nev. at 502, 686 P.2d at 225.

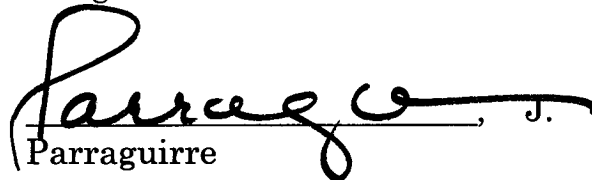
counsel."¹³ Therefore, we affirm the order of the district court in this regard.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Carroll is not entitled to relief and that briefing and oral argument are unwarranted.¹⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Maupin


Douglas


Parraguirre

cc: Hon. Joseph T. Bonaventure, District Judge
Charlita Lashunda Carroll
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

¹³Kirksey v. State, 112 Nev. at 999, 923 P.2d at 1114 (1999); see also NRS 34.810(1)(a).

¹⁴See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).