

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDITH QUINN A/K/A PATRICIA
SANDERS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45382

FILED

OCT 11 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
COURT REPORTER

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

On September 3, 2004, the district court convicted appellant, pursuant to a guilty plea, of one count of grand larceny from the person. The district court adjudicated appellant a habitual criminal and sentenced appellant to serve a term of five to twenty years in the Nevada State Prison. The district court entered an amended judgment of conviction on November 12, 2004, specifically referring to the habitual criminal adjudication. No direct appeal was taken.

On February 3, 2005, 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, the district court declined to appoint counsel to represent appellant. On May 25, 2005, after conducting an evidentiary hearing, the district court denied appellant's petition. This appeal followed.

In her petition, appellant contended that she received ineffective assistance of trial counsel. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a

petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness, and that there is a reasonable probability of a different outcome absent the alleged errors.¹ When a conviction is based upon a guilty plea, a petitioner must demonstrate a reasonable probability that, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial.² The court need not consider both prongs if the petitioner makes an insufficient showing on either prong.³ A petitioner must demonstrate the factual allegation underlying her ineffective assistance of counsel claim by a preponderance of the evidence.⁴

First, appellant claimed that her trial counsel failed to file requested motions. Appellant failed to identify the motions that counsel failed to file, and thus, she failed to demonstrate how the failure to file the motions made a difference in her decision to enter a guilty plea. Appellant's trial counsel testified that he did not recall appellant requesting that he file any specific motions that he did not file. Therefore, we conclude that the district court did not err in determining that this claim lacked merit.

Second, appellant claimed that her trial counsel coerced her guilty plea by talking her out of going to trial. In her petition, appellant

¹See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

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

³Strickland, 466 U.S. at 697.

⁴Means v. State, 120 Nev. ___, ___, 103 P.3d 25, 33 (2004).

claimed that her trial counsel told her she was going to lose if she went to trial. During the evidentiary hearing, appellant stated that she should not have entered her guilty plea when she did because the victim was not present for the trial.

Appellant failed to demonstrate that her trial counsel's performance was deficient or that she was prejudiced. Appellant's trial counsel testified that his advice to enter a guilty plea was based upon the overwhelming evidence of guilt, appellant's criminal record, and the fact that if she was found guilty after a jury trial she could have received large habitual criminal treatment and a life sentence. Trial counsel's candid advice about the likelihood of success at a trial is not deficient. The district court found that the victim was present for trial. Appellant failed to demonstrate that her counsel's advice to enter a guilty plea was deficient in light of the fact that there was a videotape showing her taking a wallet from the victim's purse, a casino teller witnessed the taking of the wallet, and the victim's identification and credit card were found in appellant's underpants during a later search. In the written guilty plea agreement and during the guilty plea canvass, appellant acknowledged that her guilty plea was being entered voluntarily. Therefore, we conclude that the district court did not err in determining that this claim lacked merit.

Third, appellant claimed that her trial counsel misled her into believing that she would receive a term of five to twelve years. Appellant failed to demonstrate that her trial counsel's performance was deficient or that she was prejudiced. The record establishes that appellant turned down a previous offer of five to twelve years and that the offer of five to twelve years was not available when appellant entered her guilty plea.

Appellant was informed in the written guilty plea agreement and during the plea canvass that she was stipulating to a term of five to twenty years. Therefore, we conclude that the district court did not err in denying this claim.

Fourth, appellant claimed that her trial counsel failed to adequately investigate, research or prepare for trial. Appellant's trial counsel testified that he read through the discovery numerous times, had an investigator look for an individual of interest and reviewed the videotapes. Appellant failed to indicate what further investigation, research or preparation that counsel should have conducted such that there was a reasonable probability of a different outcome. Therefore, we conclude that the district court did not err in determining that this claim lacked merit.

Fifth, it appeared that appellant claimed that her trial counsel was ineffective for seeking continuances. Appellant failed to demonstrate that her trial counsel's performance was deficient or that she was prejudiced. Appellant's trial counsel testified that appellant actually requested numerous times that he ask for continuances, but that he told her that he could not seek a continuance unless there was a good reason. Appellant's trial counsel testified that he sought a continuance when he received a copy of the videotape days before trial. Appellant, on the record, indicated that she did not object to the continuance. The record further reveals that appellant's trial counsel sought a continuance on November 4, 2003, because of a conflicting trial date and the district court set the matter for dual trial dates. Both of these represent reasonable

tactical decisions.⁵ The record further contains instances where appellant sought the appointment of new counsel, which the State argued was a delaying tactic. Appellant cannot demonstrate any violation of her speedy trial rights.⁶ Therefore, we conclude that the district court did not err in determining that this claim lacked merit.

Sixth, appellant claimed that her trial counsel was ineffective for failing to advise her of her right to appeal the conviction. The guilty plea agreement informed appellant of her limited right to appeal from the judgment of conviction.⁷ Appellant's trial counsel testified that he reviewed the guilty plea agreement with appellant. Therefore, we conclude that the district court did not err in determining that this claim lacked merit.

Finally, appellant claimed that her rights were violated when an all-white jury pool was seated. This claim fell outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus challenging a judgment of conviction based upon a guilty plea.⁸ Further, appellant's guilty plea waived any alleged constitutional errors that

⁵See Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990).

⁶See Windham v. State, 118 Nev. 226, 232, 43 P.3d 993, 997-98 (2002) (finding no violation of the right to speedy trial where the majority of the delay could be attributed to the defense).


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


⁸See NRS 34.810(1)(a).

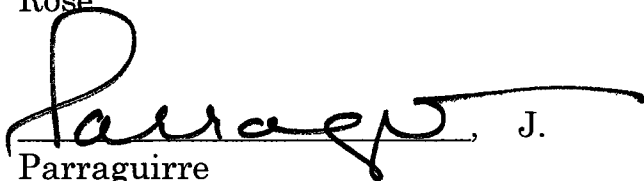
preceded the plea.⁹ Therefore, we conclude that the district court did not err in denying this claim.

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.¹⁰ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Rose


_____, J.
Parraguirre

cc: Hon. Stewart L. Bell, District Judge
Edith Quinn
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁹See Williams v. State, 103 Nev. 227, 737 P.2d 508 (1987); Webb v. State, 91 Nev. 469, 538 P.2d 164 (1975).

¹⁰See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).