

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL LIZAMA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45401

FILED

SEP 23 2005

ORDER OF AFFIRMANCE

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

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; Sally L. Loehrer, Judge.

On November 5, 2003, the district court convicted appellant, pursuant to a guilty plea, of one count of burglary while in possession of a firearm, one count of robbery with the use of a deadly weapon, one count of battery with the use of a deadly weapon, two counts of burglary, one count of robbery, one count of attempted first degree kidnapping, and one count of battery with the intent to commit a crime. The district court sentenced appellant to serve terms totaling nine to thirty years in the Nevada State Prison. No direct appeal was taken.

On November 5, 2004, 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 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On May 13, 2005, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that he received ineffective assistance of counsel. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate that his counsel's performance fell below an objective standard of reasonableness and a reasonable probability that, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial.¹ The court need not consider both prongs if the petitioner makes an insufficient showing on either prong.²

First, appellant claimed that his trial counsel was ineffective for failing to challenge the photographic line-up. Appellant claimed that the men depicted in the other photographs did not have the same hairstyle as described by the victims. Appellant claimed that he would not have been charged if his counsel had objected to the photographic line-up. Appellant failed to demonstrate that he would not have entered a guilty plea absent counsel's failure to object to the photographic line-up. Appellant failed to demonstrate that the photographic line-up was impermissibly suggestive and that he would not have been charged absent the identification from the photographic line-up.³ Further, appellant's

¹See Hill v. Lockhart, 474 U.S. 52 (1985); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

²Strickland v. Washington, 466 U.S. 668, 697 (1984).

³See Cunningham v. State, 113 Nev. 897, 944 P.2d 261 (1997).

acceptance of the guilty plea relieved counsel of any future duty to challenge the photographic line-up. Therefore, we conclude that the district court did not err in denying this claim.

Second, appellant claimed that his trial counsel was ineffective for failing to talk to any defense witnesses, interview state witnesses, and coercing appellant into accepting the guilty plea. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Appellant failed to provide any specific facts in support of these claims.⁴ Therefore, we conclude that the district court did not err in denying these claims.

Next, appellant claimed that his Fourth Amendment rights were violated due to an illegal arrest. First, 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.⁵ Further, by pleading guilty appellant waived any claims relating to the deprivation of constitutional rights that occurred prior to the entry of his guilty plea.⁶ Therefore, we conclude that the district court did not err in denying this claim.


⁴See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).


⁵See NRS 34.810(1)(a).

⁶Williams v. State, 103 Nev. 227, 737 P.2d 508 (1987); Webb v. State, 91 Nev. 469, 538 P.2d 164 (1975).

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.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Sally L. Loehrer, District Judge
Michael Lizama
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).