

IN THE SUPREME COURT OF THE STATE OF NEVADA

ABDUL HOWARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45421

FILED

SEP 23 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *Richard*
CHIEF 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; Joseph T. Bonaventure, Judge.

On December 1, 2003, the district court convicted appellant, pursuant to a guilty plea, of two counts of robbery with the use of a deadly weapon. The district court sentenced appellant to serve a total of eight to twenty years in the Nevada State Prison. The district court imposed the terms for this case to run concurrently with district court case C189799 and a Florida case. This court affirmed the judgment of conviction on direct appeal.¹

On March 18, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Appellant also filed a supplement to the petition. The State filed an opposition to the petition and the supplement. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent

¹Howard v. State, Docket No. 42344 (Order of Affirmance, May 10, 2004).

appellant or to conduct an evidentiary hearing. On July 14, 2005, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that he received ineffective assistance of trial and appellate counsel.² To state a claim of ineffective assistance of counsel, 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, the results of the proceedings would have been different.³ In a conviction involving a guilty plea, a petitioner must demonstrate that he would not have pleaded guilty and would have insisted on going to trial absent any errors.⁴ "To establish prejudice based on the deficient assistance of appellate counsel, the defendant must show that the omitted issue would have a reasonable probability of success on appeal."⁵ The court can dispose of a claim if the petitioner makes an insufficient showing on either prong.⁶

Appellant claimed that his trial counsel was ineffective for allowing the district court to participate in the plea negotiations and

²To the extent that appellant raised any of the following issues independently from his ineffective assistance of counsel claims, we conclude that the district court properly determined that they are waived and outside the scope of a petition challenging a conviction based on a guilty plea. See NRS 34.810(1)(a); Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

³Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

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

⁵Kirksey, 112 Nev. at 998, 923 P.2d at 1114.

⁶Strickland, 466 U.S. at 697.

coercing his guilty plea. He claimed that the district court's participation coerced his guilty plea because he felt that if he did not accept the plea that the district court had threatened him with a fifty-year sentence. He further asserted that the district court informed him that it was a fair offer, but that the district court had pressured the State not to offer more favorable negotiations. Finally, he claimed that his appellate counsel should have argued that the district court improperly participated in the plea negotiations.

We conclude that appellant failed to demonstrate that either his trial or appellate counsel's performance was deficient or that he was prejudiced. Appellant affirmatively indicated in the plea canvass and in the written plea agreement that his guilty plea was being voluntarily entered. A review of the record on appeal demonstrates that the district court did not improperly participate in the plea negotiations.⁷ Rather, pursuant to trial counsel's statement that a plea offer had been extended by the State, the district court had the terms of the plea negotiations set forth on the record. The record does not demonstrate that the district court evinced a desire that appellant accept the offer of the State prior to appellant accepting the plea negotiations. The district court's comment that it believed that the deal offered by the State was fair was made after appellant's trial counsel had informed the district court that appellant was accepting the negotiations, and thus, it could not have influenced his decision to accept the plea negotiations. Appellant received a substantial benefit by entry of his plea. He avoided two additional charges of burglary

⁷But cf. Standley v. Warden, 115 Nev. 333, 990 P.2d 783 (1999) (holding that trial judge improperly coerced defendant into accepting plea bargain where trial judge addressed defendant at a pretrial hearing about the advantages of the offer made by the State).

while in the possession of a deadly weapon and the State agreed not to seek habitual criminal adjudication. Appellant failed to demonstrate that the underlying issue of coercion had a reasonable probability of success on appeal. Therefore, we conclude that the district court did not err in determining that this claim lacked merit.

Second, appellant claimed that his trial counsel was ineffective for failing to provide adequate representation when appellant provided "new information witnesses [sp]." Appellant claimed that these witnesses would establish his innocence. We conclude that appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Appellant failed to identify the witnesses or provide specific information about the potential testimony of these witnesses.⁸ Therefore, we conclude that the district court did not err in determining that this claim lacked merit.

Third, appellant claimed that his trial counsel was ineffective during the argument of his motion to suppress and motion to sever. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. During the hearing set for the motions, appellant accepted the guilty plea negotiations, and thus, argument on the motions was rendered unnecessary. Appellant further failed to demonstrate that these motions were meritorious.⁹ Therefore, we conclude that the district court did not err in determining that this claim lacked merit.

Finally, appellant challenged his guilty plea on the basis that he was not properly canvassed. This court considered and rejected

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


⁹See Kirksey v. State, 112 Nev. 980, 990, 923 P.2d 1102, 1109 (1996)

appellant's challenge to the validity of his guilty plea on the basis that he was not properly canvassed. The doctrine of the law of the case prevents further litigation of this issue and cannot be avoided by a more detailed and precisely focused argument.¹⁰ Therefore, we conclude that the district court did not err in denying this claim.

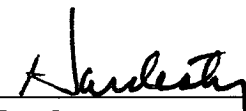
Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.¹¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹²

 J.

Maupin
 J.

Gibbons

 J.
Hardesty

¹⁰See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

¹¹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹²We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

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