IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIC DAVID HOFFERT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45502

FILED

DEC 0 6 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

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; Donald M. Mosley, Judge.

On February 10, 2004, the district court convicted appellant, pursuant to an Alford[1] plea, of one count of attempted sexual assault of a minor under the age of sixteen years, and two counts of lewdness with a child under the age of fourteen years. The district court sentenced appellant to serve three concurrent terms of 48 to 120 months in the Nevada State Prison, to run concurrently with appellant's Arizona conviction. Appellant did not file a direct appeal.

On January 31, 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 and 34.770, the district court declined to appoint counsel or conduct an evidentiary

[1]North Carolina v. Alford, 400 U.S. 25 (1970).

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hearing. On May 18, 2005, the district court denied appellant's petition.[2] This appeal followed.

In his petition below, appellant claimed that his counsel was ineffective.[3] 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.[4] Further, 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.[5] The court can dispose of a claim if the petitioner makes an insufficient showing on either prong.[6]

First, appellant claimed that his counsel was ineffective for failing to argue that the State violated his right to proceed with trial within 180 days pursuant to NRS 178.620, Art. III. This claim is belied by the record.[7] Counsel specifically objected to violation of the 180-day rule,

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[2]A second order denying petition was filed on May 24, 2005.

[3]To the extent that appellant raised any of the following issues independently from his ineffective assistance of counsel claims, we conclude that they fall 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. NRS 34.810(1)(a).

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

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

[6]Strickland, 466 U.S. at 697.

[7]See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

and briefed the district court on appellant's right. Appellant failed to indicate what further actions counsel should have taken that would have had a reasonable probability of altering the outcome of the proceedings, or convincing appellant not to plead guilty and proceed to trial. Thus, the district court did not err in denying this claim.

Second, appellant claimed that his counsel was ineffective for failing to argue that the State violated his right to commence trial proceedings within 120 days, pursuant to NRS 178.620, Art. IV. Appellant failed to demonstrate that counsel's performance was deficient, or that such performance was prejudicial. NRS 178.620, Art. IV(c) stipulates that the court having jurisdiction of the matter may grant any necessary or reasonable continuances. Appellant failed to demonstrate that any continuance was not necessary or reasonable, and that counsel's performance was ineffective. Thus, the district court did not err in denying this claim.

Third, appellant claimed that his counsel was ineffective for failing to argue that the State violated his rights by refusing to accept temporary custody of appellant in 1999 pursuant to NRS 178.620. Appellant failed to demonstrate that his counsel's performance was deficient. Appellant refused to waive extradition until December of 2000. Thus, the district court did not err in denying this claim.

Fourth, appellant claimed that his counsel was ineffective for failing to argue that the State violated his right to go before a magistrate within the required time pursuant to NRS 171.178.[8] Appellant was

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[8]See also Powell v. State, 113 Nev. 41, 930 P.2d 1123 (1997) (holding that failure to take before the magistrate before forty-eight hours was harmless error).

arrested in Arizona when he surrendered to the authorities within that state. NRS 171.178 did not apply to appellant when he was out of state. Appellant failed to demonstrate that counsel was deficient. Therefore, the district court did not err in denying this claim.

Fifth, appellant claimed that his counsel was ineffective for failing to argue that the State violated appellant's right to a speedy trial pursuant to the Sixth Amendment of the U.S. Constitution. Appellant's claim is belied by the record.[9] Appellant specifically waived his right to a speedy trial. Appellant failed to demonstrate that counsel's performance was ineffective, and the district court did not err in denying this claim.

Sixth, appellant claimed counsel was ineffective for failing to object to a sentence of lifetime supervision. Specifically, appellant argued that counsel was ineffective because counsel did not object to the application of NRS 176.0931,[10] which states that imposition of lifetime supervision applies when a "defendant pleads or is found guilty of a sexual offense." Appellant argued that since he pled under Alford, and did not plead guilty, NRS 176.0931 did not apply to him. Appellant failed to demonstrate that counsel was ineffective. Appellant was convicted of three qualifying sexual offenses,[11] and thus, imposition of lifetime supervision was required. A plea of guilty pursuant to North Carolina v.

[9]Hargrove, 100 Nev. At 503, 686 P.2d at 225.

[10]1995 Nev. Stat., ch. 256, § 4, at 414 (Appellant committed his crime in 1996 and argued that the 1995 Nev. Stat. applied to him).

[11]NRS 201.230; NRS 200.366; NRS 176.0931(5)(b)(2).

Alford[12] is treated as a plea of guilty for general purposes.[13] Thus, 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.[14] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[15]

Douglas, J.
Douglas

Rose, J.
Rose

Parraguirre, J.
Parraguirre

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[12]400 U.S. 25.

[13]State v. Gomes, 112 Nev. 1473, 1479, 930 P.2d 701, 705 (1996).

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

[15]We 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. Donald M. Mosley, District Judge
Eric David Hoffert
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk