

IN THE SUPREME COURT OF THE STATE OF NEVADA

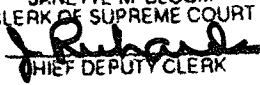
ROBIN BANKS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 45606

**FILED**

OCT 05 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 a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

On June 8, 2004, the district court convicted appellant, pursuant to a guilty plea, of one count of battery with the use of a deadly weapon resulting in substantial bodily harm. The district court sentenced appellant to serve a term of forty-eight months to one hundred and twenty months in the Nevada State Prison. The district court suspended the sentence and placed appellant on probation for a period not to exceed three years. No direct appeal was taken. On November 12, 2004, the district court revoked appellant's probation, modified appellant's sentence to a term of forty months to one hundred months, and entered an amended judgment of conviction. No appeal was taken.

On May 16, 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 to represent appellant or to conduct an evidentiary hearing. On July 12, 2005, 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.<sup>1</sup> 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.<sup>2</sup> The court need not consider both prongs if the petitioner makes an insufficient showing on either prong.<sup>3</sup>

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

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

<sup>3</sup>Strickland, 466 U.S. at 697.

First, appellant claimed that her trial counsel did not prepare for a proper defense. Appellant failed to provide any specific facts in support of this claim, and thus, she failed to demonstrate that her trial counsel was ineffective in this regard. Therefore, we conclude that the district court did not err in determining that this claim lacked merit.

Second, appellant claimed that her trial counsel failed to interview the victim or review medical records to determine whether the victim's injury amounted to substantial bodily harm. We conclude that appellant failed to demonstrate that her trial counsel's performance prejudiced her. Appellant failed to demonstrate that she would not have entered a guilty plea and would have insisted on going to trial absent the alleged deficient performance. In exchange for her guilty plea, the State agreed to the dismissal of additional counts including burglary and attempted robbery with the use of a deadly weapon. Further, the record supports the district court's finding that the victim suffered substantial bodily injury as she suffered a permanent facial disfigurement when appellant hit the victim in the head with a tire iron.<sup>4</sup> Therefore, we conclude that the district court did not err in determining that this claim lacked merit.

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<sup>4</sup>See NRS 0.060; Levi v. State, 95 Nev. 746, 748, 602 P.2d 189, 190 (1979) (interpreting "serious permanent disfigurement," identical language in the statute predating NRS 0.060, to include cosmetic disfigurement).

Third, appellant claimed that her trial counsel was ineffective for advising her to waive a preliminary inquiry on the probation violation. Appellant failed to demonstrate that she was prejudiced. Appellant failed to demonstrate that waiver of the preliminary inquiry made any difference in light of her stipulation to the probation violation at the formal probation revocation hearing. Therefore, we conclude that the district court did not err in determining that this claim lacked merit.

Next, it appears that appellant claimed that she was not informed of her right to a direct appeal. The record on appeal does not support this claim. The written guilty plea agreement informed appellant of her limited right to appeal.<sup>5</sup> Therefore, we conclude that this claim was properly denied.

Finally, appellant appeared to claim that her sentence was too harsh in light of her lack of criminal history and her drug addiction. This claim fell outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus challenging a conviction based upon a guilty plea.<sup>6</sup> Therefore, we conclude that the district court did not err in determining that this claim lacked merit.

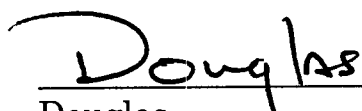
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<sup>5</sup>See Davis v. State, 115 Nev. 17, 974 P.2d 658 (1999).

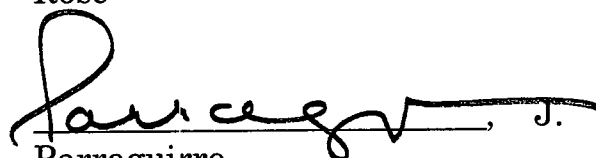
<sup>6</sup>NRS 34.810(1)(a).

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.<sup>7</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>8</sup>

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Parraguirre

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

<sup>8</sup>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. Joseph T. Bonaventure, District Judge  
Robin Banks  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk