

IN THE SUPREME COURT OF THE STATE OF NEVADA

BERNARD T. WALKER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45969

FILED

FEB 16 2006

ORDER OF AFFIRMANCE

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

This is a proper person appeal from the district court's denial of appellant's post-conviction petition for writ of habeas corpus. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

On February 15, 2005, the district court convicted appellant, pursuant to a guilty plea, of burglary. The district court adjudicated appellant a small habitual criminal and sentenced appellant to serve a term of 60 to 240 months in the Nevada State Prison. Appellant did not file a direct appeal.

On May 12, 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 August 15, 2005, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that counsel was ineffective.¹ 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.² 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.³ The court can dispose of a claim if the petitioner makes an insufficient showing on either prong.⁴

First, appellant claimed that his counsel was ineffective for failing to inform him of the DNA analysis fee and the total fee he could be fined, which resulted in his guilty plea being involuntary, unwilling and unknowing.

Appellant failed to demonstrate that his counsel was ineffective. The plea agreement stated that appellant would be charged fines or fees upon sentencing. Appellant admitted his crime and

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

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

³See Hill v. Lockhart, 474 U.S. 52 (1985); Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996).

⁴Strickland, 466 U.S. at 697.

confirmed that he was pleading freely and voluntarily, he had read the plea agreement, discussed it with his attorney, and understood the charges and everything contained in the plea agreement. The district court adequately canvassed appellant. At the time of sentencing, the district court informed appellant of the fees he would be required to pay; however, appellant was not required to pay restitution fees. Appellant's administrative and DNA analysis fees totaled \$175, which is de minimis.⁵ We conclude, considering the totality of the circumstances, that appellant's plea was voluntary.⁶ Furthermore, we conclude that, even if appellant was not informed of the fees prior to pleading guilty, this would not have convinced appellant to not plead guilty and to proceed to trial. Thus, the district court did not err in denying this claim.

Next, appellant claimed that his counsel was ineffective for not challenging the certified copies of appellant's past convictions for adjudication as a habitual criminal. Appellant failed to demonstrate that his counsel's performance was deficient. Certified copies of appellant's prior conviction were filed in court and supplied to appellant's counsel. Pursuant to NRS 207.016(5), a certified copy of a felony conviction is prima facie evidence of conviction of a prior felony. Appellant's past felonies making him eligible for habitual criminal status were listed on the

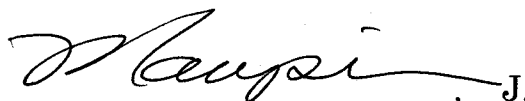
⁵See People v. Turner, 96 Cal. App. 4th 1409 (Cal. Ct. App. 2002); NRS 176.0915 (setting forth a genetic marker fee as \$150); NRS 176.062 (setting forth a \$25 administrative fee for felonies and gross misdemeanors).

⁶See Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986).

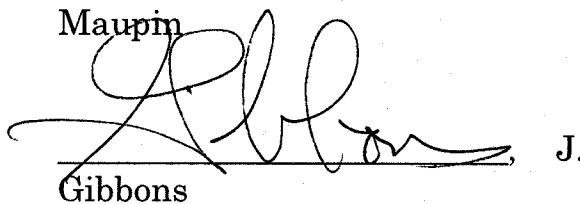
information, and appellant never objected to the authenticity of the past convictions. Appellant failed to demonstrate that counsel was ineffective, and thus, the district court did not err in denying this claim.

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.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Hon. Sally L. Loehrer, District Judge
Bernard T. Walker
Attorney General George Chanos/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).