

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY DWAYNE PALMER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45986

FILED

FEB 10 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
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. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

On May 17, 2001, the district court convicted appellant, pursuant to a guilty plea, of trafficking in a controlled substance. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole after ten years. Appellant's sentence was suspended and appellant was placed on probation for an indeterminate period not to exceed fifty months. Appellant did not file a direct appeal from the judgment of conviction.

On November 16, 2004, the district court entered an order revoking appellant's probation. The district court executed appellant's original sentence and awarded credit for 432 days served.

On February 2, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State moved to dismiss the petition. Appellant filed a response to the motion to dismiss and a supplemental 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 23, 2005, the district court denied appellant's petition. This appeal followed.

The district court denied appellant's petition on the merits. However, appellant filed his petition more than four years after the entry of the judgment of conviction. Thus, appellant's petition was untimely filed.¹ Appellant's petition was procedurally barred absent a demonstration of good cause for the delay and prejudice.²

Appellant failed to demonstrate any cause for the delay or prejudice. Further, to the extent that appellant relied upon the filing of the order revoking probation to excuse the delay in filing his petition, such reliance was unfounded. This court recently held that "untimely post-conviction claims that arise out of the proceedings involving the initial conviction . . . and that could have been raised before the judgment of conviction was amended are procedurally barred."³ Appellant's claims did not challenge the probation revocation proceedings. Therefore, the entry of the order revoking probation does not provide good cause for the untimely filing of his petition. The district court reached the correct result in denying appellant's petition, and therefore, we affirm the decision of the district court to deny post-conviction relief.⁴

¹See NRS 34.726(1).

²See id.

³Sullivan v. State, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004).

⁴See generally Kraemer v. Kraemer, 79 Nev. 287, 291, 382 P.2d 394, 396 (1963) (holding that a correct result will not be reversed simply because it is based on the wrong decision).

Moreover, as separate and independent grounds for denying relief, appellant's claims lacked merit. In his petition, appellant claimed that his sentence was improper because a judge, rather than a jury, determined his sentence; a jury did not find all the facts to support his sentence; and the facts would only support a maximum term of ten years. This claim is outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus challenging a guilty plea.⁵ Further, by entering a guilty plea appellant waived his right to a jury trial. Appellant pleaded guilty to a violation of NRS 453.3385(3) and the sentence imposed was within the statutory limits pursuant to NRS 453.3405.

Appellant also claimed that the state breached his plea agreement and his counsel was ineffective for failing to object to the breach. Specifically, appellant argued that the State's failure to recommend a 48 to 120 month sentence as set forth in the written plea agreement violated the terms of the plea agreement. Appellant failed to demonstrate that the State breached the plea agreement or that his counsel was ineffective.⁶

Although the written plea agreement states that if appellant complied with NRS 453.3405 the State would recommend a sentence of 48 to 120 months to run concurrent with his sentence in another case, the

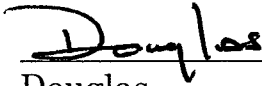
⁵See NRS 34.810(1)(a).

⁶See Kirksey v. State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996) (holding that to demonstrate ineffective assistance of counsel sufficient to invalidate a guilty plea a petitioner must demonstrate that counsel was deficient, and, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial); see also Hill v. Lockhart, 474 U.S. 52 (1985).

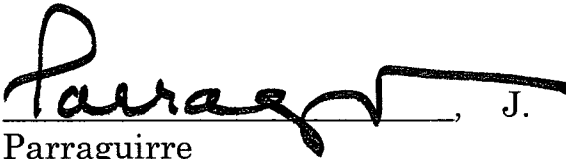
agreement also states that if the information provided by appellant lead to the arrest of a specific individual the State would recommend probation. At the sentencing hearing, the State informed the district court that appellant complied with NRS 453.3405 and recommended probation for both of appellant's cases and recommended concurrent sentences. Therefore, the State complied with the plea agreement. Further, appellant was informed in the plea agreement that the district court retained discretion when sentencing appellant. Although the district court sentenced appellant to the maximum possible sentence, that sentence was suspended and appellant was placed on probation.

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.
Douglas


_____, J.
Becker


_____, J.
Parraguirre

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

cc: Hon. Steven P. Elliott, District Judge
Anthony Dwayne Palmer
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk