

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARVIN LOVELL HAL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 46148

**FILED**

**APR 21 2006**

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. 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; Jennifer Togliatti, Judge.

On August 4, 2004, the district court convicted appellant, pursuant to a guilty plea, of one count of possession of a controlled substance and two counts of battery of an officer. The district court sentenced appellant to serve a term of twelve to forty-eight months in the Nevada State Prison for the possession count and two concurrent terms of six months for the battery counts. This court dismissed appellant's untimely direct appeal for lack of jurisdiction.<sup>1</sup>

On June 6, 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 September 16, 2005, the district court denied appellant's petition. This appeal followed.

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<sup>1</sup>Hal v. State, Docket No. 44349 (Order Dismissing Appeal, January 20, 2005).



In his petition, appellant raised seven claims of ineffective assistance of trial counsel. 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 was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is 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 address both components of the inquiry if the petitioner makes an insufficient showing on either one.<sup>3</sup>

First, appellant claimed that his trial counsel was ineffective because his trial counsel told him that if he entered a guilty plea that trial counsel would ask for probation. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Trial counsel did request probation during the sentencing hearing. However, the district court was not required to impose probation in the instant case.<sup>4</sup> The guilty plea agreement specifically informed appellant of the availability of probation and that the district court could elect not to impose probation for the possession count. Therefore, we conclude that the district court did not err in denying this claim.

Second, appellant claimed that his trial counsel was ineffective for failing to pursue an entrapment defense. Appellant failed to

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

<sup>3</sup>Strickland v. Washington, 466 U.S. 668, 697 (1984).

<sup>4</sup>Probation was not mandatory because appellant had previously had probation revoked for a felony conviction, and appellant had at least four prior felony convictions. See NRS 176A.100(1)(b)(2), (4).

demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Appellant failed to establish that he had a valid defense of entrapment to the original charge of possession of a controlled substance with the intent to sell because the record does not demonstrate that the State presented appellant with an opportunity to commit a crime or that appellant was not predisposed to sell drugs.<sup>5</sup> The record reveals that a stakeout team observed appellant conduct several drug sales with unknown individuals without any inducement or participation by the State. Further, the record reveals appellant had been twice convicted of possession of a controlled substance with the intent to sell. 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 for failing to file a direct appeal after requested to do so by appellant. Appellant appeared to indicate that he made the request in a letter. Appellant failed to demonstrate that his trial counsel's performance was deficient. Appellant failed to support this claim with sufficient facts.<sup>6</sup> For instance, appellant did not state when he made this request. Trial counsel would not be ineffective if the request to file a notice of appeal was made after the thirty-day appeal period as this court lacks jurisdiction to

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<sup>5</sup>See Miller v. State, 121 Nev. \_\_\_, \_\_\_, 110 P.3d 53, 56 (2005); (""[E]ntrapment encompasses two elements: (1) an opportunity to commit a crime is presented by the state (2) to a person not predisposed to commit the act."") (quoting Depasquale v. State, 104 Nev. 338, 340, 757 P.2d 367, 368 (1988)).

<sup>6</sup>See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

entertain an untimely notice of appeal.<sup>7</sup> Therefore, we conclude that the district court did not err in determining that this claim lacked merit.

Fourth, appellant claimed that his trial counsel was ineffective for failing to advise him that he could file a presentence motion to withdraw a guilty plea and that such a motion would have been granted for any reason. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. A presentence motion to withdraw a guilty plea will not be granted for "any reason," but may be granted if the defendant presents a substantial reason and if it is fair and just.<sup>8</sup> Appellant failed to offer any explanation of what issues that he would have raised in a presentence motion to withdraw a guilty plea, and thus, he failed to demonstrate that there was a substantial reason, one that was fair and just, for withdrawing the plea. Therefore, we conclude that the district court did not err in determining that this claim lacked merit.

Fifth, appellant claimed that his trial counsel was ineffective for failing to object to the alleged testimony of a witness. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Appellant failed to provide any intelligible, relevant facts in support of this claim.<sup>9</sup> No testimony was presented in the instant case as appellant unconditionally waived his preliminary hearing and entered a guilty plea. Consequently, trial counsel would not be ineffective for failing to object to testimony that did not actually take place.

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<sup>7</sup>See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

<sup>8</sup>Molina v. State, 120 Nev. 185, 87 P.3d 533 (2004).

<sup>9</sup>See Hargrove, 100 Nev. 498, 686 P.2d 222.

Therefore, we conclude that the district court did not err in determining that this claim lacked merit.

Sixth, appellant claimed that his trial counsel was ineffective for coercing him into entering a guilty plea. However, appellant offered no facts in support of this claim.<sup>10</sup> Therefore, we conclude that appellant failed to demonstrate that his trial counsel was ineffective, and the district court properly denied the claim.

Seventh, appellant appeared to claim that his trial counsel was ineffective for making improper attacks on appellant's character. Again, appellant failed to offer any facts in support of this claim.<sup>11</sup> Therefore, we conclude that appellant failed to demonstrate that his trial counsel was ineffective, and the district court properly denied the claim.

Next, appellant claimed that his guilty plea was not entered knowingly and voluntarily because it was induced by unkept promises of the prosecutor and entered without knowledge of the consequences. Appellant failed to present any facts in support of these claims, and thus, appellant failed to carry his burden of demonstrating that his guilty plea was invalid.<sup>12</sup> Therefore, we conclude that the district court did not err in determining that these claims lacked merit.

Next, appellant claimed that he was actually innocent. However, appellant offered no facts in support of this claim. Therefore, we conclude that the district court did not err in denying the claim.

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<sup>10</sup>See id.

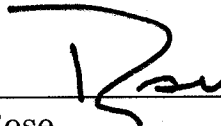
<sup>11</sup>See id.


<sup>12</sup>See Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986); Hargrove, 100 Nev. 498, 686 P.2d 222.

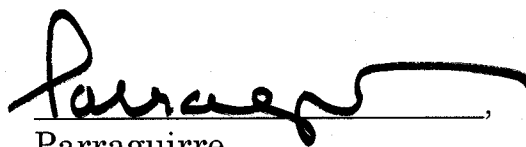
Finally, appellant claimed that he was improperly arrested, he was entrapped, he was subject to an illegal search, and his punishment was cruel and unusual. These claims fell outside the narrow scope of claims permissible in a habeas corpus petition challenging a judgment of conviction based upon a guilty plea.<sup>13</sup> Therefore, we conclude that the district court did not err in denying these claims.

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>14</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Jennifer Togliatti, District Judge  
Marvin Lovell Hal  
Attorney General George Chanos/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>13</sup>See NRS 34.810(1)(a).

<sup>14</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).