

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARVIN CRANEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46261

FILED

MAY 01 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. B. [Signature]*
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

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; Jackie Glass, Judge.

On February 16, 2005, the district court convicted appellant, pursuant to a guilty plea, of battery constituting domestic violence, third offense. The district court sentenced appellant to serve a term of 24 to 60 months in the Nevada State Prison. No direct appeal was taken.

On July 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 January 13, 2006, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that he received ineffective assistance of 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.¹ The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.²

First, appellant claimed his counsel was ineffective for failing to object to the sentence at the sentencing hearing. Appellant claimed the district court improperly sentenced him to serve a term of 24 to 60 months when he and the State had stipulated to a term of 12 to 30 months. This claim lacked merit. The district court was not bound to sentence appellant consistent with the agreement between appellant and the State. Appellant signed a written plea agreement that advised him the sentence was at the district court's discretion and could be between one and five years. At the plea entry hearing, the district court also advised appellant that the sentence was at the court's discretion and could be between one and five years. Further, appellant obtained a substantial benefit from pleading guilty. In exchange for appellant's guilty plea, the State agreed to recommend the minimum sentence of 12 to 30 months, to dismiss another felony case pending against appellant, and to refrain from seeking habitual criminal treatment. Accordingly, we conclude counsel was not deficient in this regard, and the district court did not err in denying this claim.

¹Hill v. Lockhart, 474 U.S. 52 (1985); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

²Strickland v. Washington, 466 U.S. 668, 697 (1984).

Second, appellant claimed his counsel was ineffective for failing to file a direct appeal of his conviction after appellant specifically requested that counsel do so. This court has held that failure to file a direct appeal under these circumstances is deficient and that prejudice is presumed from the defendant's loss of his right to appeal his conviction.³

Because this claim was not belied by the record on appeal, this court ordered the State to show cause why this matter should not be remanded for an evidentiary hearing. In its response to this court's order to show cause, the State argues that the issue is moot because appellant pleaded guilty, his available appeal claims are therefore limited, and appellant raised his sentencing claim in the instant petition. When a petitioner claims he asked counsel to file an appeal and counsel failed to do so, the petitioner is not required to show he had any colorable claims to bring on appeal.⁴ Because this claim was not belied by the record,⁵ appellant was entitled to an evidentiary hearing on this claim.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is entitled only to the relief set forth above, and that briefing and oral argument are unwarranted.⁶ Accordingly, we

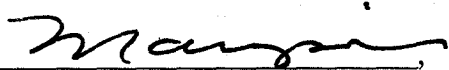
³Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

⁴Rodriguez v. United States, 395 U.S. 327, 330 (1969).

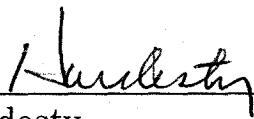
⁵See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

⁶See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty

cc: Honorable Jackie Glass, District Judge
Marvin Craney
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk