IN THE SUPREME COURT OF THE STATE OF NEVADA

HUGO APARICIO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46316

FILED

FEB 24 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [signature]
CHIEF 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. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

On February 19, 2004, the district court convicted appellant, pursuant to a guilty plea, of two counts of robbery with the use of a deadly weapon. For each count, the district court sentenced appellant to serve a term of 48 to 180 months in the Nevada State Prison, with a consecutive term of 48 to 180 months for the deadly weapon enhancement. The sentences for the two counts were to run concurrent. This court affirmed appellant's conviction on direct appeal.[1] The remittitur issued October 12, 2004.

On August 9, 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

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[1] Aparicio v. State, Docket No. 43014 (Order of Affirmance, September 15, 2004).

conduct an evidentiary hearing. On December 8, 2005, 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.[2] The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.[3]

First, appellant claimed his counsel was ineffective for failing to advise him that he faced the deadly weapon sentencing enhancement. Appellant was aware that he faced the enhancement: he signed a guilty plea agreement that informed him he faced the enhancement, and the district court informed appellant during the plea entry hearing that he would be sentenced under the enhancement. Appellant failed to demonstrate he would not have pleaded guilty had the knowledge that he faced the enhancement come from counsel. Further, appellant gained a substantial benefit by pleading guilty: in exchange for his plea, the State agreed to dismiss the charges of two counts of first-degree kidnapping with the use of a deadly weapon, assault with a deadly weapon, burglary

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

[3]Strickland v. Washington, 466 U.S. 668, 697 (1984).

while in possession of a firearm, and conspiracy to commit robbery. Accordingly, we conclude the district court did not err in denying this claim.

Second, appellant claimed counsel was ineffective for failing to give him sufficient time to think about the plea agreement before signing it. Appellant failed to state any facts to support this allegation.[4] Further, appellant obtained a significant benefit from the agreement, and he failed to demonstrate he would not have pleaded guilty had counsel given him additional time to think about the agreement. Accordingly, we conclude the district court did not err in denying this claim.

Third, appellant claimed counsel was ineffective for not giving him a Spanish version of the plea agreement at the time he signed it. Appellant failed to demonstrate he would not have pleaded guilty had counsel done so. The contents of the plea agreement were orally translated into Spanish for appellant. Appellant did not contend that the translation was incorrect. During the plea hearing, during which appellant used a Spanish interpreter, appellant stated he had been told the terms of the agreement in Spanish, understood them, and had no questions about the plea agreement's contents. Accordingly, we conclude the district court did not err in denying this claim.

Fourth, appellant claimed counsel was ineffective for promising him he would be sentenced to four to ten years. Appellant failed to state any facts to support this allegation.[5] Further, during the plea hearing, appellant stated no promises had been made to obtain his

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[4]See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

[5]See id.

plea. Accordingly, we conclude the district court did not err in denying this claim.

Fifth, appellant claimed counsel was ineffective for failing to give him copies of discovery in Spanish. Appellant failed to specify which discovery should have been provided to him[6] or how receiving this discovery in written Spanish would have convinced him not to plead guilty. Further, the police report and defendant's statement were orally translated into Spanish for appellant. Appellant did not contend those translations were incorrect. Accordingly, we conclude the district court did not err in denying this claim.

Sixth, appellant claimed his counsel was ineffective for pressuring him to plead guilty by telling him he could get a life sentence if he did not plead guilty. Appellant failed to show counsel's performance was deficient in this regard. Appellant was eligible for two life sentences for the kidnapping counts,[7] and counsel's so advising him was not deficient. Accordingly, we conclude the district court did not err in denying this claim.

Seventh, appellant claimed his counsel was ineffective for telling him a witness placed him at the scene of the crime when the surveillance video showed both perpetrators were wearing masks. Our review of the record on appeal reveals that a witness recognized appellant before he put the mask on. Counsel was not deficient for relating this fact to appellant. Accordingly, we conclude the district court did not err in denying this claim.

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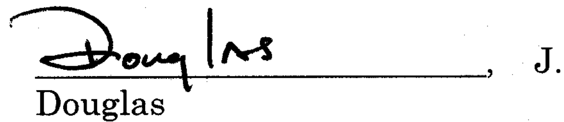
[6]See id.

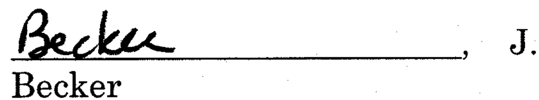
[7]See NRS 200.310(1); NRS 193.130(2)(a).

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.[8] Accordingly, we

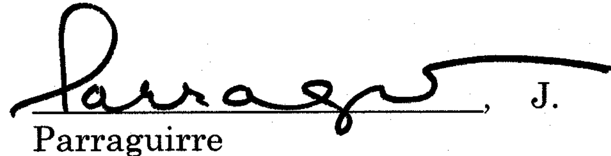
ORDER the judgment of the district court AFFIRMED.



Douglas, J.



Becker, J.



Parraguirre, J.

cc: Hon. Sally L. Loehrer, District Judge
Hugo Aparicio
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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