

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY CHARLES WALKER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 46335

**FILED**

**MAR 28 2006**

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
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; Jackie Glass, Judge.

On July 27, 2004, the district court convicted appellant, pursuant to a guilty plea, of two counts of robbery with the use of a deadly weapon and one count of robbery. The district court sentenced appellant to serve terms totaling 78 months to 360 months in the Nevada State Prison. No direct appeal was taken. Appellant unsuccessfully sought relief from his conviction by way of a motion to correct an illegal sentence.<sup>1</sup>

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 November 2, 2005, the district court denied appellant's petition. This appeal followed.

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<sup>1</sup>Walker v. State, Docket No. 44804 (Order of Affirmance, May 27, 2005).

In his petition, appellant raised seven claims of 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 or that the results of the proceedings would have been different.<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 for failing to object to the deadly weapon enhancement. Appellant claimed that his trial counsel failed to inform him that his sentence would be enhanced. Appellant claimed that his trial counsel further failed to inform him that he had a right to have a jury decide the issue of the deadly weapon and that he waived that right by entry of his guilty plea.

Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Appellant was informed during the plea canvass and in the written plea agreement that two of the robbery charges included a deadly weapon enhancement. Appellant was specifically informed that for each of the robbery with use of a deadly weapon counts that the deadly weapon enhancement required imposition of a term equal and consecutive to the term for the primary

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<sup>2</sup>Hill v. Lockhart, 474 U.S. 52 (1985); Strickland v. Washington, 466 U.S. 668 (1984); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

<sup>3</sup>Strickland, 466 U.S. at 697.

offense. The written guilty plea agreement further informed appellant that he waived his right to a jury trial by entry of his guilty plea, and appellant acknowledged during the plea canvass that he understood the waiver of his constitutional rights as set forth in the written plea agreement. Attached to the guilty plea agreement was an amended information setting forth the charges, which included two counts of robbery with the use of a deadly weapon. Appellant acknowledged his receipt of the amended information, and appellant affirmatively acknowledged the facts supporting the deadly weapon enhancements for two counts of robbery with the use of a deadly weapon. Appellant further received a benefit by entry of his guilty plea in that he avoided additional charges that would have exposed him to a greater period of incarceration.<sup>4</sup> Therefore, we conclude that the district court did not err in denying this claim.

Second, appellant claimed that his trial counsel failed to conduct adequate investigation. The only specific line of investigation identified by appellant was trial counsel's failure to investigate the victim's alleged past drug use.

Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Appellant failed to indicate which of the three victims should have been investigated and how the victim's alleged past drug use had any bearing on the robbery and kidnapping charges in the instant case. In the written guilty plea

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<sup>4</sup>The State agreed to the dismissal of the following charges in exchange for the guilty plea: 3 counts of conspiracy to commit kidnapping, three counts of conspiracy to commit robbery and three counts of first degree kidnapping.

agreement, appellant acknowledged that he had discussed the charges and any potential defenses with his attorney. Therefore, we conclude that the district court did not err in denying this claim.

Third, appellant claimed that his trial counsel was ineffective for failing to present mitigating facts to the sentencing court. Specifically, appellant claimed that his trial counsel should have presented information about appellant's past mental competency and drug usage to show that the instant crimes were committed to support a drug habit. Appellant further claimed that his trial counsel failed to present witnesses to provide testimony about appellant's family, religion, and community involvement.

Appellant failed to demonstrate that his trial counsel was ineffective in his regard. Appellant failed to identify the past mental health issue and how that would have effected the outcome of the sentencing hearing. Appellant further failed to identify the witnesses, specifically describe the potential testimony, or provide any argument as to how this testimony would have made a difference in the outcome of the proceedings. Appellant's history of drug usage was set forth in the presentence investigation report. At sentencing, appellant's trial counsel informed the district court about appellant's three children, the presence of his parents in the courtroom and appellant's religious background. Appellant's trial counsel argued that the crimes committed were out of character and were the results of drug-induced episodes. The district court acknowledged reading letters about appellant's family and religious background. Appellant failed to indicate what further information should have been presented such that there was a reasonable probability of a different sentencing outcome. Therefore, we conclude that the district court did not err in denying this claim.

Fourth, appellant claimed that his trial counsel was ineffective for failing to move for a lesser-included offense or drug treatment counseling. Appellant failed to provide any specific facts or cogent argument in support of this claim, and thus, appellant failed to demonstrate that his trial counsel was ineffective in this regard. Appellant was expressly informed in the written guilty plea agreement and during the plea canvass that he faced a period of incarceration. Therefore, we conclude that the district court did not err in denying this claim.

Fifth, appellant claimed that his trial counsel coerced him into entering his guilty plea because trial counsel was unprepared to go to trial. Appellant further argued that his trial counsel used coercive methods. Appellant failed to demonstrate that his trial counsel was ineffective in this regard. Appellant acknowledged during the plea canvass that his plea was freely and voluntarily given. Appellant further acknowledged in the written guilty plea agreement that his plea was not the product of duress or coercion. Appellant failed to demonstrate that his trial counsel was unprepared to proceed to trial. Appellant failed to provide any specific facts or cogent argument in support of his claim that trial counsel's methods were coercive. As discussed earlier, appellant benefited by entry of his plea, and appellant failed to demonstrate that he would not have entered the guilty plea absent the alleged deficient conduct of counsel. Therefore, we conclude that the district court did not err in denying this claim.

Sixth, appellant claimed that his trial counsel failed to object to the State's use of the presentence investigation report as proof of appellant's criminal history. Appellant failed to demonstrate that his trial

counsel's performance was deficient or that he was prejudiced. The written guilty plea agreement contained a specific advisement that a presentence investigation report would be prepared prior to sentencing and that the report would contain appellant's criminal history. Appellant was further advised that the report may contain hearsay information about his criminal history and that he could comment on the report at sentencing. Appellant's trial counsel discussed the criminal history set forth in the presentence investigation report during the sentencing hearing. Appellant failed to identify any misinformation about his criminal record set forth in the presentence investigation report or presented to the district court during the sentencing hearing. Therefore, we conclude that the district court did not err in denying this claim.

Seventh, appellant claimed that his trial counsel failed to inform him of his right to a direct appeal. Appellant failed to demonstrate that his trial counsel was ineffective in this regard. The written guilty plea agreement informed appellant of his limited right to appeal the conviction.<sup>5</sup> Further, this court has held that "there is no constitutional requirement that counsel must always inform a defendant who pleads guilty of the right to pursue a direct appeal" absent extraordinary circumstances.<sup>6</sup> Appellant failed to demonstrate any such extraordinary circumstances in this case. Therefore, we conclude that the district court did not err in denying this claim.

Finally, appellant claimed that the district court abused its discretion in relying on the presentence investigation report, in accepting

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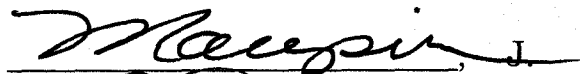
<sup>5</sup>See Davis v. State, 115 Nev. 17, 974 P.2d 658 (1999).

<sup>6</sup>Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999).

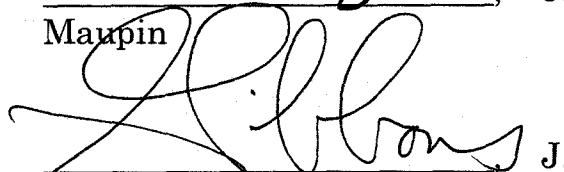
the guilty plea when the district court failed to inform appellant of the right to have a jury decide the issue of the deadly weapon enhancement, and for enhancing appellant's sentence because he did not admit using a deadly weapon. These claims fell outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus challenging a conviction based upon a guilty plea.<sup>7</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>8</sup> Accordingly, we

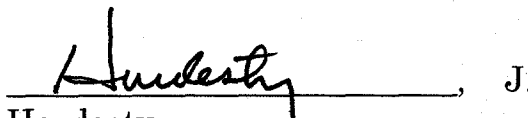
ORDER the judgment of the district court AFFIRMED.



Maupin



Gibbons



Hardesty

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<sup>7</sup>See NRS 34.810(1)(a).

<sup>8</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

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