

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN R. PAANANEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46496

FILED

OCT 17 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is an appeal from a district court order denying appellant's post-conviction petition for a writ of habeas corpus. Third Judicial District Court, Churchill County; Robert E. Estes, Judge.

On December 9, 2004, appellant John R. Paananen was convicted, pursuant to a nolo contendere plea, of one count of attempting to obtain a credit card without consent. The district court sentenced Paananen to serve a prison term of 12 to 36 months. Paananen did not file a direct appeal.

On March 25, 2005, Paananen filed a proper person post-conviction petition for a writ of habeas corpus. The State opposed the petition. The district court appointed counsel to represent Paananen, and counsel filed a supplement to the petition. After conducting an evidentiary hearing, the district court denied the petition. Paananen filed this timely appeal.

Paananen contends that the district court erred by denying his petition because defense counsel was ineffective. Paananen argues that defense counsel was ineffective for: (1) promising that he would receive

mandatory probation under the plea bargain; and (2) failing to inquire about Paananen's criminal history and advise him that he was ineligible for the sentence of mandatory probation. Paananen argues that he would not have accepted the guilty plea had he known that, due to his criminal history, probation was not mandatory. We conclude that Paananen's contention lacks merit.

In order 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 fell below an objective standard of reasonableness.¹ A petitioner must also demonstrate "a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial."² The court can dispose of a claim if the petitioner makes an insufficient showing on either prong.³

We conclude that the district court did not err by rejecting Paananen's claims of ineffective assistance of counsel. Paananen failed to show he was prejudiced by defense counsel's allegedly deficient conduct. The transcript of the sentencing hearing indicates that the district court explained that Paananen was ineligible for mandatory probation and

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

²Hill, 474 U.S. at 59.

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

inquired whether Paananen wanted to withdraw the plea. Defense counsel Lane Mills responded, "No, Your Honor." Further, at the post-conviction hearing, defense counsel testified that, before the sentencing proceeding, he informed Paananen that he was ineligible for mandatory probation, but Paananen did not want to withdraw his plea. Paananen explained at the post-conviction hearing that he advised defense counsel that he did not want to withdraw the plea because he did not want to proceed to trial on more serious charges.⁴ In light of the testimony at the post-conviction hearing, the district court did not abuse its discretion in rejecting Paananen's claim that he would have insisted on a trial if defense counsel had advised him that he was ineligible for mandatory probation.

Paananen also argues that the State breached the plea agreement at sentencing by refusing to argue for mandatory probation. We do not consider Paananen's contention because he waived the claim by failing to raise it in a direct appeal.⁵

⁴Paananen also testified that he had a viable defense to the original charges and subsequently came to believe a trial was in his best interest.

⁵See NRS 34.810(1)(b)(2); Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) ("claims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be considered waived in subsequent proceedings"), overruled in part on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

Having considered Paananen's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.⁶

Becker, J.
Becker

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Hon. Robert E. Estes, District Judge
Les W. Bradshaw
Attorney General George Chanos/Carson City
Churchill County District Attorney
Churchill County Clerk

⁶Because Paananen is represented by counsel in this matter, we decline to grant him permission to file documents in proper person in this court. See NRAP 46(b). Accordingly, this court shall take no action and shall not consider the proper person documents Paananen has submitted to this court in this matter.