

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH B. CRUZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46615

FILED

MAY 03 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

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; Lee A. Gates, Judge.

On May 6, 2003, the district court convicted appellant, pursuant to a guilty plea, of one count each of first-degree murder and attempted murder. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole after a minimum of 20 years have been served for the murder count and a consecutive term of 48 to 120 months in the Nevada State Prison for the attempted murder count. No direct appeal was taken.

On May 6, 2004, 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, the district court appointed counsel to represent appellant, and counsel filed a supplement to the petition. Pursuant to NRS 34.770, the district court declined to conduct an evidentiary hearing. On December 22, 2005, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that he received ineffective assistance of counsel and that his co-defendant received a much lesser sentence than appellant did.

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 contended his counsel was ineffective for failing to present appellant with discovery until the sentencing. Appellant failed to state how counsel's performance in this regard was objectively unreasonable or that he would not have pleaded guilty and would have insisted on going to trial had counsel shown him discovery earlier.³ Accordingly, we conclude the district court did not err in denying this claim.

Second, appellant contended his counsel was ineffective for coercing him into pleading guilty. Appellant failed to state any facts to

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).

³See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984) (holding that a petitioner is not entitled to an evidentiary hearing on "bare" or "naked" claims for relief that are unsupported by any specific factual allegations).

support this allegation.⁴ Accordingly, we conclude the district court did not err in denying this claim.

Third, appellant contended his counsel was ineffective for failing to investigate fingerprint evidence or the weapon used in the commission of the crimes. Appellant failed to state any facts to show that counsel failed to investigate, what counsel should have done to investigate, or what an investigation would have revealed.⁵ Appellant also failed to prove that he would not have pleaded guilty and would have insisted on going to trial but for counsel's performance in this regard. Accordingly, we conclude the district court did not err in denying this claim.

Fourth, appellant contended counsel was ineffective for failing to move for dismissal of a third count, attempted robbery, after the preliminary hearing. Our review of the record on appeal reveals there was sufficient evidence presented on this charge at the preliminary hearing to bind appellant over for trial on this count.⁶ Thus, appellant failed to prove counsel's performance in this regard was objectively unreasonable. Further, appellant failed to prove that he would not have pleaded guilty and would have insisted on going to trial had counsel so moved. Accordingly, we conclude the district court did not err in denying this claim.

Fifth, appellant contended counsel was ineffective for failing to present a defense at the preliminary hearing. Appellant failed to prove

⁴See *id.*

⁵See *id.*

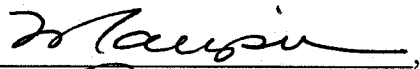
⁶See *Sheriff v. Lyons*, 96 Nev. 298, 299, 607 P.2d 590, 591 (1980) (holding that a probable cause finding may be based on slight evidence).

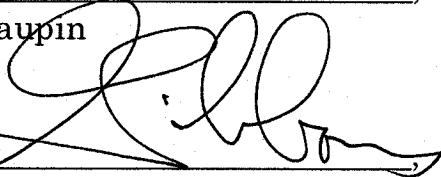
counsel's performance in this regard was objectively unreasonable, or that he would not have pleaded guilty and would have insisted on going to trial had counsel presented a defense at the preliminary hearing. Accordingly, we conclude the district court did not err in denying this claim.

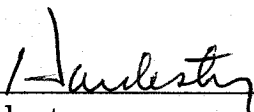
Appellant also claimed that his co-defendant received a much lesser sentence than appellant did. This claim fell outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus where the conviction is based upon a guilty plea.⁷ Accordingly, we conclude the district court did not err in denying this claim.

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.


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty

⁷See NRS 34.810(1)(a).

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

cc: Hon. Lee A. Gates, District Judge
Joseph B. Cruz
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk