

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID RODIUS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 46658

**FILED**

**JAN 09 2007**

ORDER OF AFFIRMANCE

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

This is an 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; Donald M. Mosley, Judge.

On June 7, 2004, the district court convicted appellant David Rodius, pursuant to a guilty plea, of second-degree murder with the use of a deadly weapon. The district court sentenced Rodius to serve two consecutive terms of 10 years to life in prison. Rodius did not file a direct appeal. On February 4, 2005, Rodius filed the instant petition. After an evidentiary hearing, the district court denied the petition on January 6, 2006. This appeal followed.

In his petition, Rodius claimed 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 fell below an objective standard of reasonableness and a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have

insisted on going to trial.<sup>1</sup> Rodius was represented at all times by the Clark County Public Defender's Officer, initially by Drew Christensen. Before Rodius entered his guilty plea, his case was reassigned to Robert Amundson

Rodius argues that the district court erred in denying his claim that his counsel were ineffective for allowing him to plead guilty while he was incompetent due to being medicated with the psychotropic drugs Haldol, Prozac, and Cogentin and for failing to advise the court at the plea canvass that he was being medicated. Rodius failed to demonstrate that had counsel so advised the district court, he would not have pleaded guilty and would have insisted on going to trial. Our review of the record reveals that Rodius's responses at the plea canvass were coherent and appropriate. Mr. Amundson testified that he knew Rodius was being medicated, that he never had difficulty talking with Rodius, and that Rodius seemed to understand what was happening. Accordingly, we conclude the district court did not err in denying this claim.

Rodius also argues the district court erred in denying his claim that his counsel were ineffective for failing to investigate his mental state. He argues that if counsel had obtained his records from the Henderson jail and Clark County Detention Center, they would have discovered that the victim, Rodius's father, punched Rodius sometime

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<sup>1</sup>Strickland v. Washington, 466 U.S. 668 (1984); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

before the killing. He claims this would have assisted him in arguing the killing was in self-defense. He also claims counsel should have spoken to Dr. Abasolo, a physician who treated Rodius in a Mexican hospital after a psychotic episode that immediately preceded the killing. Rodius claims that Dr. Abasolo's opinion that Rodius had a mental illness would have strengthened an insanity or temporary insanity defense.

At the evidentiary hearing, Mr. Christensen testified that he discussed Rodius's mental health issues and the incident in Mexico with Rodius. He reviewed Rodius's records from the Mexican hospital. He hired Dr. Paglini, a psychologist, to assess Rodius's competency and for analysis of a possible insanity defense. Dr. Paglini found that Rodius was competent and concluded that Rodius was depressed but not otherwise mentally ill. Dr. Paglini concluded that the killing was likely an impulsive act resulting from drug-induced psychosis. Dr. Paglini's report included his conversations with Rodius's family members; two of them were very sympathetic to Rodius, and none of them indicated he had a history of mental illness.

Mr. Christensen also testified that an insanity defense was difficult to prove. He testified that no one could corroborate Rodius's claim that he shot his father in self-defense. He also testified that a self-defense claim was hindered by Rodius's threats to kill his parents and his pointing the gun at his brother and threatening to shoot him just before shooting their father. Mr. Christensen further testified that the State had offered a negotiated plea of second-degree murder with the use of a deadly weapon


and that he was not confident Rodius would do better than that at trial because he felt many jurors were not sympathetic to defendants who were psychotic due to their voluntary drug use. Mr. Christensen testified that he discussed all these issues with Rodius and Rodius seemed to understand them.

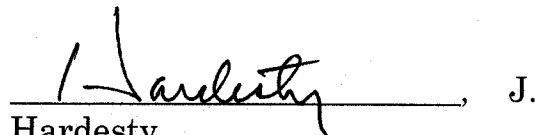
Mr. Amundson testified that he knew Rodius had mental health issues and had discussed them, including the Mexico incident, with Rodius. He reviewed the Mexican hospital records. He did not believe Rodius could successfully assert an insanity defense, and he discussed this with Rodius.

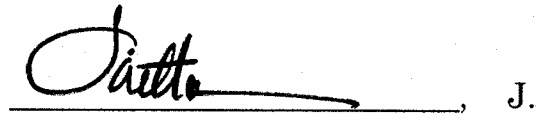
We conclude the district court did not err in concluding that counsel were effective. Our review of the record indicates that if counsel had obtained the records at issue, they would only have learned that Rodius told Henderson jail staff that his father punched him. Rodius failed to demonstrate that he was unable to tell his counsel this. He also failed to demonstrate that this would have changed counsel's analysis and advice and that he therefore would not have pleaded guilty. Similarly, Rodius failed to demonstrate that Dr. Abasolo's opinion that Rodius had a mental illness would have changed counsel's analysis or advice and that he therefore would not have pleaded guilty. Dr. Abasolo was not a psychologist or psychiatrist, he treated Rodius for less than two days, and his opinion was contradicted by Dr. Paglini, an expert whom counsel hired on Rodius's behalf. Accordingly, we conclude the district court did not err in denying this claim.

Having reviewed Rodius's contentions and concluded they are without merit, we

ORDER the judgment of the district court AFFIRMED.

  
Parraguirre, J.

  
Hardesty, J.

  
Saitta, J.

cc: Hon. Donald M. Mosley, District Judge  
Carmine J. Colucci & Associates  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk