IN THE SUPREME COURT OF THE STATE OF NEVADA

LAWRENCE GREGORY SEEHORN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46927

FILED

AUG 0 1 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
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. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

On April 6, 2005, the district court convicted appellant, pursuant to a guilty plea, of coercion. The district court sentenced appellant to serve a term of twenty-four to sixty months in the Nevada State Prison. This court affirmed the judgment of conviction on direct appeal.[1] The remittitur issued November 1, 2005.

On November 9, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. 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 February 8, 2006, the district court denied appellant's petition. This appeal followed.

[1]Seehorn v. State, Docket No. 45231 (Order of Affirmance, October 4, 2005).

06-15990

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 promising appellant he would receive probation if he agreed to plead guilty. This claim is belied by the record.[4] The guilty plea agreement appellant signed affirmed that appellant had not been promised any particular sentence, that appellant knew the sentence was at the district court's discretion, and that appellant could be sentenced to probation or to a term of one to six years in prison. Further, during the plea colloquy, appellant advised the district court that he knew he could be sentenced to up to six years in prison and that his plea was freely and voluntarily

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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).

[4]See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

given.[5] Accordingly, we conclude the district court did not err in denying this claim.

Second, appellant claimed his counsel was ineffective for failing to investigate the charges or to provide appellant with discovery. Appellant failed to demonstrate that counsel's performance prejudiced him. Appellant failed to state what further investigation or provision of discovery to appellant would have accomplished, or that he would not have pleaded guilty and would have insisted on going to trial had counsel done so. We note that appellant admitted his guilt in the plea agreement, at the plea colloquy, and at the sentencing hearing. Accordingly, we conclude the district court did not err in denying this claim.

Third, appellant claimed counsel was ineffective for failing to file a motion to withdraw guilty plea despite appellant's request that he do so after the district court did not grant him probation. Appellant failed to demonstrate that counsel's performance prejudiced him. Appellant failed to demonstrate that such a motion would have been successful and would have allowed him to insist on going to trial. Accordingly, we conclude the district court did not err in denying this claim.

Appellant also claimed he received ineffective assistance of appellate counsel. To state a claim of ineffective assistance of appellate counsel, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that the omitted issue would have a reasonable

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[5]See Rouse v. State, 91 Nev. 677, 541 P.2d 643 (1975) (holding that a defendant's subjective belief as to a potential sentence is insufficient to invalidate his guilty plea as involuntary and unknowing).

probability of success on appeal.[6] Appellate counsel is not required to raise every non-frivolous issue on appeal.[7] This court has held that appellate counsel will be most effective when every conceivable issue is not raised on appeal.[8]

First, appellant claimed appellate counsel was ineffective for failing to argue that the evidence supporting appellant's conviction was insufficient. By pleading guilty, appellant waived having the State prove guilt beyond a reasonable doubt, and the record contains factual admissions; specifically, at the plea colloquy and at the sentencing, appellant admitted to threatening to kill his wife and/or himself if she divorced him.[9] Accordingly, we conclude the district court did not err in denying this claim.

Second, appellant claimed appellate counsel was ineffective for failing to discuss with appellant which claims to argue on appeal. Appellant failed to demonstrate that counsel's performance prejudiced him. Appellant failed to demonstrate that discussion between himself and counsel would have resulted in counsel raising claims that had a reasonable probability of success on appeal. Accordingly, we conclude the district court did not err in denying this claim.

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[6]Kirksey, 112 Nev. at 998, 923 P.2d at 1114 (citing Strickland, 466 U.S. 668).

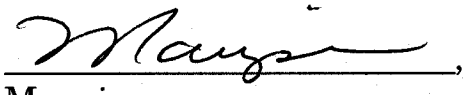
[7]Jones v. Barnes, 463 U.S. 745, 751 (1983).

[8]Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989).

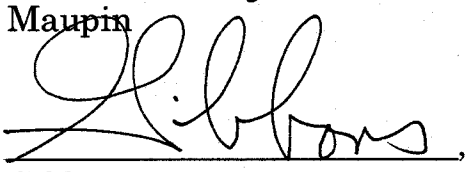
[9]See NRS 207.190(1)(a).

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.[10] Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Maupin



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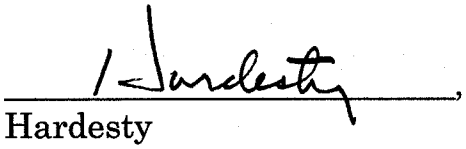
Gibbons



_____, J.
Hardesty

cc: Hon. Brent T. Adams, District Judge
Lawrence Gregory Seehorn
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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