IN THE SUPREME COURT OF THE STATE OF NEVADA

GEORGE TYRONE DUNLAP, JR., Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 46944
GEORGE TYRONE DUNLAP, JR., Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 47625

FILED

NOV 28 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [signature]
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

These are proper person appeals from orders of the district court denying and dismissing appellant's post-conviction petitions for writs of habeas corpus. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge. We elect to consolidate these appeals for disposition.[1]

On March 7, 2006, the district court convicted appellant, pursuant to an Alford[2] plea, of two counts of attempted sexual assault and one count of attempted lewdness with a minor under the age of fourteen. The district court sentenced appellant to serve two concurrent terms of 48

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[1]See NRAP 3(b).

[2]North Carolina v. Alford, 400 U.S. 25 (1970).

06-24321

to 120 months and one consecutive term of 48 to 120 months in the Nevada State Prison.[3] Appellant did not file a direct appeal.

Docket No. 46944

On January 20, 2006, 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 March 24, 2006, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that counsel was ineffective.[4] 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

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[3]The district court verbally sentenced appellant on January 11, 2006.

[4]To the extent that appellant raised any of the underlying issues independently from his ineffective assistance of counsel claims, we conclude that they fell outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus challenging a judgment of conviction based upon a guilty plea. NRS 34.810(1)(a).

to trial.[5] The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.[6]

First, appellant claimed that his counsel was ineffective for coercing him into pleading guilty through deception, trickery, fraud, and threats to withdraw as counsel. Specifically, appellant claimed that counsel guaranteed he would receive concurrent sentences of two to ten years with a suspended sentence, and he would be placed on probation and released on his own recognizance prior to sentencing. Appellant failed to demonstrate that his counsel's performance was deficient or that there was a reasonable probability of a different outcome at sentencing. In exchange for appellant's guilty plea, the State agreed to a cap on each count of ten years rather than a maximum of twenty years. During appellant's plea canvass, appellant agreed that he understood that he could be sentenced to terms of two to ten years for each count, and that the district court had the discretion to sentence appellant to consecutive or concurrent terms. Appellant stated that he understood that the district court would determine his sentence after reviewing the facts surrounding the case and the Presentence Investigation report and recommendation. Additionally, appellant stated that he understood he would need to undergo a psychosexual assessment and evaluation to be considered for

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

[6]Strickland v. Washington, 466 U.S. 668, 697 (1984).

probation.[7] It is apparent from the record that, although counsel argued that appellant should be granted probation, probation was not guaranteed. This court has stated that a "'mere subjective belief of a defendant as to potential sentence, or hope of leniency, unsupported by any promise from the State or indication by the court, is insufficient to invalidate a guilty plea as involuntary or unknowing.'"[8] Counsel moved the court and argued for appellant's release on his own recognizance awaiting sentencing, but the district court denied the motion. Thus, the district court did not err in denying this claim.

Second, appellant claimed that his counsel was ineffective for not allowing him to view or read his plea agreement. Appellant failed to demonstrate that his counsel was ineffective. Although appellant stated during his plea canvass that he did not read his plea agreement, he stated that counsel read it to him, he understood it, and he signed it freely and voluntarily. Appellant failed to demonstrate that had he viewed the plea agreement, he would have refused to plead guilty and would have insisted on proceeding to trial. Thus, the district court did not err in denying this claim.

Third, appellant claimed that counsel was ineffective by coercing appellant to enter an Alford plea when appellant asserted his

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[7]NRS 176.139.

[8]State v. Langarica, 107 Nev. 932, 934, 822 P.2d 1110, 1112 (1991) (quoting Rouse v. State, 91 Nev. 677, 679, 541 P.2d 643, 644 (1975)).

innocence. Appellant failed to demonstrate that counsel's performance was ineffective. Appellant's Alford plea signified that he maintained his innocence, but that he believed it was in his best interest to enter a plea.[9] Appellant received a substantial benefit by entry of his guilty plea in the instant case.[10] Thus, the district court did not err in denying this claim.

Last, appellant claimed that counsel was ineffective for failing to object to the State's breach of the plea agreement when it did not recommend probation based on appellant's substantial assistance in another case. Appellant failed to demonstrate that the State breached the plea agreement or that counsel's performance was ineffective. The State agreed not to pursue more serious charges and to a ten-year cap on all counts in exchange for appellant's guilty plea. The plea agreement stated that the State retained the right to argue at sentencing, and this was discussed at appellant's plea canvass. Appellant benefited from his plea

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[9]We note that this court has previously recognized that a claim of innocence is "essentially academic" where a defendant enters a plea pursuant to Alford. See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 226 (1984). Appellant failed to demonstrate that he was actually innocent in the instant case. See Pellegrini v. State, 117 Nev. 860, 34 P.3d 519 (2001); Mazzan v. Warden, 112 Nev. 838, 921 P.2d 920 (1996); see also Bousley v. United States, 523 U. S. 614 (1998).

[10]Appellant was initially charged by information with first degree kidnapping (NRS 200.310, NRS 200.320); sexual assault with a minor under fourteen years of age (NRS 200.364, NRS 200.366); lewdness with a child under the age of fourteen (NRS 201.230); coercion (NRS 207.190); and battery with intent to commit a crime (NRS 200.400).

agreement by avoiding more serious charges. Thus, the district court did not err in denying this claim.

Docket No. 47625

On May 15, 2006, appellant filed a second 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 June 14, 2006, the district court dismissed appellant's petition. This appeal followed.

Appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus raising the same claims.[11] Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.[12] Good cause must be an impediment external to the defense.[13]

Appellant did not attempt to demonstrate good cause or prejudice to excuse his procedural defects. Thus, appellant's petition was procedurally barred and the district court did not err in dismissing this petition.

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[11]See NRS 34.810(2).

[12]See NRS 34.726(1); NRS 34.810(3).

[13]See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

Conclusion

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.[14] Accordingly, we

ORDER the judgments of the district court AFFIRMED.

Becker, J.
Becker

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Hon. Stewart L. Bell, District Judge
George Tyrone Dunlap Jr.
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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