

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD ALLEN ROBB,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47129

FILED

NOV 13 2006

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

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

This is a proper person appeal from an order of the district court denying appellant Richard Allen Robb's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

On June 17, 2005, the district court convicted Robb, pursuant to a guilty plea, of one count of attempted robbery. The district court adjudicated Robb a habitual criminal and sentenced him to serve a prison term of 60 to 150 months. We dismissed Robb's untimely direct appeal.¹

On November 22, 2005, Robb filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed a response, Robb filed an amended petition, and the State responded to the amended petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Robb or to conduct an evidentiary hearing. On March 29, 2006, the district court denied Robb's petition. This appeal followed.

¹Robb v. State, Docket No. 46165 (Order Dismissing Appeal, November 28, 2005).

In his petition, Robb raised several allegations of ineffective assistance of counsel. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance was deficient, and that the petitioner was prejudiced by counsel's performance.² To show prejudice, a petitioner who has entered a guilty plea must demonstrate "a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial."³ The court need not consider both prongs of this test if the petitioner makes an insufficient showing on either prong.⁴

First, Robb claimed that counsel was ineffective for failing to prepare his case. Robb did not support this claim with "any specific factual allegations that would, if true, have entitled him" to relief.⁵ Accordingly, we conclude that the district court did not err in denying this claim.

Second, Robb claimed that counsel was ineffective for failing to properly investigate at the pretrial stages of his case. Specifically, Robb contended that counsel did not investigate the facts regarding all of the charges, did not use a full-time investigator to determine what really

²Kirksey v. State, 122 Nev. 980, 987, 923 P.2d 1102, 1107 (1996) (citing Strickland v. Washington, 466 U.S. 668, 687 (1987)).

³Id. at 988, 923 P.2d at 1107 (quoting Hill v. Lockhart, 474 U.S. 52, 59 (1985)).

⁴See Strickland, 466 U.S. at 697.

⁵Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

happened at the Lady Luck Hotel and Casino, and did not interview any of the witnesses listed on the information. Robb did not specify how these investigations would have made a difference in his case and altered his decision to plead guilty. Accordingly, we conclude that the district court did not err in denying this claim.

Third, Robb claimed that counsel was ineffective for failing to request that he receive a mental competency evaluation pursuant to NRS 178.405. He contended that counsel knew that he was an alcoholic and under a lot of stress. Robb did not explain how being an alcoholic and under a lot of stress rendered him incompetent to stand trial. Accordingly, we conclude that the district court did not err in denying this claim.

Fourth, Robb claimed that counsel was ineffective for failing to file a motion pursuant to Brady v. Maryland⁶ and NRS 174.235. Robb did not allege facts that indicated the existence of undiscovered Brady material, nor did he explain how this alleged evidence would have altered his decision to plead guilty. Accordingly, we conclude that the district court did not err in denying this claim.

Fifth, Robb claimed that counsel was ineffective for failing to file a pretrial petition for a writ of habeas corpus. Robb did not explain how counsel's performance was deficient, how he was prejudiced by the failure to file such a petition, or how such a filing would have persuaded him to proceed to trial and not plead guilty. Accordingly, we conclude that the district court did not err in denying this claim.

⁶373 U.S. 83 (1963).

Sixth, Robb claimed that counsel was ineffective for failing to "challenge innocent or guilt to the count of burglary -- attempt robbery -- or coercion." Robb did not explain how counsel's performance was deficient, how he was prejudiced by counsel's failure to challenge the counts alleged in the original information in such a manner, or how such a challenge would have altered his decision to plead guilty. Accordingly, we conclude that the district court did not err in denying this claim.

Seventh, Robb claimed that counsel was ineffective for failing to file an appeal, despite his request to do so. "[A]n attorney has a duty to perfect an appeal when a convicted defendant expresses a desire to appeal or indicates dissatisfaction with a conviction."⁷ Prejudice is presumed if a petitioner demonstrates that counsel ignored his request for an appeal.⁸ Robb's claim that counsel ignored his request for an appeal is not belied by the record. If the claim is true, Robb is entitled to relief. Because it remains to be determined whether Robb requested an appeal from counsel, we conclude that the district court erred in denying this claim.

Finally, Robb claims that the district court erred in adjudicating him a habitual criminal. However, we conclude that this claim could have been raised on direct appeal and decline to consider its merits here.⁹

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Robb is only entitled to the relief granted

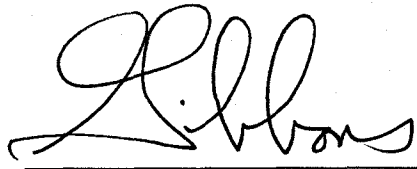
⁷Lozada v. State, 110 Nev. 349, 354, 871 P.2d 944, 947 (1994).

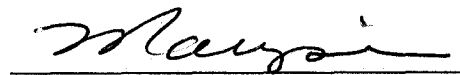
⁸See Hathaway v. State, 119 Nev. 248, 254, 71 P.3d 503, 507 (2003).

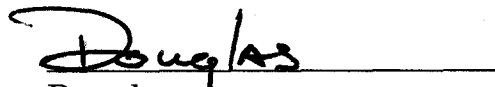
⁹See NRS 34.810(1)(b)(2).

herein, and that briefing and oral argument are unwarranted.¹⁰
Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for an evidentiary hearing on Robb's appeal deprivation claim.¹¹


_____, J.
Gibbons


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Stewart L. Bell, District Judge
Richard Allen Robb
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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

¹¹This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.