

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID MATTHEW BURBANK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47595

FILED

NOV 09 2006

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court dismissing appellant's post-conviction petitions for writs of habeas corpus. Fifth Judicial District Court, Mineral County; John P. Davis, Judge.

On December 8, 2004, the district court convicted appellant, pursuant to a guilty plea, of one count of sexual assault against a child under the age of fourteen and one count of lewdness with a child under the age of fourteen. The district court sentenced appellant to serve a term of life in the Nevada State Prison with parole eligibility after a minimum of twenty years has been served, and a consecutive term of life with parole eligibility after a minimum of ten years has been served. Appellant did not file a direct appeal.

On November 16, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On November 22, 2005, appellant filed a second petition for a writ of habeas corpus in the district court. The State answered and moved to dismiss the

petitions. 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 April 27, 2006, the district court dismissed appellant's petitions. This appeal followed.

In his petitions, appellant contended that counsel was ineffective.¹ 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

Appellant claimed that counsel was ineffective for failing to investigate the facts of the case, interview State and defense witnesses, advise appellant of available defenses, and prepare for trial. Appellant

¹To 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).

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

³Strickland v. Washington, 466 U.S. 668, 697 (1984).

presented nothing more than bare or naked claims for relief that are not supported by specific factual allegations.⁴ Appellant did not explain what counsel should have investigated, how counsel failed to present an adequate defense, who counsel should have specifically interviewed, how counsel could have better prepared for trial, or whether any of these actions would have resulted in a different outcome. Thus, the district court did not err in dismissing these claims.

Next, appellant claimed that trial counsel was ineffective for failing to file a direct appeal despite appellant's request for counsel to do so. When a defendant pleads guilty, counsel is obligated to inform a defendant about his or her appellate rights if the defendant expressly inquires about an appeal, or if an appellate argument exists that seems meritorious.⁵ Appellant did not demonstrate that he asked counsel to file a direct appeal or that he expressed dissatisfaction to his trial counsel within the time period for filing a direct appeal.⁶ A request for a direct appeal by a third party does not trigger counsel's duty to file a direct appeal on his client's behalf. Appellant failed to demonstrate that counsel was ineffective, and the district court did not err in denying this claim.


⁴See NRS 34.735; Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).


⁵Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999); see also Roe v. Flores-Ortega, 528 U.S. 470 (2000).


⁶See Hargrove, 100 Nev. at 502, 686 P.2d at 225.

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.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁸


_____, C.J.
Rose


_____, J.
Gibbons


_____, J.
Maupin

⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁸We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. John P. Davis, District Judge
David Matthew Burbank
Attorney General George Chanos/Carson City
Mineral County District Attorney
Mineral County Clerk