

IN THE SUPREME COURT OF THE STATE OF NEVADA

JERRY DUNCAN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 47682

**FILED**

**FEB 28 2007**

ORDER OF AFFIRMANCE

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

This is an appeal from a district court order denying appellant's postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michael A. Cherry, Judge.

Appellant Jerry Duncan was charged with first-degree murder with the use of a deadly weapon, victim over 60 years of age. Pursuant to a guilty plea, he was convicted of second-degree murder and aggravated stalking. He was sentenced to serve a term of 10 years to life in prison for the murder and a consecutive term of 5 to 15 years for the stalking. No direct appeal was filed.

On May 19, 2005, Duncan filed a proper person postconviction petition for a writ of habeas corpus. The district court appointed counsel to represent Duncan, and counsel filed a supplement to the petition. The district court denied the petition without conducting an evidentiary hearing. This appeal followed.

In his petition, Duncan claimed his counsel was ineffective for failing to investigate his competency and failing to request a competency hearing.

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; he must also demonstrate 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.<sup>1</sup>

"[A] defendant is incompetent to stand trial if he either 'is not of sufficient mentality to be able to understand the nature of the criminal charges against him' or he 'is not able to aid and assist his counsel in the defense interposed upon the trial or against the pronouncement of the judgment thereafter.'"<sup>2</sup> The standard for competency to plead guilty is the same as that to stand trial.<sup>3</sup>

Duncan's victim was his girlfriend, who had recently left him. At his plea canvass, Duncan admitted to waiting outside the salon where the victim was getting her hair done, arguing with her, and then cutting her throat. After the killing, Duncan returned to his home and cleaned himself up. He then took pills and began drinking in an attempt to kill himself, but called 911 within 10 minutes of returning home. He told the 911 operator that he had killed the victim, had taken pills, and had a gun. The officers who responded to the 911 call arrested him after brief negotiations. He told the officers who questioned him the following day that he was angry that the victim had left him and so he had planned to

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<sup>1</sup>Hill v. Lockhart, 474 U.S. 52 (1985); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

<sup>2</sup>Calvin v. State, 122 Nev. \_\_\_, \_\_\_, 147 P.3d 1097, 1100 (2006) (internal quotation omitted) (emphasis omitted).

<sup>3</sup>See Godinez v. Moran, 509 U.S. 389, 399 (1993).

kill her, purchased a shotgun and ammunition to use to kill her, placed the shotgun in his car, drove himself to the salon knowing she would be there, and waited for her to come outside. He wanted to talk to her, but she refused to speak with him and attempted to get into her car. At that point, Duncan grabbed the victim and stabbed her in the throat three to four times with his pocketknife. He said he attempted suicide because he was going blind and he and the victim were supposed to "go together." He said he was sorry the victim had died but was more sorry that he had not died as well.

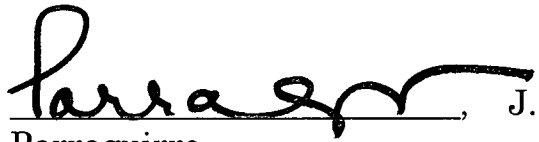
Duncan claimed in his petition that he had advised his counsel that he suffered from confusion, delusional behavior, hallucinations, temporary insanity, deafness, and blindness. He argued that this advisement, along with his suicide attempt and the initial report of the physician who treated him after his arrest, which included a recommendation for a psychiatric evaluation, should have alerted his counsel that investigation into his competency and a request for a competency hearing were warranted.

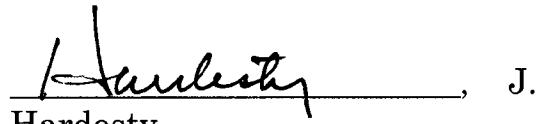
We conclude that the district court did not err in finding that Duncan's counsel was not ineffective. At his sentencing, counsel advised the court that she requested Duncan's medical records when she first got the case and indicated that she had reviewed them. Nothing in the record indicates that Duncan was not competent to enter his guilty plea. Duncan's alleged disabilities, use of alcohol and medication, and suicide attempt, without more, do not indicate that he was unable to understand the charges and proceedings or assist his counsel in his defense. At the plea canvass, Duncan detailed how he stalked and killed the victim. He responded appropriately and coherently to the district court's questions.

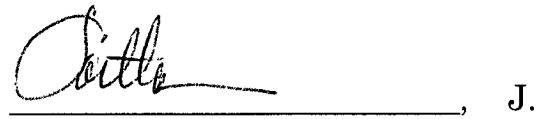
While his counsel may have advised him to waive the reading of the constitutional rights he was giving up by pleading guilty, she noted that she and Duncan had discussed them several weeks earlier. The waiver of rights was also set forth in the guilty plea agreement that Duncan admitted he had read, understood, and signed. Duncan failed to establish a reasonable probability that, had counsel investigated his competency further or requested a competency hearing, the district court would have rejected his plea or he would have refused to plead guilty and would have insisted on going to trial.

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

ORDER the judgment of the district court AFFIRMED.

  
Parraguirre, J.

  
Hardesty, J.

  
Saitta, J.

cc: Eighth Judicial District Court Dept. 17, District Judge  
Michael P. Villani & Associates  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk