

IN THE SUPREME COURT OF THE STATE OF NEVADA

CORNELIUS JAMES ANTEE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47877

FILED

FEB 01 2007

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 denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On August 3, 2005, the district court convicted appellant, pursuant to a guilty plea, of attempted grand larceny auto. The district court sentenced appellant to serve a term of twelve to forty-eight months in the Nevada State Prison. No direct appeal was taken.

On May 4, 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 July 26, 2006, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that he received ineffective assistance of trial 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.¹ The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.²

First, appellant claimed that his trial counsel was ineffective for failing to investigate pertinent facts that would refute statements made by or attributed to the victim in the police reports and failing to discuss strategy. Specifically, appellant appeared to claim that an investigation would have uncovered that appellant lived with the victim at the time the car was stolen contrary to the victim's alleged statement that appellant did not reside with him.³ Appellant failed to demonstrate that he was prejudiced. Appellant failed to demonstrate that investigation into whether he resided with the victim would have changed his decision to enter a guilty plea because even assuming that appellant lived with the victim it does not alter the fact that the victim alleged that appellant took his vehicle without his permission.⁴ Further, appellant received a substantial benefit by entry of his guilty plea as he avoided the more serious charges of robbery and grand larceny and the possibility of being

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

²Strickland v. Washington, 466 U.S. 668, 697 (1984).

³Appellant claimed that his sister Mary Washington and the apartment manager knew that appellant was residing with the victim.

⁴In fact the record indicates that the victim informed the police that after being refused permission to borrow the car, appellant knocked out the victim and stole the car while he was unconscious.

adjudicated a habitual criminal. Therefore, we conclude that the district court did not err in denying this claim.

Second, appellant claimed that his trial counsel was ineffective for failing to arrange for a polygraph examination. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. The results of a polygraph examination are not admissible unless both parties have signed a written stipulation to that effect.⁵ Appellant did not demonstrate that the results of a polygraph examination would have been both favorable and admissible such that his counsel acted objectively unreasonable in failing to arrange for one. Appellant further failed to demonstrate that the failure to arrange a polygraph examination impacted his decision to enter a guilty plea. Thus, the district court did not err in denying this claim.

Third, appellant claimed that his trial counsel was ineffective for failing to subpoena the victim's medical records to show the severity of the alleged injury to the victim and the victim's mental health issues. Appellant appeared to claim that the victim's statement that he was knocked unconscious for a period of twelve hours should have been corroborated with medical records and the victim's alleged mental health issues may have affected his recollection of what occurred. Appellant failed to demonstrate that he was prejudiced. Appellant failed to demonstrate that he would not have entered a guilty plea if his trial counsel had sought to subpoena the medical records of the victim. As noted above, appellant received a substantial benefit by entry of his guilty

⁵Santillanes v. State, 102 Nev. 48, 50, 714 P.2d 184, 186 (1986).

plea. Appellant further failed to demonstrate that the medical records would have been relevant in the instant case, that the medical records would support his assertions, or that he would have a right to view the victim's medical records in the instant case.⁶ Therefore, we conclude that the district court did not err in denying this claim.

Fourth, appellant claimed that there was a conflict of interest with his trial counsel who presented him with plea offers approximately five times. Appellant failed to demonstrate that an actual conflict of interest adversely affected trial counsel's performance.⁷ Further, trial counsel is not deficient for presenting a defendant with plea offers extended by the State. Thus, the district court did not err in determining that this claim lacked merit.

Fifth, appellant claimed that trial counsel was ineffective for implying in conversations that the district attorney would be successful in seeking habitual criminal adjudication. Appellant appeared to suggest that habitual criminal adjudication would not have been likely because his prior convictions were stale. He further claimed that his trial counsel informed him that he had a good chance at probation. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. NRS 207.010 makes no allowance for stale prior convictions, and thus, the habitual criminal enhancement was a potential penalty in the instant case as appellant had three prior felony convictions.

⁶See generally NRS 48.015; NRS 48.025.

⁷Strickland, 466 U.S. at 692; Cuyler v. Sullivan, 446 U.S. 335 (1980); Leonard v. State, 117 Nev. 53, 17 P.3d 397 (2001).

Although appellant's felony convictions were older, appellant's criminal history in the intervening years indicated an inability to comply with the law.⁸ Appellant was informed of the potential penalties, and he was informed that matters of sentencing were left in the discretion of the district court. Appellant's mere subjective belief as to a potential sentence is insufficient to invalidate his guilty plea as involuntary and unknowing.⁹ Therefore, we conclude that the district court did not err in denying this claim.

Sixth, appellant claimed that his trial counsel was ineffective for failing to correct a misstatement of fact made by the State in its opposition to his motion for O.R. release. Appellant claimed that the State falsely stated that he had five prior felonies when he only had three prior felonies. Appellant failed to demonstrate that he was prejudiced. Appellant failed to demonstrate that correcting the misstatement would have changed the outcome of the proceedings or altered his decision to enter a guilty plea. Therefore, we conclude that the district court did not err in denying this claim.

Seventh, appellant claimed that his trial counsel was ineffective for failing to consult with appellant about the presentence investigation interview or provide the preparer of the report with beneficial information. Appellant further claimed that trial counsel failed to object to unfavorable, irrelevant and negative information in the

⁸The presentence investigation report indicates that appellant had at least eleven misdemeanor convictions and one gross misdemeanor conviction following his felony convictions.

⁹See Rouse v. State, 91 Nev. 677, 541 P.2d 643 (1975).

presentence investigation report. Specifically, appellant claimed that his trial counsel should have challenged the summary of the crime as it contained information about a robbery from the police report and robbery was never proven and the report stated that he was in non-compliance with child support. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Appellant failed to indicate how consulting with his trial counsel about the presentence investigation report would have changed the outcome of the proceedings. Appellant further failed to indicate what beneficial information was not included in the presentence investigation report. Appellant was informed in the written guilty plea agreement that the presentence investigation report would contain matters relevant to the issue of sentencing and that the report may contain hearsay information. The original charges would be a matter relevant to the issue of sentencing. Appellant failed to demonstrate that an objection to the crime summary or the statement about child support would have been successful, or would have changed the outcome of the proceedings. Appellant personally addressed the district court at sentencing and explained his criminal history. Therefore, we conclude that the district court did not err in denying this claim.


Finally, appellant claimed that his trial counsel was ineffective for failing to advise him of the right to appeal. The written guilty plea agreement, which appellant acknowledged that he read and understood, informed appellant of his limited right to a direct appeal.¹⁰ Moreover, there is no constitutional requirement that counsel must always

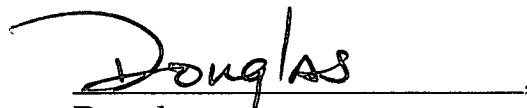
¹⁰See Davis v. State, 115 Nev. 17, 974 P.2d 658 (1999).

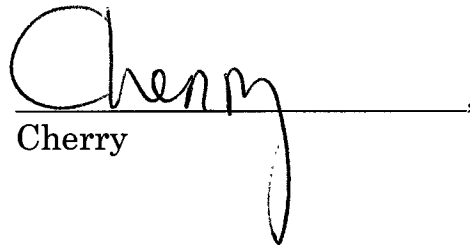
inform a defendant who pleads guilty of the right to pursue a direct appeal unless the defendant inquires about an appeal or there exists a direct appeal claim that has a reasonable likelihood of success.¹¹ Appellant did not allege that he asked counsel to file a direct appeal and nothing in the record suggests that a direct appeal in appellant's case had a reasonable likelihood of success. Therefore, we conclude that the district court did not err in denying this claim.

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.¹² Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Gibbons, J.


Douglas, J.


Cherry, J.

¹¹See Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999); see also Roe v. Flores-Ortega, 528 U.S. 470 (2000); Davis, 115 Nev. at 20, 974 P.2d at 660.

¹²See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Jackie Glass, District Judge
Cornelius James Antee
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk