

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN ANTHONY HAAG,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 47924

**FILED**

**FEB 28 2007**

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

On November 20, 2003, the district court convicted appellant, pursuant to a guilty plea, of one count of sexual assault of a minor and two counts of lewdness with a minor under the age of fourteen years. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole after twenty years has been served for the sexual assault count, and two terms of life with the possibility of parole after ten years has been served for the lewdness counts, all terms to run consecutively. The district court further imposed the special sentence of lifetime supervision. Appellant did not file a direct appeal.

On November 19, 2004, with the assistance of counsel, appellant filed a post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On July 12, 2006, following

an evidentiary hearing, the district court denied appellant's petition. This appeal followed.<sup>1</sup>

In his petition, appellant contended that counsel was ineffective.<sup>2</sup> 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.<sup>3</sup> The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.<sup>4</sup> A petitioner must demonstrate the factual allegation underlying his ineffective assistance of counsel claim by a preponderance of the evidence.<sup>5</sup> Further, the district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal.<sup>6</sup>

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<sup>1</sup>Appellant is proceeding in proper person in this appeal.

<sup>2</sup>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).

<sup>3</sup>Hill v. Lockhart, 474 U.S. 52 (1985); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

<sup>4</sup>Strickland v. Washington, 466 U.S. 668, 697 (1984).

<sup>5</sup>Means v. State, 120 Nev. 1001, 1013, 103 P.3d 25, 33 (2004).

<sup>6</sup>Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

First, appellant claimed that his trial counsel was ineffective for failing to investigate and present available defenses. Specifically, appellant claimed that counsel should have investigated and presented that (1) his wife was incompetent; (2) his wife physically abused the child victim; (3) his wife was having an incestuous relationship with her brother; (4) appellant attempted to remove the child victim from the dysfunctional family situation; (4) his wife was motivated to remove appellant from the home by a desire to acquire appellant's property; (5) DNA evidence in the victim's bedroom could have originated from his wife; and (6) a social services investigation on inappropriate sexual conduct by appellant had been dismissed.

Appellant failed to demonstrate that his counsel's performance was deficient or that he was prejudiced. Counsel testified at the evidentiary hearing that she was aware of and considered the above claims, but however, she recommended that appellant accept the plea negotiations because she felt that the evidence against appellant was strong and that if he proceeded to trial, there was a sound possibility that he would be convicted of all of the charges.<sup>7</sup> Further, appellant failed to demonstrate how the allegations against his wife and the dysfunction of the family would have exonerated him of the charges he was facing. If he had proceeded to trial, there was a distinct possibility that appellant's six-year-old daughter would have testified regarding the sexual acts that appellant performed on her and forced her to perform, and defense counsel

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<sup>7</sup>Appellant was originally charged by information with four counts of sexual assault on a child and three counts of lewdness with a minor under the age of fourteen.

testified at the evidentiary hearing that the State had commented that the victim would have been very convincing. Additionally, appellant had made incriminating statements indicating that he sexually abused his daughter, and these statements would have likely been admitted. Appellant failed to demonstrate that had counsel further investigated the above claims that he would have refused to plead guilty and would have insisted on proceeding to trial. Appellant benefited by his plea by avoiding further charges.<sup>8</sup> Additionally, counsel testified that appellant stated he wanted to plead guilty to spare his daughter the emotional toll of testifying. Thus, the district court did not err in denying this claim.

Second, appellant claimed that his trial counsel was ineffective for failing to present critical mitigation evidence through character witnesses during his sentencing hearing. Appellant failed to demonstrate that his counsel's performance was deficient. Appellant is not entitled to present character witnesses at his sentencing hearing.<sup>9</sup> Furthermore, appellant failed to demonstrate that had counsel presented mitigating evidence his sentence would have been different. Thus, the district court did not err in denying this claim.

Last, appellant claimed that cumulative error infected his trial counsel's performance, as evidenced by the errors alleged and

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<sup>8</sup>As stated above, appellant was originally charged by information with four counts of sexual assault on a child and three counts of lewdness with a minor under the age of fourteen.


<sup>9</sup>See NRS 176.015(2) (permitting the defendant and defendant's counsel to make a statement prior to sentencing).

discussed above. Since appellant failed to demonstrate that counsel was ineffective, 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.<sup>10</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>11</sup>

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Saitta

cc: Hon. Connie J. Steinheimer, District Judge  
Steven Anthony Haag  
Attorney General Catherine Cortez Masto/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

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<sup>10</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>11</sup>We 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.