

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT BRUCE MOORE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47934

FILED

FEB 08 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; Stewart L. Bell, Judge.

On January 16, 2003, appellant Robert Bruce Moore was convicted, pursuant to a guilty plea, of two counts of sexual assault on a minor under the age of sixteen. The district court sentenced Moore to serve two consecutive prison terms of 60 to 240 months. Moore filed a direct appeal, and this court dismissed the appeal.¹

On September 16, 2004, Moore, with the assistance of counsel, filed a postconviction petition for a writ of habeas corpus. The State opposed the petition. After conducting an evidentiary hearing, the district court denied the petition. Moore filed this timely appeal.

¹Moore v. State, Docket No. 40801 (Order Dismissing Appeal, August 20, 2003).

First, Moore contends that that the district court erred by denying his oral motion for recusal. Citing to Turner v. State,² Moore argues that recusal was mandatory because, at the time Moore's case was filed, Judge Bell was the Clark County District Attorney and his name was on the information. We disagree. Unlike in Turner, there is no indication in the record that Judge Bell, in his capacity as Clark County District Attorney, personally prepared the information or made a court appearance in the case, and therefore NRS 1.230 and NCJC 3E are not implicated.³ Accordingly, the district court did not err by denying the oral motion for recusal.

Second, Moore argues that the order of the district court should be reversed because it was prepared by the State, it "imposes the State's position of the case," and does not adequately reflect the oral findings made by the district court. We disagree. Although the State prepared the order, the district court adopted and approved the contents of the order by signing it.⁴

²114 Nev. 682, 688, 962 P.2d 1223, 1226 (1998).

³Cf. id. at 686, 962 P.2d at 1225 (mandatory recusal required where the trial judge had previously appeared as a deputy district attorney for the State at appellant's pretrial hearings).

⁴See NRS 34.830(1); EDCR 7.21.

Third, Moore contends that the district court erred in rejecting his claims that defense counsel was ineffective and that his guilty plea was unknowing. In particular, Moore contends that trial counsel was ineffective by "hastily negotiating" and forcing him through "strong arm tactics" to accept a plea bargain after a mistrial was granted. Additionally, Moore argues that appellate counsel was ineffective by failing to allege that the spirit of the plea agreement was breached when the prosecutor interlineated the written agreement, changing count VII to count IX. Finally, Moore argues that his guilty plea was unknowing because the oral canvass was inadequate in that the district court (1) incorrectly explained the right to a jury trial; (2) did not advise him of his right to testify; and (3) failed to inform him of the effects of pleading guilty to a sexual offense, including the requirement of lifetime supervision.

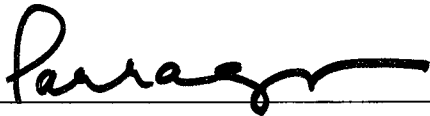
The district court found that defense counsel was not ineffective under the standard set forth in Strickland v. Washington,⁵ and that Moore's guilty plea was knowing, voluntary, and intelligent. The district court's factual findings regarding the validity of a guilty plea and claims of ineffective assistance of counsel are entitled to deference when reviewed on appeal.⁶ Moore has not demonstrated that the district court's

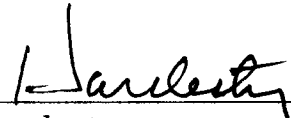
⁵466 U.S. 668 (1984).


⁶See Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986); Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

findings of fact are not supported by substantial evidence or are clearly wrong. Moreover, Moore has not demonstrated that the district court erred as a matter of law. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Saitta

cc: Hon. Stewart L. Bell, District Judge
Belanger & Plimpton
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk