IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN KEITH PAAJANEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47999

FILED

SEP 07 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART, VACATING CONVICTION IN PART, AND REMANDING

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. Eighth Judicial District Court, Clark County; Michael A. Cherry, Judge.

On July 1, 2005, the district court convicted appellant, pursuant to a guilty plea, of one count each of violation of lifetime supervision and sex offender failure to change address. The district court sentenced appellant as a habitual criminal on both counts, and ordered appellant to serve two concurrent terms of five to twenty years in the Nevada State Prison. Appellant did not file a direct appeal.

On July 3, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Appellant filed a supplemental petition. 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 September 21, 2006, the district court denied appellant's petition. This appeal followed.

In his petition, appellant raised several claims of ineffective assistance of 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 counsel was ineffective for failing to raise appellant's homeless status as a defense to the charge for sex offender failure to change address. This claim was belied by the record.[3] The record reveals that at the preliminary hearing appellant's counsel challenged the charge for sex offender failure to change address on the basis that appellant was homeless. Despite counsel's argument, the justice court bound appellant over on the charge. Appellant was aware that this same argument could have been raised as a defense at trial, but decided to plead guilty rather than proceed to trial. Appellant failed to demonstrate that any additional argument regarding his homeless status would have been successful in having his charge dismissed or that any additional argument regarding appellant's homeless status would have altered his decision to plead guilty. Accordingly, we affirm the denial of this claim.

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

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

[3]See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

Second, appellant claimed that his counsel was ineffective for failing to initiate competency proceedings because appellant had a history of paranoid schizophrenia. Appellant failed to demonstrate that his counsel was ineffective. A defendant is competent to stand trial, and enter a guilty plea, if he has sufficient ability to consult with his lawyer with a reasonable degree of understanding, and can comprehend the proceedings against him.[4] Appellant failed to demonstrate that there was any doubt about his competency when he pleaded guilty. At his plea canvass, appellant indicated that he had discussed the charges with his counsel, and appellant clearly articulated what conduct he engaged in that led him to plead guilty. Accordingly, we affirm the denial of this claim.

Third, appellant claimed that his counsel was ineffective for failing to argue against habitual criminal adjudication contending that it was improper because the sole basis for his convictions was that he was homeless and the habitual criminal statute was not intended for nonviolent offenses. Appellant failed to demonstrate prejudice because he failed to demonstrate that such an argument would have altered the sentence he received. NRS 207.010 does not make any allowance for nonviolent offenses. Further, although appellant's instant offenses were nonviolent, the record reveals that appellant had a continuous history of committing felony and sexual offenses that dated back to 1977. Accordingly, we affirm the district court's denial of this claim.

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[4]See NRS 178.400(2); Riker v. State, 111 Nev. 1316, 1324, 905 P.2d 706, 711 (1995) (holding that there is no higher standard of competency required to plead guilty than to stand trial); Melchor-Gloria v. State, 99 Nev. 174, 180, 660 P.2d 109, 113 (1983); see also Godeniz v. Moran, 509 U.S. 389, 399 (1993).

Fourth, appellant claimed that his counsel was ineffective for failing to challenge, and advising him to plead guilty to, the charge for violating the conditions of lifetime supervision because lifetime supervision was improperly imposed upon him. We conclude that the district court erred in denying this claim.

The record reveals that appellant was charged with violating the conditions of lifetime supervision that was imposed as a result of a 1994 conviction in district court case number C116573 and a 2001 conviction in district court case number C175198. However, former NRS 176.113, which governed the imposition of lifetime supervision, was not added to the NRS until 1995 and did not apply to convictions that preceded that date.[5] Therefore, lifetime supervision could not have been imposed in district court case number C116573. Additionally, we note that the State never provided proof that appellant was subject to lifetime supervision in district court case number C116573. Further, this court recently vacated the special sentence of lifetime supervision that was imposed in district court case number C175198 because lifetime supervision was improperly imposed.[6] Specifically, appellant was convicted in district court case number C175198 of violating NRS 200.730(1), but former NRS 176.113 did not provide for imposition of a special sentence of lifetime supervision for an individual convicted of that

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[5]See 1995 Nev. Stat., ch. 256, § 4, at 414; 1995 Nev. Stat., ch. 256, § 14, at 418.

[6]Paajanen v. State, Docket No. 48463 (Order of Reversal and Remand and Vacating Special Sentence of Lifetime Supervision, July 24, 2007).

offense.[7] Accordingly, appellant was not legally subject to lifetime supervision at the time he was charged with violating the conditions of lifetime supervision.

Because a review of appellant's prior convictions and the statutes governing lifetime supervision would have demonstrated that appellant was not legally subject to lifetime supervision, we conclude that appellant's counsel was ineffective for failing to present this as a defense and for advising appellant to plead guilty to the charge of violation of lifetime supervision by a convicted sex offender. We therefore reverse the district court's denial of this claim. Further, because appellant was never legally subject to lifetime supervision, appellant could not have been convicted of violating the conditions of his lifetime supervision, and we vacate appellant's conviction for violating lifetime supervision by a convicted sex offender.[8] We therefore remand this matter to the district court for entry of an amended judgment of conviction that removes the conviction for violating lifetime supervision by a convicted sex offender.

Fifth, appellant claimed that his counsel was ineffective for failing advise him of his right to file a direct appeal, and for failing to file a direct appeal after being requested to do so. The district court erroneously denied appellant's petition without first conducting an evidentiary hearing on the issue of whether appellant's counsel failed to file a direct appeal after being requested to do so. Appellant is entitled to an evidentiary

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[7]See 1997 Nev. Stat., ch. 451, § 85, at 1671.

[8]Because we vacate appellant's conviction for violating lifetime supervision, we decline to address any other claims that appellant raised in relation to that conviction.

hearing if he raises claims that are not belied by the record and, if true, would entitle him to relief.[9] If a client expresses a desire to appeal, counsel is obligated to file a notice of appeal on the client's behalf.[10] Here, appellant's appeal deprivation claim was not belied by the record, and may have entitled him to relief. Accordingly, we reverse the denial of this claim and remand this matter to the district court for an evidentiary hearing on appellant's appeal deprivation claim.[11] If the district court determines that appellant was denied the right to a direct appeal, the district court shall appoint counsel to represent and assist appellant in filing a petition pursuant to Lozada.[12]

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.[13] Accordingly, we

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[9]See Hargrove, 100 Nev. at 503, 686 P.2d at 225.

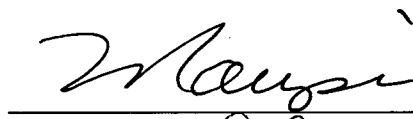
[10]See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003); Thomas, 115 Nev. 148, 979 P.2d 222; Davis v. State, 115 Nev. 17, 974 P.2d 658 (1999); see also Roe v. Flores-Ortega, 528 U.S. 470 (2000).

[11]To the extent that appellant challenged his counsel's failure to advise him of the right to appeal, we conclude the district court did not err in denying this claim. Appellant was advised of his limited right to appeal in the written guilty plea agreement that appellant acknowledged having read, understood and signed. See Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

[12]See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

[13]See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.[14]



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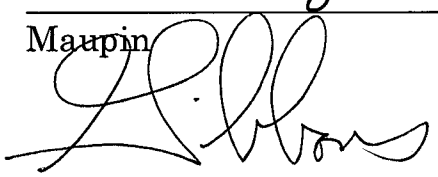
Maupin



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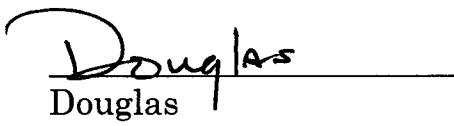
Gibbons



_____, J.
Douglas

cc: Eighth Judicial District Court Dept. 17, District Judge
Steven Keith Paajanen
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

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[14]This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter. We have considered all proper person documents filed or received in this matter. We conclude that appellant is only entitled to the relief described herein.