

IN THE SUPREME COURT OF THE STATE OF NEVADA


ALEXANDER OCASIO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48274

FILED

APR 06 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
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; Joseph T. Bonaventure, Stewart L. Bell, Judges.

On October 19, 2004, the district court convicted appellant, pursuant to a guilty plea, of one count of battery with a deadly weapon resulting in substantial bodily harm. The district court sentenced appellant to serve a term of thirty to ninety months in the Nevada State Prison. This court affirmed the judgment of conviction on appeal.¹ The remittitur issued on August 2, 2005.

On June 14, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court.² The

¹Ocasio v. State, Docket No. 44282 (Order of Affirmance, July 5, 2005).

²On July 24, 2006, appellant filed an amended petition, which contained a change to the warden and institution.

State opposed the petition. Appellant filed a response. 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 October 19, 2006, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that he received ineffective assistance of trial counsel.³ 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 of a different outcome but for counsel's errors.⁴ In order to establish prejudice to invalidate the decision to enter a guilty plea, a petitioner must demonstrate that, but for counsel's errors, petitioner

³To the extent that appellant raised any of the underlying claims independently from his ineffective assistance of counsel claims, these claims 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. See NRS 34.810(1)(a). To the extent that appellant claimed his guilty plea was invalid, appellant failed to carry his burden of demonstrating that his guilty plea was entered involuntarily or unknowingly for the reasons discussed in the analysis of his claims of ineffective assistance of trial counsel. See Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986).

⁴See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

would not have pleaded guilty and would have insisted on going to trial.⁵ The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.⁶

First, appellant claimed that trial counsel was ineffective for failing to inform him that no criminal complaint had been filed in the justice court, misinforming him that he was charged pursuant to a criminal complaint, concealing that no criminal complaint had been filed by waiving the reading of the complaint, failing to file a motion to dismiss or pretrial petition for a writ of habeas corpus based upon the fact that no criminal complaint had been filed, and advising appellant to waive his preliminary hearing and plead guilty when no criminal complaint had been filed in the justice court. Appellant failed to demonstrate that his trial counsel's performance was deficient. The record indicates that the criminal complaint was filed on July 29, 2004, in the justice court. Because the factual basis for his claim lacked merit, appellant necessarily failed to demonstrate any prejudice. Therefore, we conclude that the district court did not err in denying this claim.

Second, appellant claimed that trial counsel was ineffective because of a conflict of interest. Appellant claimed that trial counsel's conflict arose from the fact that trial counsel was trying to have appellant convicted and failed to defend him. Appellant complained that trial

⁵Hill v. Lockhart, 474 U.S. 52 (1985); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

⁶Strickland, 466 U.S. at 697.

counsel recommended a guilty plea prior to even interviewing appellant. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Appellant failed to demonstrate that an actual conflict of interest adversely affected trial counsel's performance in the proceedings in the district court.⁷ Appellant further failed to provide any specific facts in support of his claim that trial counsel was motivated to have appellant convicted.⁸ Appellant failed to demonstrate that there was a reasonable probability that he would not have entered a guilty plea if counsel had interviewed him prior to advising him to enter a guilty plea. Therefore, we conclude that the district court did not err in denying this claim.

Third, appellant claimed that trial counsel was ineffective because he failed to communicate with appellant about his case and waited until the day before the preliminary hearing to speak to appellant. Appellant claimed that this failure left trial counsel unprepared to defend appellant at the preliminary hearing. Appellant further complained that he was never explained his legal rights, or the purpose and importance of a preliminary hearing. Appellant failed to demonstrate that he was prejudiced. We note that during a discussion on appellant's presentence motion to withdraw a guilty plea, trial counsel represented that he had discussed the case with appellant prior to the preliminary hearing.

⁷See Strickland, 466 U.S. at 692; Cuyler v. Sullivan, 446 U.S. 335 (1980); Leonard v. State, 117 Nev. 53, 63, 17 P.3d 397, 404 (2001).

⁸See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

Appellant failed to demonstrate that further discussions prior to the preliminary hearing would have made a difference in his decision to waive the preliminary hearing or his decision to enter a guilty plea. Appellant further failed to indicate how information about the legal rights, purpose and importance of the preliminary hearing would have altered his decision to waive the preliminary hearing or enter a guilty plea. Therefore, we conclude that the district court did not err in denying this claim.

Fourth, appellant claimed that trial counsel was ineffective for failing to file a motion for discovery to obtain all witness statements. Specifically, appellant appeared to claim that trial counsel failed to obtain Richard Ocasio's voluntary statement to the police. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Appellant failed to demonstrate that Richard Ocasio prepared a written statement for the police. From a review of the record on appeal, it appears that the police interviewed Richard Ocasio en route to the hospital and received his statements verbally and that these statements were later included in the arrest report. It further appears from the record on appeal that the arrest report was made available to appellant with the discovery items as he discussed conflicts with the witness statements during the hearing on the presentence motion to withdraw a guilty plea. Trial counsel represented during the discussions on the presentence motion to withdraw a guilty plea that he had discussed the witness statements with appellant. Even assuming that Richard Ocasio's statement was not a part of the discovery discussed in the context of the presentence motion to withdraw a guilty plea, appellant failed to demonstrate a reasonable probability that he would not have entered a

guilty plea and would have insisted on going to trial if trial counsel had filed a motion to discover Richard Ocasio's statements to the police. Appellant failed to demonstrate that Richard Ocasio's statements to the police were inconsistent with the other witness statements in any pertinent or significant part. Appellant received a substantial benefit by entry of his guilty plea as he avoided additional charges of two counts of assault with a deadly weapon and the alternative count of attempted murder with the use of a deadly weapon. Therefore, we conclude that the district court did not err in denying this claim.

Fifth, appellant claimed that trial counsel was ineffective for failing to deliver discovery to appellant prior to entry of his guilty plea. Appellant further claimed that trial counsel was ineffective for failing to inform him of conflicts between the statements of Rachale Kaufmann and Richard Ocasio. Appellant failed to demonstrate that he was prejudiced by trial counsel's performance. Appellant raised these issues in his presentence motion to withdraw a guilty plea, and the district court concluded that these failures did not invalidate appellant's guilty plea. On direct appeal, this court concluded that the district court did not abuse its discretion in so deciding. Because the underlying facts have already been determined to lack merit, appellant necessarily failed to demonstrate any prejudice. Therefore, we conclude that the district court did not err in denying this claim.

Sixth, appellant claimed that trial counsel was ineffective for failing to obtain text messages which would have established that appellant had ended the relationship with Kaufmann, that appellant knew about Kaufmann's new relationship with Richard Ocasio, that

appellant only wanted peace, that the car appellant went to pick up the morning he shot Richard Ocasio was in fact appellant's car, and that he was invited to pick up the car the morning of the shooting. Appellant failed to demonstrate that he was prejudiced. Appellant failed to demonstrate that had trial counsel reviewed these text messages that there was a reasonable probability that appellant would not have entered a guilty plea and would have insisted on going to trial. Notably, as appellant indicated that these text messages were sent to him, appellant was aware of these text messages prior to his decision to waive his preliminary hearing and enter a guilty plea. Finally, appellant's decision to enter a guilty plea eliminated a duty to further investigate the matter. Therefore, we conclude that the district court did not err in denying this claim.

Seventh, appellant claimed that trial counsel was ineffective for failing to interview witnesses who would refute any notion that appellant yelled at Richard Ocasio, that appellant enticed Richard Ocasio outside, that appellant fought Richard Ocasio in the front yard, and that appellant jabbed at Richard Ocasio with a knife. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. The witness statements attached to the petition do not establish any of the points as alleged by appellant. To the extent that appellant claimed that the witnesses would reveal further information if interviewed, appellant's claim was mere speculation. Again, appellant's decision to enter a guilty plea eliminated a duty to further investigate the matter. Therefore, we conclude that the district court did not err in denying this claim.

Eighth, appellant claimed that trial counsel was ineffective for failing to pursue self-defense. Appellant claimed that he thought Richard Ocasio had a second gun and that belief explained why appellant shot Richard Ocasio in the face with the gun that appellant had taken from Richard Ocasio. Appellant claimed that his trial counsel failed to investigate to determine if a second gun was found and failed to follow-up on appellant's statement that Richard Ocasio was a gun collector. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. In entering his guilty plea, appellant affirmatively acknowledged that he had discussed defense theories with his trial counsel. Further, appellant failed to demonstrate that any further investigation would have turned up a second gun on Ocasio's person the morning he was shot. Notably, when appellant discussed the facts of the crime during the sentencing hearing, appellant never mentioned that he shot Richard Ocasio because he believed that Richard Ocasio had a second gun. Again, appellant's decision to enter a guilty plea eliminated a duty to further investigate the matter. Therefore, we conclude that the district court did not err in denying this claim.

Ninth, appellant claimed that trial counsel was ineffective for failing to obtain Richard Ocasio's medical records to determine if Richard Ocasio was high or intoxicated during the shooting incident. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. This claim is based upon no more than naked speculation on the part of appellant. Even assuming that this evidence existed, appellant failed to establish that he was entitled to review the medical records or that any intoxication was of such a level that Richard

Ocasio was not able to describe the incident or identify the person who shot him in the face. In addition to Richard Ocasio's statements to the police, the evidence against appellant included Kaufmann's statements, statements from the neighbors, and appellant's own 911 phone call and subsequent arrest. Again, appellant's decision to enter a guilty plea eliminated a duty to further investigate the matter. Therefore, we conclude that the district court did not err in denying this claim.

Tenth, appellant claimed that trial counsel was ineffective for failing to obtain transcripts from a 911 telephone call. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Appellant failed to provide any specific facts in support of this claim.⁹ Thus, appellant failed to demonstrate that obtaining the transcripts would have altered his decision to enter a guilty plea. Therefore, we conclude that the district court did not err in denying this claim.

Eleventh, appellant claimed that trial counsel was ineffective for failing to verify the type of knife that the police claimed that appellant had used during the incident and that the police found at the crime scene. Appellant failed to demonstrate that he was prejudiced. Kaufmann and Richard Ocasio both told the police that appellant brandished a knife during the incident, and in fact, appellant held the knife to the throat of Kaufmann. Appellant failed to demonstrate that the description of the

⁹See Hargrove, 100 Nev. 498, 686 P.2d 222.

type of knife made any difference in the decision to enter a guilty plea. Therefore, we conclude that the district court did not err in denying this claim.

Twelfth, appellant claimed that trial counsel's representation was ineffective because: (1) trial counsel did not encourage appellant; (2) trial counsel did not give legal advice about the case; (3) trial counsel played to appellant's fears and ignorance; (4) trial counsel told him he had no case; (5) trial counsel told him that if he did not take the deal he would be punished later by the State; (6) trial counsel did not inform him the case was defensible; (7) trial counsel failed to exploit the competency and credibility of evidence; and (8) trial counsel failed to inform appellant that the State could not make a charge of attempted murder because appellant called 911. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Appellant failed to demonstrate that but for these failures he would not have entered a guilty plea and would have insisted on going to trial. Trial counsel's candid advice about the possibility of success at trial and the potential penalties faced if convicted of the original charges is not deficient. Appellant failed to indicate what evidence was subject to a competency or credibility attack, and appellant failed to demonstrate that attack would have been successful. We note that the fact that appellant called 911 does not necessarily establish a defense for attempted murder as calling the authorities for assistance after the shooting does not indicate that the intent to kill was not present before the shooting. During the discussions of the presentence motion to withdraw a guilty plea, trial counsel informed the district court that he had discussed the case and witness statements

with appellant before and after the preliminary hearing. Therefore, we conclude that the district court did not err in denying this claim.

Thirteenth, appellant claimed that trial counsel failed to meet with him after waiver of the preliminary hearing and explain the elements of the charges. Appellant claimed that the criminal information did not establish "criminal agency" and he did not understand how his actions fulfilled the elements of the charges. Appellant further claimed that he was handed the guilty plea agreement in open court and told to sign the agreement without sufficient time to review. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Attached to the written guilty plea agreement was a copy of the criminal information setting forth the elements of the offense. In signing the guilty plea agreement, appellant acknowledged that the elements of the offense were explained to him. During the guilty plea canvass, appellant indicated that he understood the charge to which he was pleading guilty and that he had read and understood the guilty plea agreement. Appellant made a factual admission to the charged offense during the guilty plea canvass. Appellant's claim that the criminal information did not establish "criminal agency" was patently without merit. Appellant failed to demonstrate a reasonable probability that had he received the guilty plea agreement earlier that he would not have pleaded guilty and would have insisted on going to trial. Finally, appellant's trial counsel affirmatively acknowledged that he had discussed the elements of the offenses with appellant. Therefore, we conclude that the district court did not err in denying this claim.

Fourteenth, appellant claimed that trial counsel was ineffective for informing him that he would not have received a lesser sentence with an Alford¹⁰ plea. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Pleading guilty pursuant to Alford does not guarantee a defendant will receive either a greater or a lesser sentence than a guilty plea in which the defendant admits the facts of the crime. Sentencing decisions are within the discretion of the district court, and appellant was informed of this fact in his written guilty plea agreement. Therefore, we conclude that the district court did not err in denying this claim.

Fifteenth, appellant claimed that trial counsel was ineffective for failing to present a justice court pretrial services recommendation prior to waiving the preliminary hearing. Appellant offered no specific facts in support of this claim, and thus, he failed to demonstrate that but for this failure he would not have entered a guilty plea and would have insisted on going to trial.¹¹ Therefore, we conclude that the district court did not err in denying this claim.

Sixteenth, appellant claimed that trial counsel was ineffective for not providing appellant with the presentence investigation report ten days before sentencing. Appellant claimed that the presentence investigation report erred in the following respects: (1) stating he went to

¹⁰North Carolina v. Alford, 400 U.S. 25 (1970).

¹¹See Hargrove, 100 Nev. 498, 686 P.2d 222.

"their" residence, when in fact it was Kaufmann's residence not Richard Ocasio's residence; (2) failing to set forth Kaufmann's or appellant's versions of the incident; (3) failing to list all misdemeanor convictions and listing only the violent misdemeanors; (4) failing to identify appellant as a former law enforcement officer and bailiff; (5) failing to list mitigating circumstances—for example, self-defense and the fact that appellant called 911. Appellant appeared to indicate that if counsel had provided him with a copy of the presentence investigation report earlier that counsel could have raised these issues for appellant at sentencing instead of appellant raising these issues himself. Appellant failed to demonstrate that he was prejudiced. Appellant made lengthy statements at sentencing and informed the district court about his version of the events, the fact appellant called 911 after the incident and appellant's past employment in law enforcement. Appellant failed to indicate that there was a reasonable probability of a different sentence had trial counsel raised any of these issues at sentencing. Therefore, we conclude that the district court did not err in denying these claims.

Seventeenth, appellant claimed that trial counsel was ineffective for failing to file a presentence motion to withdraw the guilty plea. Appellant failed to demonstrate that he was prejudiced. The district court considered and denied on the merits appellant's proper person motion to withdraw his guilty plea before sentencing. On appeal, this court concluded that the district court had not abused its discretion in denying the motion. Appellant failed to demonstrate that there was a reasonable probability that the motion would have been successful if trial

counsel had filed the motion instead. Therefore, we conclude that the district court did not err in denying this claim.

Eighteenth, appellant claimed that trial counsel was ineffective for informing appellant that he would get probation. Appellant claimed that the violent nature of this offense and his past crimes involving violence would have made the possibility of probation unlikely. Appellant failed to demonstrate that he was prejudiced. Appellant was informed of the potential penalties, including the possibility of probation, in the written guilty plea agreement. Appellant was further informed that imposition of probation was within the discretion of the district court. Therefore, we conclude that the district court did not err in denying this claim.

Nineteenth, appellant claimed that trial counsel was ineffective for setting forth an argument at sentencing that was easily refuted by the State. Appellant claimed that trial counsel's statement of the facts was inaccurate. Appellant failed to demonstrate that he was prejudiced. Appellant failed to demonstrate that absent this argument that there was a reasonable probability of a different sentence. Appellant provided a lengthy statement of his version of the events. Therefore, we conclude that the district court did not err in denying this claim.

Twentieth, appellant claimed that trial counsel was ineffective for failing to inform appellant to obtain favorable letters from friends, family and former employers. Appellant failed to demonstrate that he was prejudiced. Appellant failed to demonstrate that there was a reasonable probability of a different sentence had he obtained and presented letters to

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

Twenty-first, appellant claimed that trial counsel was ineffective for failing to interview Rachale Kaufmann and ascertain that she had recanted her statements to the police. Appellant relied upon a document prepared and submitted by Kaufmann's attorney in a family court proceeding. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. The documents relied upon contained no express recantation and do not appear to disagree in any significant way from the voluntary statement to the police. Rather, the documents in the family court case appear to contain a more complete statement of events. Even assuming that Kaufmann's statement in the family court documents contained some inconsistencies, appellant failed to demonstrate that there was a reasonable probability of a different outcome as Richard Ocasio's statements to the police identified appellant as the man who shot him in the face. Therefore, we conclude that the district court did not err in denying this claim.

Twenty-second, appellant claimed that his trial counsel was ineffective for failing to inform the district court that Richard Ocasio was a liar and not credible because Richard Ocasio lied about his height and birth date on his driver's license. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Appellant failed to demonstrate that Richard Ocasio had lied on his driver's license, and that even if he had lied on his driver's license, that this meant he lied to the police about the incident in which he was shot in

the face. Therefore, we conclude that the court did not err in denying this claim.

Twenty-third, appellant claimed that trial counsel was ineffective for failing to argue that the criminal information and criminal complaint were not declared or sworn under oath and were signed by unauthorized persons. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. The information was not required to be declared or sworn under oath in the instant case as appellant unconditionally waived his preliminary hearing.¹² The criminal information was properly signed by a deputy from the district attorney's office.¹³ To the extent that appellant claimed that the criminal complaint was not properly initiated under a declaration of perjury, appellant's claims is belied by the record on appeal.¹⁴ Appellant further failed to demonstrate that the person who signed the criminal complaint was not authorized to sign the complaint. Because the above

¹²See NRS 173.045(3) ("In all cases in which the defendant has not had or waived a preliminary examination there must be filed with the information the affidavit of some credible person verifying the information upon the personal knowledge of affiant that the offense was committed."); State v. Jernigan, 75 Nev. 389, 343 P.2d 1015 (1959) (interpreting this language in an earlier statute to mean that an affidavit was not required when a defendant had a preliminary hearing or waived the right to a preliminary hearing as the word "not" applied to both "had" and "waived" in the statutory language).

¹³See NRS 173.045(1).

¹⁴See NRS 171.102(2).

challenges to the criminal information and complaint would have failed, appellant failed to demonstrate any prejudice. Therefore, we conclude that the district court did not err in denying this claim.

Twenty-fourth, appellant claimed that trial counsel was ineffective for failing to challenge the contents of the criminal information. Appellant claimed that the criminal information did not adequately inform him of the nature and cause of accusation against him. Appellant further claimed that the justice court did not bind him over on a charge of battery with a deadly weapon causing substantial bodily harm. He also appeared to claim that he was not bound over on a charge of assault with a deadly weapon involving Kaufmann, and if he knew this, he would have insisted on going to trial as there would have been only one complaining witness—Richard Ocasio. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced.¹⁵ The criminal information adequately informed appellant of the nature of the charge.¹⁶ Appellant's claim that he was not bound over on the charge of battery with a deadly weapon causing substantial bodily harm is without merit. Appellant waived his preliminary hearing and was bound over on the original charges in the criminal complaint: (1) assault with a deadly weapon (victim Richard Ocasio); (2) assault with a deadly weapon (victim

¹⁵To the extent that appellant claimed that the commitment and order to appear was fatally defective, appellant failed to establish any such fatal defects.

¹⁶See NRS 173.075.

Rachale Kaufmann); (3) attempted murder with the use of a deadly weapon (victim Richard Ocasio); and (4) battery with use of a deadly weapon resulting in substantial bodily harm (victim Richard Ocasio). Because in waiving his preliminary hearing appellant indicated that he was pleading guilty to only one of the charges, the battery charge, the criminal information properly included only the battery charge.¹⁷ Therefore, the district court did not err in denying this claim.

Twenty-fifth, appellant claimed that trial counsel was ineffective for failing to argue that there was no probable cause to arrest appellant and bind him over for trial because the statements of the victims were incredible and not supported by other witness statements. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Appellant failed to establish that there was not probable cause to arrest him. The police found Richard Ocasio in the yard shot in the face, and statements from Richard Ocasio and Kaufmann to the police identifying appellant as the shooter provided probable cause for the arrest. Any alleged inconsistencies in the statements of the victims did not implicate the probable cause to arrest in the instant case. Appellant was bound over for trial as a result of his waiver of the preliminary hearing. Therefore, we conclude that the district court did not err in denying this claim.

¹⁷See NRS 173.035(4).

Next, appellant claimed that he received ineffective assistance of appellate counsel.¹⁸ To state a claim of ineffective assistance of appellate counsel, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that the omitted issue would have a reasonable probability of success on appeal.¹⁹ Appellate counsel is not required to raise every non-frivolous issue on appeal.²⁰ This court has held that appellate counsel will be most effective when every conceivable issue is not raised on appeal.²¹

First, appellant claimed that his appellate counsel was ineffective for failing to argue: (1) the district court lacked jurisdiction to conduct proceedings because no criminal complaint had been filed and the State failed to inform the district court of this fact; (2) the criminal information and criminal complaint were defective because they were not declared or sworn under oath and were signed by unauthorized persons; (3) the criminal information was defective because it did not inform

¹⁸To the extent that appellant raised any of the underlying claims independently from his ineffective assistance of counsel claims, these claims 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. See NRS 34.810(1)(a).

¹⁹Kirksey, 112 Nev. at 998, 923 P.2d at 1114.

²⁰Jones v. Barnes, 463 U.S. 745, 751 (1983).

²¹Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989).

appellant of the nature of the charges against him and because it contained counts for which he was not bound over for trial; (4) there was no probable cause to arrest appellant; and (5) the presentence investigation report contained errors. As previously discussed, the underlying facts for these claims lacked merit, and thus, appellate counsel was not deficient, and appellant was not prejudiced by appellate counsel's failure to raise any of these arguments. Therefore, we conclude that the district court did not err in denying these claims.

Second, appellant claimed that appellant counsel was ineffective for failing to argue that his right to have his case presented before the grand jury was violated. Appellant failed to demonstrate that his appellate counsel's performance was deficient or that this issue had a reasonable probability of success on appeal. A prosecution may be initiated by either the filing of a grand jury presentment or indictment or the filing of an information.²² Appellant's case originated with the filing of an information after the waiver of a preliminary hearing. Therefore, we conclude that the district court did not err in denying this claim.

Third, appellant claimed that appellate counsel was ineffective for failing to argue that the State illegally conspired with defense counsel to illegally convict appellant. Appellant offered no specific facts in support of this claim, and thus, he failed to demonstrate that his appellate counsel

²²See Nev. Const. art. 1, § 8; see also NRS 172.015; NRS 173.015; NRS 173.025; NRS 173.035.

was ineffective in this regard.²³ Therefore, we conclude that the district court did not err in denying this claim.

Fourth, appellant claimed that appellate counsel was ineffective for failing to argue that the State withheld Richard Ocasio's voluntary statement to the police. Appellant did not demonstrate that this statement existed or was withheld, and thus, appellant failed to demonstrate that his appellate counsel's performance was deficient or that he was prejudiced. Therefore, we conclude that the district court did not err in denying this claim.

Finally, appellant claimed that the district court erred in denying his presentence motion to withdraw a guilty plea and that he should have received an evidentiary hearing on this motion. This court considered and rejected these claims on direct appeal, and the doctrine of the law of the case prevents further litigation of these issues and cannot be avoided by a more detailed and precisely focused argument.²⁴

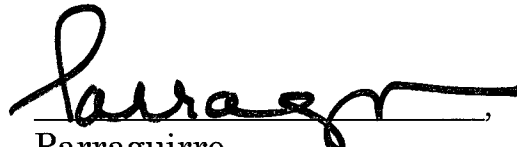
Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that

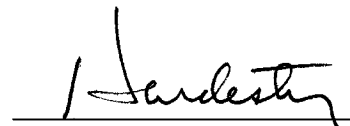
²³See Hargrove, 100 Nev. 498, 686 P.2d 222.

²⁴See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

briefing and oral argument are unwarranted.²⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.²⁶


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Saitta

cc: Hon. Joseph T. Bonaventure, District Judge
Hon. Stewart L. Bell, District Judge
Alexander Ocasio
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

²⁵See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

²⁶We 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.