

IN THE SUPREME COURT OF THE STATE OF NEVADA

GILES MANLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48319

FILED

JUL 17 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

Appellant Giles Manley was a juvenile when he committed his crimes and the State filed a notice of intent to seek the death penalty against him. He was convicted on May 27, 2003, by the district court, pursuant to a guilty plea, of one count of murder (open) and one count of murder with the use of a deadly weapon (open).¹ He was sentenced to serve three consecutive terms of life in prison without the possibility of parole. This court affirmed the judgment of conviction on direct appeal.²

Manley filed a proper person postconviction petition for a writ of habeas corpus and a supplemental petition in the district court. The district court declined to appoint Manley counsel or to conduct an evidentiary hearing, and issued an order denying his petition.

¹Manley also pleaded guilty to committing several other crimes and was sentenced to various consecutive terms of imprisonment.

²Manley v. State, Docket No. 41667 (Order of Affirmance, June 3, 2004).

This court reversed and remanded on appeal, concluding that "under the unique facts" of Manley's case the district court should have appointed Manley counsel and conducted an evidentiary hearing on the following claim: Whether his counsel was ineffective for advising him that he could withdraw his plea if the execution of juvenile offenders later became unconstitutional.³

Upon remand, the district court appointed counsel to represent Manley and conducted an evidentiary hearing on July 19, 2006, where Manley's trial counsel, Clark County Deputy Public Defenders Joseph Abood and Nancy Lemcke, as well as Clark County Deputy District Attorney Christopher Lalli, testified. After the hearing, the district court again denied Manley's petition, concluding that his trial counsel never told him "that he would be able to withdraw his guilty plea if the law changed regarding the execution of juveniles." This appeal followed.

Manley contends on appeal that the district court's finding on this matter was erroneous. He asserts that Deputy Public Defender Abood's statements prior to and during the evidentiary hearing regarding the advice he gave Manley about the plea, and whether he could withdraw it if the law ever changed,⁴ were contradictory. He maintains that the district court improperly denied his request to withdraw the guilty plea. We disagree.

³Manley v. State, Docket No. 44515 (Order of Reversal and Remand, November 16, 2005).

⁴Two years after Manley entered his plea, the United States Supreme Court in Roper v. Simmons, 543 U.S. 551 (2005), held that the execution of juvenile offenders was unconstitutional.

A district court's factual findings regarding the effectiveness of trial counsel are entitled to deference when they are supported by substantial evidence and not clearly wrong.⁵

Here, Abood testified at the evidentiary hearing that he sought to place Manley in "the best position possible" to seek to withdraw his guilty plea if the law regarding the execution of juvenile offenders changed and advised Manley that "he could ask to withdraw his plea." But Abood also advised Manley that "there was obviously no guarantees" that he could withdraw his plea. If there had been such a guarantee, Abood continued, it would have been a part of the plea negotiations.


Deputy Public Defender Lemcke testified that she had no specific recollection of whether Manley was told that he could withdraw his plea if the law changed, but she generally corroborated Abood's testimony. And Deputy District Attorney Lalli testified that he "absolutely did not and would not have agreed" to the guilty plea if it was conditioned upon Manley being able to withdraw it if the law changed.

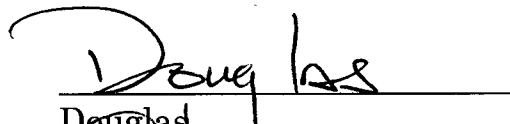
Even if some of Abood's prior statements and testimony on this matter were inconsistent or unclear, the district court found Abood to be a credible witness, and Abood testified unequivocally that he made "no guarantees" to Manley that he could withdraw his plea if the law regarding the execution of juvenile offenders ever changed. Substantial evidence supports this finding, which includes the testimony of Lemcke and Lalli. And the district court's finding on this matter is not clearly wrong. We therefore defer to it.

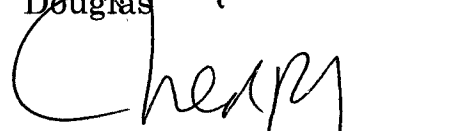
⁵See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

Manley has failed to demonstrate that the district court improperly denied his petition for postconviction relief. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

cc: Eighth Judicial District Court Dept. 6, District Judge
Anthony M. Goldstein
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk