

IN THE SUPREME COURT OF THE STATE OF NEVADA

JESSE EUGENE DENNIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48450

FILED

JAN 30 2009

TRACIE J. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Jesse Eugene Dennis' post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

On August 15, 2005, the district court convicted Dennis, pursuant to a guilty plea, of one count of second-degree murder. The district court sentenced Dennis to serve a term of life in prison with the possibility of parole after ten years. Dennis did not appeal the judgment of conviction.

On July 31, 2006, Dennis filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Dennis or to conduct an evidentiary hearing. On October 30, 2006, the district court denied the petition. This appeal followed.

Dennis contends that the district court erred by not conducting an evidentiary hearing. An evidentiary hearing is warranted if the petitioner raises claims supported by specific factual allegations that are not belied by the record and, if true, would entitle him to relief. See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984). For the

reasons set forth below, we conclude that the district court did not err by denying Dennis' post-conviction petition for writ of habeas corpus without an evidentiary hearing. Dennis failed to meet this burden, and, accordingly, we conclude that the district court did not err by not granting an evidentiary hearing.

Dennis 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 counsel's performance fell below an objective standard of reasonableness, and that, but for counsel's errors, the petitioner would not have pleaded guilty and would have insisted on going to trial. See Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Warden v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984); see also Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). The court can dispose of a claim if the petitioner makes an insufficient showing on either prong. Strickland, 466 U.S. at 697.

First, Dennis claimed that trial counsel was ineffective because he failed to inform Dennis of his right to appeal. This claim is belied by the record. See Hargrove, 100 Nev. at 503, 686 P.2d at 225. Dennis' plea agreement clearly informed him of the limited scope of his right to appeal. See Davis v. State, 115 Nev. 17, 19, 974 P.2d 658, 659 (1999). Further, this court has held "that there is no constitutional requirement that counsel must always inform a defendant who pleads guilty of the right to pursue a direct appeal." Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999). Moreover, Dennis has not claimed that he asked for an appeal and counsel failed to file it. Consequently, Dennis failed to show that counsel was deficient, and we conclude that the

district court did not err by denying this claim without an evidentiary hearing.

Second, Dennis argued that trial counsel was ineffective for failing to develop evidence to impeach the testimony of Lisa and Nicholas Fleming. Specifically, he contends that trial counsel should have cross-examined Lisa and Nicholas at the preliminary hearing and the Petrocelli hearing regarding property and money they received as a result of Leslie Dennis' death, the victim in this case. Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985). Dennis argues that this evidence would show that Lisa and Nicholas' testimony was biased and therefore Dennis would not have been bound over from justice court or he would have received a more favorable ruling at the Petrocelli hearing.

Dennis has failed to provide this court with a copy of the transcript from the Petrocelli hearing. Therefore, this court is unable to discern the nature of Lisa and Nicholas' testimony and its potential impact on the trial. The burden is on the appellant to provide an adequate record enabling this court to review assignments of error. Thomas v. State, 120 Nev. 37, 43 n.4, 83 P.3d 818, 822 n.4 (2004); see also Greene v. State, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980). Because Dennis failed to show that counsel was deficient or that he was prejudiced, we conclude that the district court did not err by denying this claim.

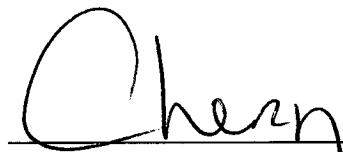
Additionally, Dennis contends that counsel should have filed a pretrial writ of habeas corpus challenging the sufficiency of the evidence produced at the preliminary hearing. In particular, Dennis states that counsel should have filed the writ because had counsel impeached Lisa, the evidence produced at the preliminary hearing would not have been sufficient to bind him over to district court.


Dennis failed to show that counsel was deficient or that he was prejudiced. The justice court did not base its decision to bind Dennis

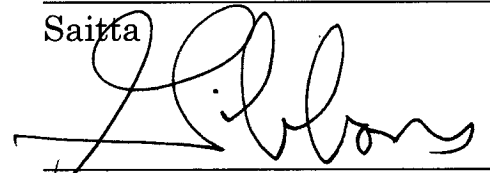
over to the district court on Lisa's testimony.¹ Instead, the justice court found the evidence presented about the particular gun used in the shooting highly persuasive. Evidence was presented showing that the gun could not have been shot accidentally as Dennis contended; either the hammer had to be pulled along with the trigger or the trigger had to be pulled especially hard. In addition, evidence was produced that the trajectory of the bullet was inconsistent with Dennis' claim that the gun fired accidentally while he was cleaning it. A justice court only needs slight or marginal evidence in order to bind a defendant over to district court. Sheriff v. Shade, 109 Nev. 826, 828, 858 P.2d 840, 841 (1993). Because Dennis failed to show that counsel was deficient or that he was prejudiced, we conclude that the district court did not err by denying this claim.

Having considered Dennis' claims and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

¹Nicholas Fleming did not testify at the preliminary hearing.

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