IN THE SUPREME COURT OF THE STATE OF NEVADA

LAWRENCE SCHWIGER A/K/A LAWRENCE E. SCHWIGER, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 48483
LAWRENCE SCHWIGER A/K/A LAWRENCE E. SCHWIGER, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 48579

FILED

JUL 18 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Docket No. 48483 is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Docket No. 48579 is a proper person appeal from an order of the district court denying appellant's motion for return of personal property. Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge. We elect to consolidate these appeals for disposition.[1]

On December 11, 2001, the district court convicted appellant, pursuant to an Alford plea,[2] of one count of lewdness with a child under

[1]NRAP 3(b).

[2]North Carolina v. Alford, 400 U.S. 25 (1970).

07-15617

the age of fourteen and two counts of solicitation to commit murder. The district court sentenced appellant to serve a term of life in the Nevada State Prison with parole eligibility after serving ten years for the lewdness count, and two concurrent terms of 72 to 180 months for the solicitation counts, to run consecutively to the sentence imposed for the lewdness count. This court affirmed appellant's judgment of conviction on direct appeal.[3] The remittitur issued on September 21, 2004.

Docket No. 48483, Petition for a Writ of Habeas Corpus

On August 22, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court, followed by a supplemental petition. The State opposed the petition and the supplemental petition. Appellant filed a reply. Pursuant to NRS 34.750 and NRS 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On December 20, 2006, the district court denied appellant's petition. This appeal followed.

In his petition, appellant claimed that defense counsel were ineffective. 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

---

[3]Schwiger v. State, Docket No. 39007 (Order of Affirmance, August 24, 2004).

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.[4] The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.[5]

First, appellant claimed that defense counsel were ineffective for misadvising him regarding his waiver of appellate rights upon entry of his Alford plea. Specifically, appellant claimed that his counsel misadvised him that he could raise certain issues on appeal that were in fact waived by the entry of his plea. Even assuming that counsel was deficient for misadvising appellant with respect to his appellate rights, appellant failed to demonstrate that he was prejudiced by the alleged deficient performance. Appellant received a substantial benefit in exchange for the guilty plea in that the State agreed to dismiss three counts of lewdness with a minor under the age of fourteen, two counts of sexual assault of a minor under the age of fourteen, three counts of solicitation to commit murder, and recommend that the sentences on two of the counts run concurrently. Further, the State's evidence against appellant would have included testimony from the child victim describing the lewd acts and sexual assaults that appellant committed, and an audiotape and videotape of appellant soliciting the murders of five

---

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

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

witnesses, including a five-year-old victim. Finally, and most notably, none of the proposed appellate issues had a reasonable likelihood of success on appeal.[6] Appellant thus failed to show that there is a reasonable probability that, but for defense counsel's misadvice, he would not have pleaded guilty and would have insisted on going to trial. Accordingly, the district court did not err in denying this claim.

Appellant further claimed that defense counsel were ineffective for (1) failing to object to the district court's joinder of his lewdness and solicitation counts; (2) failing to challenge the indictment and the district court's pretrial ruling on appellant's pretrial writ of habeas corpus and motion for a psychological examination of the victim; (3) failing to conduct legal research and investigation; (4) failing to interview witnesses; and (5) advising appellant to accept the plea bargain.

---

[6]See, e.g. Honeycutt v. State, 118 Nev. 660, 56 P.3d 362 (2002) (proper to join solicitation to commit murder counts with connected counts) overruled on other grounds by Carter v. State, 121 Nev. 759, 121 P.3d 592 (2005); Abbott v. State, 122 Nev. 715, 138 P.3d 462 (2006) (setting forth the considerations when determining whether a child victim should be psychologically examined, including whether there is a reasonable basis for believing that the victim's mental or emotional state may have affected his or her veracity); Boggs v. State, 95 Nev. 911, 604 P.2d 107 (1979) (requiring an appellant to demonstrate that the evidence was material and exculpatory, and that the State acted in bad faith in its destruction); Sheriff v. Marcum, 105 Nev. 824, 783 P.2d 1389 (1989) (setting forth the notice requirement for target of grand jury investigation); Mulder v. State, 116 Nev. 1, 992 P.2d 845 (2000) (granting or denying a motion for a continuance is within the sound discretion of the district court).

Further, appellant claimed that his appellate counsel was ineffective for failing to file a reply brief or petition for en banc consideration in his direct appeal and failing to challenge the denial of a pretrial motion for an independent psychological evaluation of the victim. Finally, appellant claimed that (1) his plea was involuntarily and unknowingly entered,[7] and (2) he was actually innocent.[8]

The district court found that defense counsel was not ineffective under the standard set forth in Strickland v. Washington,[9] and that appellant'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

---

[7]State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000); Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 367-68 (1986) (in determining the validity of a guilty plea, this court looks to the totality of the circumstances). Moreover, we previously determined that appellant's guilty plea was validly entered. Schwiger v. State, Docket No. 39007 (Order of Affirmance, August 24, 2004). "The doctrine of the law of the case cannot be avoided by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings." Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

[8]See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 226 (1984) (holding that a claim of actual innocence in which a defendant pleaded guilty pursuant to Alford, was "essentially academic").

[9]466 U.S. 668 (1984).

reviewed on appeal.[10] Appellant has not demonstrated that the district court's findings of fact are not supported by substantial evidence or are clearly wrong. Moreover, appellant has not demonstrated that the district court erred as a matter of law.

Having reviewed the record on appeal and concluded that appellant's claims have no merit, we affirm the order of the district court denying appellant's petition for a writ of habeas corpus.

Docket No. 48579, Motion for Return of Personal Property

On October 25, 2006, appellant filed a motion for return of personal property in the district court under NRS 179.085. The State opposed the motion. On January 25, 2007, the district court denied appellant's motion. This appeal followed.

Appellant contended that he had a right to the return of his seized property because the State had not initiated forfeiture proceedings and because he was aggrieved by an unlawful search and seizure.[11] Appellant failed to demonstrate that the property was illegally seized, and thus, the district court did not err in denying his motion for return of personal property.[12]

---

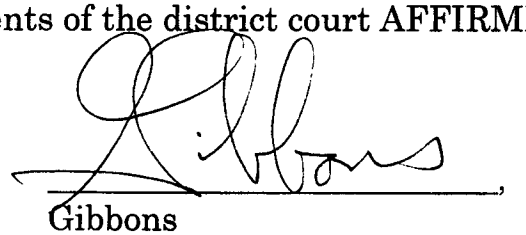
[10]See Bryant, 102 Nev. 268, 721 P.2d 364; Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

[11]See NRS 179.085.

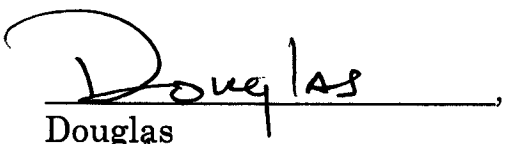
[12]See Maiola v. State, 120 Nev. 671, 99 P.3d 227 (2004); see also NRS 179.055(3) ("All reasonable and necessary force may be used to effect an entry into any building or property . . . to execute a search warrant.").

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

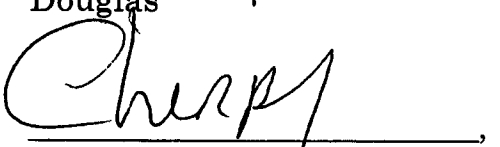
ORDER the judgments of the district court AFFIRMED.[14].



_____, J.
Gibbons



_____, J.
Douglas



_____, J.
Cherry

cc: Eighth Judicial District Court Dept. 18, District Judge
Lawrence Schwiger
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

---

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

[14]We 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.