IN THE SUPREME COURT OF THE STATE OF NEVADA

GEORGE TYRONE DUNLAP, JR. A/K/A GEORGE T. DUNLAP,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48611

FILED

MAY 11 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a motion for a new trial. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

On March 7, 2006, the district court convicted appellant, pursuant to an Alford plea,[1] of two counts of attempted sexual assault and one count of attempted lewdness with a minor under the age of fourteen. The district court sentenced appellant to serve two consecutive terms of 48 to 120 months in the Nevada State Prison and one concurrent term of 48 to 120 months. No direct appeal was taken.

On January 20, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On March 24, 2006, the district court denied the petition. On March 15, 2006, appellant filed a second proper person post-conviction petition for a writ of habeas corpus. The State opposed the petition. On June 14, 2006, the district court denied the petition. This

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

court affirmed the orders of the district court denying appellant's petitions.[2]

On November 7, 2006, appellant filed a proper person motion for a new trial in the district court. The State opposed the motion. On November 30, 2006, the district court denied the motion. This appeal followed.

In his motion, appellant claimed that he was actually innocent of the crimes. Appellant claimed that B.F., one of the three victims, lied about the date that she went camping with appellant because B.F. was at a sleepover at a friend's house the date that she claimed she went camping and was sexually assaulted by appellant. Appellant further claimed that C.D. and R.J., two of the victims, also lied to authorities about what occurred during a camping trip that they took with appellant. Appellant claimed that their story was incredible and appellant claimed that a new witness, an inmate apparently incarcerated at the same facility as appellant, would be able to come forward to state that C.D. was a "meth ho" and had told him that she had lied about the incident at the lake. Appellant also explored alleged inconsistencies in the statements to the police and testimony at the preliminary hearing.

Our review of the record on appeal reveals that the district court did not err in denying the motion. Appellant's conviction was based upon a guilty plea, and thus, a motion for a new trial was unavailable to

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[2]Dunlap v. State, Docket Nos. 46944, 47625 (Order of Affirmance, November 28, 2006).

appellant as appellant waived his right to a trial by entry of his guilty plea.[3]

Even assuming that appellant's motion was construed to be a motion to withdraw a guilty plea, appellant failed to carry his burden of demonstrating that his guilty plea was entered involuntarily or unknowingly.[4] Appellant's Alford plea signified that he maintained his innocence, but that he believed it was in his best interests to enter a plea.[5] Appellant received a substantial benefit by entry of his guilty plea in the instant case. Appellant was originally charged with three counts of first degree kidnapping, three counts of sexual assault on a minor under the age of fourteen, three counts of lewdness with a child under the age of fourteen, two counts of coercion, and one count of battery with the intent to commit sexual assault. A conviction on the original charges may have resulted in the imposition of multiple life sentences.[6] Further, appellant raised a claim of innocence in the prior post-conviction proceedings, and this court rejected that claim. The doctrine of the law of the case prevents further litigation of this issue and cannot be avoided by a more detailed

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[3]See generally NRS 176.515.

[4]See State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000); Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994); Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986).

[5]We note that this court has previously recognized that a claim of innocence is "essentially academic" where a defendant enters a plea pursuant to Alford. See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 226 (1984).

[6]See NRS 200.320(2); NRS 200.366(3)(c); NRS 201.230(2).

and precisely focused argument made upon reflection of the prior proceedings.[7] Even assuming that the allegedly two new facts set forth by appellant, B.F. was at a sleepover at a friend's house and an inmate would state that C.D. told him that she lied, would not be barred by the law of the case, appellant failed to demonstrate that he was actually innocent.[8] B.F. testified at the preliminary hearing that she was camping with appellant the night that she claimed she was sexually assaulted by appellant, and she did not testify that she was at a friend's house that night. A vague statement from the victim in a police voluntary statement does not make it more likely than not that a reasonable juror would have found appellant not guilty based upon this statement. The inmate's statement about C.D. failed to provide even a scintilla of proof of the truth of the allegation and was not made under the penalty of perjury or any indication that the author of the statement understood the statement was under the penalty of perjury. Further, this statement about C.D. does not invalidate the allegations of the other victims.[9] Therefore, we affirm the order of the district court denying the motion.

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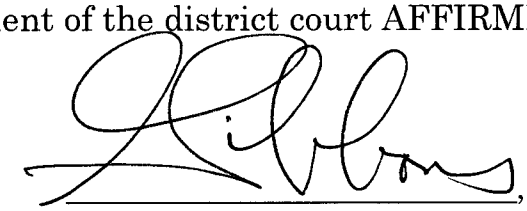
[7]See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

[8]See Pellegrini v. State, 117 Nev. 860, 34 P.3d 519 (2001); Mazzan v. Warden, 112 Nev. 838, 921 P.2d 920 (1996); see also Bousley v. United States, 523 U. S. 614 (1998).

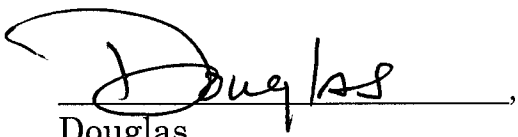
[9]See Bousley, 523 U.S. 614 (recognizing that actual innocence in a case involving a guilty plea requires that the petitioner demonstrate that he is actually innocent of more serious charges foregone by the State in the course of plea bargaining).

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.[10] Accordingly, we

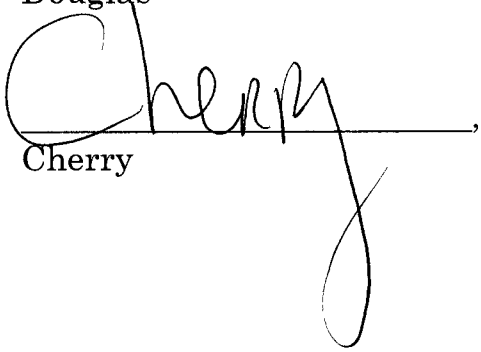
ORDER the judgment of the district court AFFIRMED.



_____, J.
Gibbons



_____, J.
Douglas



_____, J.
Cherry

cc: Hon. Stewart L. Bell, District Judge
George Tyrone Dunlap Jr.
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

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