

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEWEY EDWARD JONES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48778

FILED

MAY 31 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

This is an appeal from a district court order dismissing appellant Dewey Edward Jones' post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

Jones was convicted, pursuant to a guilty plea, of one count each of battery causing substantial bodily harm and coercion. The district court sentenced Jones to serve two consecutive prison terms of 19-60 months and ordered him to pay \$2,059.07 in restitution. Jones did not pursue a direct appeal from the judgment of conviction and sentence.

On August 5, 2005, Jones filed a timely proper person petition for a writ of habeas corpus in the district court. The district court appointed counsel to represent Jones, and counsel filed a supplement to the petition. The State moved for a partial dismissal of Jones' petition. Jones opposed the motion for partial dismissal. On April 28, 2006, the district court entered an order dismissing three of Jones' claims and ordering a hearing on the remaining two claims. The district court conducted an evidentiary hearing, and on December 1, 2006, entered an order denying Jones' petition. This timely appeal followed.

Jones contends that the district court erred by dismissing, without conducting an evidentiary hearing, his claim that counsel was ineffective for failing to investigate the facts of his case and concoct a viable defense strategy. Jones claims that he had a defense to the charges of coercion and false imprisonment,¹ namely, that the victim, his long-time girlfriend, was not credible because “she had been drinking at the time of the incident,” their relationship was “volatile,” and she “was not an emotionally stable woman.” Jones also claims that the victim was free to leave the motel room, that he did not keep her there against her will, and that a motel guest, “Eddie,” would have provided favorable testimony based on the fact that he visited their room “to determine what was happening” and was told by the victim “that everything was all right.” Jones asserts that he provided counsel with all of this information.

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 (1) counsel’s errors were so severe that there was a reasonable probability that the outcome would have been different,² or (2) but for counsel’s errors, the petitioner would not have pleaded guilty and would have insisted on going to trial.³ The court can

¹As part of the plea agreement, the State agreed to dismiss the one count of false imprisonment.

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

³Hill v. Lockhart, 474 U.S. 52 (1985); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

dispose of a claim if the petitioner makes an insufficient showing on either prong.⁴ A petitioner must demonstrate the factual allegation underlying his ineffective assistance of counsel claim by a preponderance of the evidence.⁵ A district court's factual finding regarding a claim of ineffective assistance of counsel is entitled to deference so long as it is supported by substantial evidence and is not clearly wrong.⁶

We conclude that the district court did not err by dismissing Jones' claim without conducting an evidentiary hearing.⁷ The district court found that Jones' contention lacked the requisite factual specificity entitling him to an evidentiary hearing, and that "[i]t is insufficient to merely allege that the jury would not have believed the victim's testimony and then blame the plea decision on trial counsel." The district court also noted that Jones "knew the relevant facts of this case more than anyone and yet agreed to plea[d] guilty after a thorough canvass." We agree and also conclude that Jones failed to provide any context for, or demonstrate how the victim's alleged drinking on the night in question, her instability, or their dysfunctional relationship would have exonerated him of the charges. Jones' bare assertions lack factual specificity and fail to demonstrate that the victim's credibility, or her perception of the events,

⁴Strickland, 466 U.S. at 697.

⁵Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).

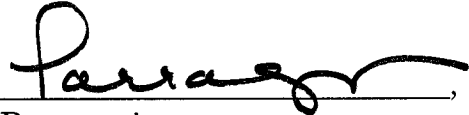
⁶Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994); see also Lara v. State, 120 Nev. 177, 179, 87 P.3d 528, 530 (2004).


⁷See NRS 34.770; Thomas v. State, 120 Nev. 37, 44, 83 P.3d 818, 823 (2004) (habeas petitioner "not entitled to an evidentiary hearing if the factual allegations are belied or repelled by the record").

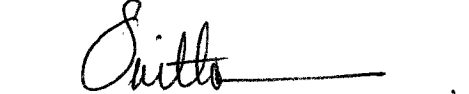
was somehow compromised. And finally, we conclude that Jones failed to demonstrate that counsel's performance was deficient.

Therefore, having considered Jones' contention and concluded that it is without merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Saitta

cc: Hon. Brent T. Adams, District Judge
Eric W. Lerude
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk